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17  
 18 IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 19 WESTERN DIVISION

<p>20 _____          NOBEL BIOCARE USA, LLC, a          Delaware limited liability company,          21 NOBEL BIOCARE SERVICES AG, a          Swiss corporation, and NOBEL          22 BIOCARE AB, a Swedish corporation,            23 Plaintiffs,            24 v.            25 BLUE SKY BIO, LLC, an Illinois limited          liability company,          26 Defendant.          27 _____          28 <u>AND RELATED COUNTERCLAIMS</u></p>	<p>) Civil Action No.          ) CV08-1407 ODW (RZx)          )          ) STIPULATED [PROPOSED]          ) PROTECTIVE ORDER          )          ) <b>NOTE: CHANGES HAVE BEEN</b>          ) <b>MADE TO THIS DOCUMENT</b>          )          ) <b>Hon. Ralph Zarefsky</b>          )          )</p>
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1 Plaintiffs NOBEL BIOCARE SERVICES AG, NOBEL BIOCARE AB,  
2 and NOBEL BIOCARE USA, LLC (“Nobel”) and Defendant BLUE SKY BIO,  
3 LLC (“Blue Sky”), recognizing that each may have confidential business,  
4 financial, and/or trade secret information relevant to the subject matter of this  
5 lawsuit that may be subject to discovery, have agreed to this Protective Order on  
6 the terms set forth below.

7 IT IS HEREBY STIPULATED that:

8 1. This Order shall apply to all information produced during  
9 discovery in this action, including information produced as an initial disclosure  
10 or for purposes of mediation or arbitration, that shall be designated by the party  
11 or person producing it as “Confidential” or “Confidential-Attorneys Eyes Only”  
12 (collectively, “Confidential Information”). This Order shall not apply to  
13 information that, before disclosure, is properly in the possession or knowledge  
14 of the party to whom such disclosure is made, or is public knowledge. The  
15 restrictions contained in this Order shall not apply to information that is, or after  
16 disclosure becomes, public knowledge other than by an act or omission of the  
17 party to whom such disclosure is made, or that is legitimately acquired from a  
18 source not subject to this Order.

19 2. Good cause exists for this Court to enter the Order. In the course  
20 of pre-trial discovery disclosure has been sought of technical, marketing,  
21 personnel, and financial information that contains highly confidential, trade  
22 secret, or proprietary information of the parties, which the parties have taken  
23 reasonable steps to maintain as confidential. For example, through document  
24 requests and interrogatories, the parties have already sought discovery from one  
25 another in this case that requires the parties to disclose highly confidential  
26 technical product drawings; manufacturing data; royalties, licenses, and  
27 confidential business relationships with third parties; detailed product cost,  
28 sales, and profitability information; customer and vendor lists; and strategic

1 marketing information. Such information is maintained confidentially by each  
2 of the parties, and the parties believe that its disclosure beyond the limits set  
3 forth herein would substantially injure the disclosing party and provide a  
4 significant competitive advantage for competitors of the parties (including the  
5 receiving party), if such competitors had access to the Confidential Information  
6 identified above.

7 3. If an exhibit, pleading, interrogatory answer, or admission  
8 (collectively, “discovery response”), document or thing (collectively,  
9 “document or thing”), or a deposition transcript, other transcript of testimony, or  
10 declaration or affidavit (collectively, “testimony”) contains information  
11 considered confidential by the disclosing party, such exhibit, pleading,  
12 discovery response, document or thing, or testimony may be designated  
13 “Confidential” or “Confidential-Attorneys Eyes Only” by the disclosing party.

14 4. In connection with an exhibit, pleading, discovery response,  
15 document or thing, testimony or other court submission, the legend  
16 “Confidential” or “Confidential-Attorneys Eyes Only” (in such a manner as will  
17 not interfere with the legibility thereof) shall be affixed before the production or  
18 service upon a party.

19 5. A document may be designated “Confidential” only when it  
20 contains, reflects, or otherwise discloses a trade secret or other research,  
21 development, commercial, marketing, technical, business, financial, personnel,  
22 or customer information that the disclosing party has made reasonable efforts to  
23 maintain as confidential and protect against disclosure to improper third parties.  
24 A document may be designated “Confidential-Attorneys Eyes Only” only when  
25 it contains any of the following highly sensitive information: financial  
26 information; cost information; pricing information; sales information; customer,  
27 license, supplier, and vendor information; software and firmware for a party’s  
28 products; technical and development information about a party’s products,

1 including but not limited to a product's dimensions or manufacturing tolerances;  
2 comparative product test results; business plans; marketing strategies; new  
3 product plans and competitive strategies; or any other information that would  
4 put the producing party at a competitive disadvantage if the information became  
5 known to employees of the receiving party or if the information became known  
6 to third parties beyond the restrictions set forth herein.

