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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 KYLE WALKER,

12 Plaintiff,

13 v.

14 STRYKER EMPLOYMENT
15 COMPANY, LLC, et al.,

16 Defendants.

Case No.: 22-cv-00264-MMA-JLB

**ORDER GRANTING JOINT
MOTION FOR PROTECTIVE
ORDER**

[ECF No. 19]

17
18 Before the Court is the parties' Joint Motion for Protective Order. (ECF No. 19.)
19 Good cause appearing, the Joint Motion is **GRANTED**, and the following Protective Order
20 is entered:

21 **PROTECTIVE ORDER**

22 The Court recognizes that at least some of the documents and information
23 ("materials") being sought through discovery in the above-captioned action are, for
24 competitive reasons, normally kept confidential by the parties. The parties have agreed to
25 be bound by the terms of this Protective Order ("Order") in this action. The materials to be
26 exchanged throughout the course of the litigation between the parties may contain trade
27 secret or other confidential research, technical, cost, price, marketing or other commercial
28 information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The

1 purpose of this Order is to protect the confidentiality of such materials as much as practical
2 during the litigation. THEREFORE:

3 **DEFINITIONS**

4 1. The term “confidential information” will mean and include information
5 contained or disclosed in any materials, including documents, portions of documents,
6 answers to interrogatories and requests for admissions, trial testimony, deposition testimony,
7 and transcripts of trial testimony and depositions, including data, summaries, and
8 compilations derived therefrom that is deemed to be confidential information by any party
9 to which it belongs.

10 2. The term “materials” will include, but is not to be limited to: documents;
11 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
12 material that identify customers or potential customers; price lists or schedules or other
13 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
14 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
15 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
16 compilations from which information can be obtained and translated into reasonably usable
17 form through detection devices; sketches; drawings; notes (including laboratory notebooks
18 and records); reports; instructions; disclosures; other writings; models, prototypes, and other
19 physical objects.

20 3. The term “counsel” will mean outside counsel of record, and other attorneys,
21 paralegals, secretaries, and other support staff employed in the law firms identified below:

- 22 • Hunton Andrews Kurth LLP
- 23 • Glick Law Group, P.C.

24 “Counsel” also includes all other in-house attorneys and paralegals for Defendants.

25 **GENERAL RULES**

26 4. Each party to this litigation that produces or discloses any materials, answers to
27 interrogatories and requests for admission, trial testimony, deposition testimony, and
28 transcripts of trial testimony and depositions, or information that the producing party

1 believes should be subject to this Order may designate the same as “CONFIDENTIAL” or
2 “CONFIDENTIAL – FOR COUNSEL ONLY.”

3 a. Designation as “CONFIDENTIAL”: A party or non-party subject to this
4 Order may only designate documents or other information in this action as
5 “CONFIDENTIAL” if the designating party or non-party has an articulable, good
6 faith basis to believe that each document or other information designated as
7 confidential qualifies for protection under Federal Rule of Civil Procedure 26(c).

8 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any
9 party may designate information as “CONFIDENTIAL – FOR COUNSEL ONLY”
10 only if, in the good faith belief of such party and its counsel, the information is among
11 that considered to be most sensitive by the party, including but not limited to trade
12 secret or other confidential research, development, financial or other commercial
13 information.

14 5. In the event the producing party elects to produce materials for inspection, no
15 marking need be made by the producing party in advance of the initial inspection. For
16 purposes of the initial inspection, all materials produced will be considered as
17 “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to the
18 terms of this Order. Thereafter, upon selection of specified materials for copying by the
19 inspecting party, the producing party must, within a reasonable time prior to producing those
20 materials to the inspecting party, mark the copies of those materials that contain confidential
21 information with the appropriate confidentiality marking.

22 6. Whenever a deposition taken on behalf of any party involves a disclosure of
23 confidential information of any party:

24 a. the deposition or portions of the deposition must be designated as
25 containing confidential information subject to the provisions of this Order; such
26 designation must be made on the record whenever possible, but a party may designate
27 portions of depositions as containing confidential information after transcription of
28 the proceedings; a party will have until 14 calendar days after receipt of the deposition

1 transcript to inform the other party or parties to the action of the portions of the
2 transcript to be designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR
3 COUNSEL ONLY.”