7         6. All Confidential Information (*i.e.*, “Confidential” or “Confidential-  
8 Attorneys Eyes Only” information) that has been obtained from a party during  
9 the course of this proceeding shall be used only for the purpose of this litigation  
10 (including, without limitation, appeals and proceedings to enforce subpoenas  
11 issued in connection with this litigation) and not for prosecution of patent  
12 applications or any other business, proceeding, litigation, or other purpose  
13 except as set forth in Paragraph 23. Further, such information may not be  
14 disclosed to anyone except as provided in this Order. Counsel for a party may  
15 give advice and opinions to their client based on evaluation of information  
16 designated as Confidential Information produced by the other party. For  
17 information designated “Confidential-Attorneys Eyes Only,” such rendering of  
18 advice and opinions shall not reveal the content of such information except by  
19 prior agreement with opposing counsel.

20         7. All documents, or any portion thereof, produced for inspection only  
21 (*i.e.*, copies have not yet been provided to the receiving party) shall be deemed  
22 “Confidential-Attorneys Eyes Only.” If a copy of any such document is  
23 requested after inspection, the document shall be deemed “Confidential” or  
24 “Confidential-Attorneys Eyes Only” only if labeled or marked in conformity  
25 with Paragraph 3, with access and dissemination limited as set forth in  
26 Paragraphs 12-15.

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1           8. Information disclosed at a deposition or other testimony may be  
2 designated as “Confidential” or “Confidential-Attorneys Eyes Only” at the time  
3 of the testimony or deposition, or within fourteen (14) days following receipt of  
4 the transcript, and shall be subject to the provisions of this Order. Information  
5 disclosed during a deposition or other testimony may be designated as  
6 “Confidential” or “Confidential-Attorneys Eyes Only” by notifying the other  
7 party, in writing, within fourteen (14) days after receipt of the transcript, of the  
8 specific pages of the transcript that should also be so designated. Unless  
9 otherwise agreed on the record of the deposition or other testimony, all  
10 transcripts shall be treated as “Confidential-Attorneys Eyes Only” for a period  
11 of fourteen (14) days after their receipt, and the transcript shall not be disclosed  
12 by a non-designating party to persons other than those persons named or  
13 approved according to Paragraphs 13-15 to review documents or materials  
14 designated “Confidential-Attorneys Eyes Only” on behalf of that non-  
15 designating party.

16           9. All exhibits, pleadings, discovery responses, documents or things,  
17 testimony or other submissions, filed with the Court pursuant to this action that  
18 have been designated “Confidential” or “Confidential-Attorneys Eyes Only,” by  
19 any party, or any pleading or memorandum purporting to reproduce, paraphrase,  
20 or otherwise disclose such information designated as Confidential Information,  
21 shall be marked with the legend “Confidential” or “Confidential-Attorneys Eyes  
22 Only” and shall be maintained by the Court under seal by filing the same in the  
23 Clerk's Office in sealed envelopes or other appropriate sealed containers on  
24 which shall be endorsed the title and docket number of this action, an indication  
25 of the nature of the contents of such sealed envelope or other container, the  
26 legend “Confidential” and a statement substantially in the following form:  
27 “Filed Under Seal Pursuant to Protective Order Dated (insert the date of this  
28 Order)”.

1           10. Any Confidential Information that a party seeks to file with the  
2 Court under seal shall be submitted to the Court only as provided by Civil Local  
3 Rule 79-5. In particular, all documents containing non-segregable Confidential  
4 Information that are submitted to the Court shall be lodged (not filed) with the  
5 Court in sealed envelopes or other appropriate sealed containers on which shall  
6 be placed the title of the litigation, an indication of the nature of the contents of  
7 the sealed envelope or other container, and the words “Confidential” or  
8 “Confidential-Attorneys Eyes Only” as appropriate. If the Confidential  
9 Information is segregable, such as an exhibit or set of exhibits in support of a  
10 motion, then only the segregable materials shall be lodged in this matter, with  
11 the remaining materials being publicly filed. The party lodging the Confidential  
12 Information shall simultaneously file an application to seal such materials,  
13 directed to the judicial officer to whom the underlying papers are directed.  
14 Until the Court rules on whether to seal, the lodged material shall remain under  
15 seal.