4 b. the disclosing party will have the right to exclude from attendance at the
5 deposition, during such time as the confidential information is to be disclosed, any
6 person other than the deponent, counsel (including their staff and associates), the court
7 reporter, and the person(s) agreed upon pursuant to Paragraph 9 below; and

8 c. the originals of the deposition transcripts and all copies of the deposition
9 must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL
10 ONLY,” as appropriate, and the original or any copy ultimately presented to a court
11 for filing must not be filed unless it can be accomplished under seal, identified as
12 being subject to this Order, and protected from being opened except by order of the
13 Court.

14 7. All confidential information designated as “CONFIDENTIAL” or
15 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving party
16 to anyone other than those persons designated within this Order and must be handled in the
17 manner set forth below and, in any event, must not be used for any purpose other than in
18 connection with this litigation, unless and until such designation is removed either by
19 agreement of the parties or by order of the Court.

20 8. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” must
21 be viewed only by counsel (as defined in Paragraph 3) of the receiving party, and by
22 independent experts under the conditions set forth in this Paragraph. The right of any
23 independent expert to receive any confidential information will be subject to the advance
24 approval of such expert by the producing party or by permission of the Court. The party
25 seeking approval of an independent expert must provide the producing party with the name
26 and curriculum vitae of the proposed independent expert, and an executed copy of the form
27 attached hereto as Exhibit A, in advance of providing any confidential information of the
28 producing party to the expert. Any objection by the producing party to an independent expert

1 receiving confidential information must be made in writing within 14 calendar days
2 following receipt of the identification of the proposed expert. Confidential information may
3 be disclosed to an independent expert if the fourteen-day period has passed and no objection
4 has been made. The approval of independent experts must not be unreasonably withheld.

5 9. Information designated “CONFIDENTIAL” must be viewed only by counsel
6 (as defined in Paragraph 3) of the receiving party, by independent experts (pursuant to the
7 terms of Paragraph 8), by court personnel, and by the parties and their employees.

8 10. With respect to material designated “CONFIDENTIAL” or “CONFIDENTIAL
9 – FOR COUNSEL ONLY,” any person indicated on the face of the document to be its
10 originator, author, or a recipient of a copy of the document, may be shown the same.

11 11. All information which has been designated as “CONFIDENTIAL” or
12 “CONFIDENTIAL – FOR COUNSEL ONLY” by the producing or disclosing party, and
13 any and all reproductions of that information, must be retained in the custody of the counsel
14 for the receiving party identified in Paragraph 3, except that independent experts authorized
15 to view such information under the terms of this Order may retain custody of copies such as
16 are necessary for their participation in this litigation.

17 12. Before any materials produced in discovery, answers to interrogatories or
18 requests for admissions, deposition transcripts, or other documents which are designated as
19 confidential information are filed with the Court for any purpose, the party seeking to file
20 such material must seek permission of the Court to file the material under seal. An
21 application to file a document under seal shall be served on opposing counsel, and on the
22 person or entity that has custody and control of the document, if different from opposing
23 counsel. If the application to file a document designated as confidential under seal is being
24 made by the non-designating party, then, upon request, the designating party must promptly
25 provide the applicant with a legal basis for the confidential designation to include in the
26 application. If opposing counsel, or the person or entity that has custody and control of the
27 document, wishes to oppose the application, he/she must contact the chambers of the judge
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1 who will rule on the application, to notify the judge's staff that an opposition to the
2 application will be filed.

3 13. At any stage of these proceedings, any party may object to a designation of
4 materials as confidential information. The party objecting to confidentiality must notify, in
5 writing, counsel for the designating party of the objected-to materials and the grounds for
6 the objection. If the dispute is not resolved consensually between the parties after meeting
7 and conferring within 14 calendar days of receipt of such a notice of objections, the parties
8 may jointly request the Court's assistance with the dispute, in accordance with Judge
9 Burkhardt's Civil Chambers Rules. The materials at issue must be treated as confidential
10 information, as designated by the designating party, until the Court has ruled on the objection
11 or the matter has been otherwise resolved.

12 14. All confidential information must be held in confidence by those inspecting or
13 receiving it and must be used only for purposes of this action. Counsel for each party, and
14 each person receiving confidential information, must take reasonable precautions to prevent
15 the unauthorized or inadvertent disclosure of such information. If confidential information
16 is disclosed to any person other than a person authorized by this Order, the party responsible
17 for the unauthorized disclosure must immediately bring all pertinent facts relating to the
18 unauthorized disclosure to the attention of the other parties and, without prejudice to any
19 rights and remedies of the other parties, make every effort to prevent further disclosure by
20 the party and by the person(s) receiving the unauthorized disclosure.

21 15. No party will be responsible to another party for disclosure of confidential
22 information under this Order if the information in question is not labeled or otherwise
23 identified as such in accordance with this Order.

24 16. If a party, through inadvertence, produces any confidential information without
25 labeling or marking or otherwise designating it as such in accordance with this Order, the
26 designating party may give written notice to the receiving party that the document or thing
27 produced is deemed confidential information, and that the document or thing produced
28 should be treated as such in accordance with that designation under this Order. The receiving

1 party must treat the materials as confidential, once the designating party so notifies the
2 receiving party. If the receiving party has disclosed the materials before receiving the
3 designation, the receiving party must notify the designating party in writing of each such
4 disclosure.

5 17. Nothing within this Order will prejudice the right of any party to object to the
6 production of any discovery material on the grounds that the material is protected as
7 privileged or as attorney work product.

8 18. Nothing in this Order will bar counsel from rendering advice to their clients
9 with respect to this litigation and, in the course thereof, relying upon any information
10 designated as confidential information, provided that the contents of the information must
11 not be disclosed.

12 19. This Order will be without prejudice to the right of any party to oppose
13 production of any information for lack of relevance or any other ground other than the mere
14 presence of confidential information. The existence of this Order must not be used by either
15 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
16 Procedure.

17 20. Nothing within this Order will be construed to prevent disclosure of
18 confidential information if such disclosure is required by law or by order of the Court.

19 21. Upon final termination of this action, including any and all appeals, counsel for
20 each party must, upon request of the producing party, return all confidential information to
21 the party that produced the information, including any copies, excerpts, and summaries of
22 that information, or must destroy same at the option of the receiving party, and must purge
23 all such information from all machine-readable media on which it resides. Notwithstanding
24 the foregoing, counsel for each party may retain all pleadings, briefs, memoranda, motions,
25 and other documents filed with the Court that refer to or incorporate confidential
26 information, and will continue to be bound by this Order with respect to all such retained
27 information. Further, attorney work product materials that contain confidential information
28 need not be destroyed, but, if they are not destroyed, the person in possession of the attorney

1 work product will continue to be bound by this Order with respect to all such retained
2 information.

3 22. Absent an *ex parte* motion made within 10 calendar days of the termination of
4 the case, the parties understand that the Court will destroy any confidential documents in its
5 possession.

6 23. The restrictions and obligations set forth within this Order will not apply to any
7 information that:

- 8 a. the parties agree should not be designated confidential information;
- 9 b. the parties agree, or the Court rules, is already public knowledge;
- 10 c. the parties agree, or the Court rules, has become public knowledge other
11 than as a result of disclosure by the receiving party, its employees, or its agents in
12 violation of this Order; or
- 13 d. has come or will come into the receiving party's legitimate knowledge
14 independently of the production by the designating party. Prior knowledge must be
15 established by pre-production documentation.

16 24. The restrictions and obligations within this Order will not be deemed to prohibit
17 discussions of any confidential information with anyone if that person already has or obtains
18 legitimate possession of that information.

19 25. Transmission by e-mail or some other currently utilized method of transmission
20 is acceptable for all notification purposes within this Order.

21 26. This Order may be modified by agreement of the parties, subject to approval
22 by the Court.

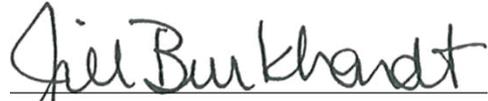
23 27. The Court may modify the terms and conditions of this Order for good cause,
24 or in the interest of justice, or on its own order at any time in these proceedings.

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1 28. Without separate court order, this Order and the parties' stipulation do not
2 change, amend, or circumvent any court rule or local rule.

3 **IT IS SO ORDERED.**

4 Dated: April 21, 2022

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6 Hon. Jill L. Burkhardt
7 United States Magistrate Judge
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ (name), of _____
4 (address), declare under penalty of perjury that I have read in its entirety and understand the
5 Protective Order (“Order”) that was issued by the United States District Court for the
6 Southern District of California on _____ (date), in the case of *Kyle*
7 *Walker v. Stryker Employment Company, LLC,, et al.*, Case No. 22-cv-00264-MMA-JLB. I
8 agree to comply with and to be bound by all the terms of the Order, and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any
11 information or item that is subject to the Order to any person or entity, except in strict
12 compliance with the provisions of the Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Southern District of California for the purpose of enforcing the terms of the Order, even if
15 such enforcement proceedings occur after termination of this action.

16
17
18 Name: _____

19 Signature: _____ Date: _____