16           11. As used in this Protective Order, “Trial Counsel” refers exclusively  
17 to the following:

18           (a) For Plaintiffs: The attorneys, paralegals, agents, and support  
19 staff of Knobbe, Martens, Olson & Bear, LLP.

20           (b) For Defendants: The attorneys, paralegals, agents, and  
21 support staff of Malina & Associates, P.L.L.C., and Kleinberg & Lerner, L.L.P.

22           (c) Others: Such additional attorneys as may be ordered by the  
23 Court, or subsequently may be agreed upon by the parties, such agreement not  
24 to be unreasonably withheld.

25           (d) The Plaintiffs have identified the following attorneys at  
26 Knobbe, Martens, Olson & Bear, LLP as the attorneys responsible for  
27 prosecuting Plaintiffs’ patent applications: Rabi Narula, Nathan Smith, Sean  
28 Ambrose, Jeff Stephens, and John Swingle. These attorneys shall not be given

1 access to materials produced by the Defendants that are designated by the  
2 Defendants as “Confidential” or “Confidential – Attorneys Eyes Only.”

3 12. Material designated as “Confidential” that has been obtained from  
4 a party during the course of this proceeding may be disclosed or made available  
5 only to the Court, to Trial Counsel for either party, and to the persons  
6 designated below:

7 (a) a party, or an officer, director, or designated employee of a  
8 party, including in-house counsel, deemed necessary by Trial Counsel to aid in  
9 the prosecution, defense, or settlement of this action;

10 (b) independent experts or consultants (together with their  
11 clerical staff) retained by such Trial Counsel to assist in the prosecution,  
12 defense, or settlement of this action;

13 (c) court reporter(s) employed in this action;

14 (d) agents of Trial Counsel needed to perform various services  
15 such as, for example, copying, drafting of exhibits, and support and  
16 management services, including vendors retained by the parties, or by counsel  
17 for parties, for the purpose of encoding, loading into a computer and storing and  
18 maintaining for information control and retrieval purposes, transcripts of  
19 depositions, hearings, trials, pleadings, exhibits marked by a party, or attorneys'  
20 work product, all of which may contain material designated Confidential;

21 (e) witnesses in any deposition or other proceeding of this  
22 action;

23 (f) Judges, Magistrates, law clerks and other clerical personnel  
24 of the Court before which this action is pending;

25 (g) members of the jury and alternates;

26 (h) courtroom spectators at hearings and trial as may be deemed  
27 appropriate by the Court; and

28 (i) any other persons as to whom the parties in writing agree.

1           13. Material designated as “Confidential-Attorneys Eyes Only” that  
2 has been obtained from Plaintiff or Defendants during the course of this  
3 proceeding may be disclosed or made available only to the Court, to Trial  
4 Counsel for either party, and to the persons designated below:

5           (a) independent experts or consultants (together with their  
6 clerical staff) retained by such Trial Counsel to assist in the prosecution,  
7 defense, or settlement of this action;

8           (b) authors and recipients of any material bearing a  
9 “Confidential-Attorneys Eyes Only” legend;

10           (c) court reporter(s) employed in this action;

11           (d) Jacqueline Collins, Esq., of Nobel or any other successor in-  
12 house counsel designated in writing by Nobel, provided that Ms. Collins or  
13 other designated in-house counsel does not engage in competitive decision  
14 making;

15           (e) agents of Trial Counsel needed to perform various services  
16 such as, for example, copying, drafting of exhibits, and support and  
17 management services, including vendors retained by the parties, or by counsel  
18 for parties, for the purpose of encoding, loading into a computer and storing and  
19 maintaining for information control and retrieval purposes, transcripts of  
20 depositions, hearings, trials, pleadings, exhibits marked by a party, or attorneys'  
21 work product, all of which may contain material designated Confidential-  
22 Attorney Eyes Only;

23           (f) witnesses in any deposition or other proceeding in this action  
24 who are the author or recipient of the “Confidential-Attorney Eyes Only”  
25 material, or who, based on evidence, have seen the material in the past;

26           (g) Judges, Magistrates, law clerks and other clerical personnel  
27 of the Court before which this action is pending;

28           (h) members of the jury and alternates;



1 (i) court room spectators at hearings and trial as may be deemed  
2 appropriate by the Court; and

3 (j) any other persons as to whom the parties in writing agree.

4 14. Any officer, director, or designated employee of a party under  
5 Paragraph 12(a) or individuals identified under Paragraphs 12(b) and 13(a)  
6 having access to Confidential Information shall be given a copy of this order  
7 before being shown such Confidential Information, and its provisions shall be  
8 explained to them by an attorney. Each person, before having access to the  
9 Confidential Information, shall agree not to disclose to anyone any Confidential  
10 Information not exempted by this order and not to make use of any such  
11 Confidential Information other than solely for purpose of this litigation, and  
12 shall acknowledge in writing by signing a document in the form of Exhibit A  
13 attached hereto, that he or she is fully conversant with the terms of this Order  
14 and agrees to comply with it and be bound by it.

15 15. For the purpose of this Protective Order an independent expert or  
16 consultant shall be defined as a person, who has not been and is not an  
17 employee of a party or scheduled to become an employee in the future, and who  
18 is retained or employed as a consultant or expert for purposes of this litigation,  
19 either full or part-time, by or at the direction of counsel of a party.

20 16. No expert shall receive Confidential Information unless and until:

21 (i) any such expert, consultant and/or consulting firm has signed  
22 an undertaking in the form of the attached Exhibit A;

23 (ii) a copy of the signed undertaking, a curriculum vitae of the  
24 proposed consultant, an identification of any past or present employment or  
25 consulting relationship with any party or any related company, and a description  
26 of each employment or consulting engagement during the past five years is  
27 served on all counsel of record at least ten (10) court days before the  
28 confidential discovery material is shown to such consultant; and

1 (iii) no party objects in writing to such disclosure within those at  
2 least ten (10) days. If any such objection is made, it must be in writing and for  
3 good cause, and must state the reasons for such objection; thereafter, no  
4 disclosure of confidential discovery material shall be made to that consultant as  
5 to material produced by the objecting party until the matter is resolved by the  
6 Court or upon agreement of the parties. If the objection is not resolved by the  
7 parties, the objecting party has 15 court days from the time the materials  
8 referenced in (ii) are served to raise its objections to the Court. If an objection is  
9 made and the objecting party fails to bring the objections before the Court  
10 within the previously described fifteen (15) court days, the receiving party may  
11 show the objecting party's confidential information to its consultant, and the  
12 objecting party will be deemed to have waived its objections.

13 17. If any party desires at a hearing to offer into evidence Confidential  
14 Information, or to use Confidential Information in such a way as to reveal its  
15 nature or contents, such offers or use shall be made only upon the taking of all  
16 steps reasonably available to preserve the confidentiality of such Confidential  
17 Information, which may include the offering of such Confidential Information  
18 outside the presence of persons other than court personnel and counsel.

19 18. Any Confidential Information may be used in the course of any  
20 deposition taken of the party producing such Confidential Information or its  
21 employees without consent, or otherwise used in any deposition with the  
22 consent of the party producing such Confidential Information, subject to the  
23 condition that when such Confidential Information is so used, the party who  
24 made the designation may notify the reporter that the portion of the deposition  
25 in any way pertaining to such Confidential Information or any portion of the  
26 deposition relevant thereto is being taken pursuant to this Order. Further,  
27 whenever any Confidential Information is to be discussed or disclosed in a  
28 deposition, any party claiming such confidentiality may exclude from the room

1 any person not entitled to receive such confidential information pursuant to the  
2 terms of this Order.

3 19. In the event that a party seeks discovery from a non-party to this  
4 action, either the non-party or the parties may invoke the terms of this Order  
5 with respect to any Confidential Information provided to the parties by the non-  
6 party by so advising all parties in this suit in writing. Any non-party that  
7 discloses Confidential Information under this Order shall be entitled to the  
8 rights of a party under this Protective Order with respect to those produced  
9 materials. To protect its own Confidential Information, a party may ask a non-  
10 party to execute a document in the form of Exhibit A.

11 20. If any Confidential Information that has been obtained from a party  
12 during the course of this proceeding is sought in a separate proceeding by a  
13 subpoena, request for production of documents, interrogatory, or any other form  
14 of discovery request or compulsory process, including any form of discovery  
15 request or compulsory process of any court, administrative or legislative body or  
16 any other person or tribunal purporting to have authority to seek such  
17 information by compulsory process or discovery request, including private  
18 parties, then the party or Trial Counsel to whom the process or request is  
19 directed (“the receiving party”) shall:

20 (i) by the third business day after receipt thereof, or the earliest  
21 practicable date thereafter, give written notice by hand or facsimile or email of  
22 such process or request, together with a copy thereof, to counsel for the party  
23 from which the Confidential Information was obtained (“the producing party”);

24 (ii) object to the process or request, if requested to do so by the  
25 producing party; and

26 (iii) refuse to produce or disclose such Confidential Information  
27 until:

28 (a) the producing party consents in writing to production;

1 (b) the producing party fails to file a motion to quash such  
2 process or discovery within the time required for such a motion;

3 (c) a motion to quash such process or discovery filed by  
4 the producing party is denied; or

5 (d) the receiving party is ordered by a court of competent  
6 jurisdiction to produce or disclose such confidential information, so long as the  
7 order is not stayed prior to the date set for production or disclosure.

8 The producing party shall indemnify the receiving party for all  
9 expenses, including attorneys' fees, reasonably incurred in resisting  
10 production.

11 21. A receiving party who objects to the designation of any discovery  
12 response, document, or thing or testimony as "Confidential" or "Confidential-  
13 Attorneys Eyes Only" shall state the objection by letter to counsel for the  
14 producing party. If the objection is not promptly resolved, the receiving party  
15 may move the Court to determine whether the discovery response, document, or  
16 thing or testimony at issue qualifies for treatment as "Confidential" or  
17 "Confidential-Attorneys Eyes Only." If the receiving party files such a motion,  
18 the discovery response, document, or thing or testimony at issue will continue to  
19 be entitled to the protections accorded by this Stipulated Protective Order until  
20 and unless the Court rules otherwise. If the receiving party files such a motion,  
21 the producing party shall bear the burden of establishing that the discovery  
22 response, document, or thing or testimony at issue qualifies for treatment as  
23 "Confidential" or "Confidential-Attorneys Eyes Only." Nothing herein shall  
24 operate as an admission by any party that any particular discovery response,  
25 document, or thing or testimony contains "Confidential" or "Confidential-  
26 Attorneys Eyes Only" Information for purposes of determining the merits of the  
27 claims in this litigation. A party shall not be obligated to challenge the  
28 propriety of the designation of any discovery response, document, or thing or

1 testimony at the time such designation is made; failure to do so shall not  
2 preclude a subsequent challenge. Further, a party's failure to challenge a  
3 designation during pretrial discovery shall not preclude a subsequent challenge  
4 of such designation at trial or in connection with the submission of any  
5 discovery response, document, or thing or testimony to the Court for any  
6 purpose.

7 22. Notwithstanding anything contrary herein, if a party through  
8 inadvertence or mistake produces discovery of any Confidential Information  
9 without marking it with the legend "Confidential" or "Confidential-Attorneys  
10 Eyes Only," or by designating it with an incorrect level of confidentiality, the  
11 producing party may give written notice to the receiving party that the exhibit,  
12 pleading, discovery response, document or thing, or testimony contains  
13 Confidential Information and should be treated as such in accordance with the  
14 provisions of this Protective Order. Upon receipt of such notice, and upon  
15 receipt of properly marked materials, the receiving party shall return said  
16 unmarked or improperly marked materials and not retain copies thereof, and  
17 must treat such exhibits, pleadings, discovery responses, documents or things, or  
18 testimony as Confidential Information and shall cooperate in restoring the  
19 confidentiality of such Confidential Information. The inadvertent or  
20 unintentional disclosure by a party of Confidential Information, regardless of  
21 whether the information was so designated at the time of disclosure, shall not be  
22 deemed a waiver in whole or in part of a party's claim of confidentiality either  
23 as to the specific information disclosed or as to any other information relating  
24 thereto or on the same or related subject matter, provided that the non-producing  
25 party is notified and properly marked documents are supplied as provided  
26 herein. The receiving party shall not be responsible for the disclosure or other  
27 distribution of belatedly designated Confidential Information that may occur  
28 before the receipt of such notification of a claim of confidentiality and such

1 disclosure or distribution shall not be deemed to be a violation of this Protective  
2 Order.

3 23. Any party receiving Confidential Information who believes, in  
4 good faith, that disclosure of such material to the United States Patent and  
5 Trademark Office (“PTO”) is required by 37 C.F.R. § 1.56 may disclose such  
6 material to the PTO using the confidential disclosure procedures set forth in the  
7 Manual of Patent Examining Procedure §§ 724 - 724.06. Any such disclosure  
8 shall be accompanied by a Petition to Expunge such Confidential Information  
9 from the PTO’s file in accordance with 37 C.F.R. § 1.59(b) and the Manual of  
10 Patent Examining Procedure § 724.05. At least ten (10) calendar days prior to  
11 submission of Confidential Information to the PTO, the submitting party shall  
12 provide written notice of the planned submission to the producing party. The  
13 producing party may seek relief from this Court to prevent or otherwise restrict  
14 disclosure of Confidential Information to the PTO.

15 24. Documents and things produced or made available for inspection  
16 may be subject to redaction, in good faith by the producing party, of sensitive  
17 material that is neither relevant to the subject of this litigation nor reasonably  
18 calculated to lead to the discovery of admissible evidence, or is subject to the  
19 attorney-client privilege or to work-product immunity. Each such redaction,  
20 regardless of size, will be clearly labeled. This paragraph shall not be construed  
21 as a waiver of any party’s right to seek disclosure of redacted information.

22 25. If information subject to a claim of attorney-client privilege or  
23 work-product immunity is inadvertently produced, such production shall in no  
24 way prejudice or otherwise constitute a waiver of, or estoppel as to, any such  
25 claim. If a party has inadvertently produced information subject to a claim of  
26 immunity or privilege, upon request, such information shall be returned  
27 promptly and, if a document, all copies of that document shall be destroyed.  
28 The party returning such information may move the Court for an Order

1 compelling production of such information but the motion shall not assert as a  
2 ground for production the fact that the information was inadvertently produced.

3 26. Any privileged communication that occurs solely between all or  
4 some of the following individuals does not need to be logged by the party on its  
5 privilege log:

6 (a) the party;

7 (b) its Trial Counsel as provided in Paragraph 11 of this Order; and

8 (c) experts and consultants retained by the party or its counsel  
9 specifically for the present litigation.

10 The omission of any such communication from a party's privilege log  
11 will not constitute a waiver of any privilege. The parties, however, reserve their  
12 right to seek a log of any such communication if a party later reasonably  
13 believes that such information would be probative.

14 27. It is not the intention of this Protective Order to address fully  
15 discovery objections to produce, answer, or respond on the grounds of attorney-  
16 client privilege or work product, nor to preclude either party from seeking  
17 further relief or protective orders from the Court as may be appropriate under  
18 the Federal Rules of Civil Procedure.

19 28. Neither the taking or the failure to take any action to enforce the  
20 provisions of this Order, nor the failure to object to any designation or any such  
21 action or omission, shall constitute a waiver of any signatory's right to seek and  
22 obtain protection or relief, with respect to any claim or defense in this action or  
23 any other action including, but not limited to, the claim or defense that any  
24 information is or is not proprietary to any party, is or is not entitled to particular  
25 protection or that such information embodies trade secret or other confidential  
26 information of any party. The procedures set forth herein shall not affect the  
27 rights of the parties to object to discovery on grounds other than those related to  
28 trade secrets or other confidential information claims, nor shall it relieve a party

1 of the necessity of proper responses to discovery requests.

2 29. This Order shall not abrogate or diminish any contractual,  
3 statutory, or other legal obligation or right of any party to this Order, as to any  
4 third party, with respect to any Confidential Information. The fact that  
5 Information is designated “Confidential” or “Confidential-Attorneys Eyes  
6 Only” under this Order shall not be deemed to be determinative of what a trier  
7 of fact may determine to be confidential or proprietary. This Order shall be  
8 without prejudice to the right of any party to bring before the Court the question  
9 of:

10 (a) whether any particular information is or is not Confidential  
11 Information;

12 (b) whether any particular information is or is not entitled to a  
13 greater or lesser degree of protection than provided hereunder; or

14 (c) whether any particular information is or is not relevant to  
15 any issue in this case; provided that in doing so the party complies with the  
16 foregoing procedures.

17 30. Within thirty (30) days following the conclusion of this litigation,  
18 including the exhaustion of all appeals, all information designated as  
19 Confidential Information, except such documents or information which  
20 incorporate or are incorporated into attorney work product (a single copy of  
21 which may be retained in counsel’s file), shall, upon request, be returned to the  
22 producing party, or disposed of pursuant to the instructions of the producing  
23 party.

24 31. The restrictions provided for above shall not terminate upon the  
25 conclusion of this lawsuit, but shall continue until further order of this Court.  
26 This Stipulated Protective Order is without prejudice to the right of a party  
27 hereto to seek relief from the Court, upon good cause shown, from any of the  
28 provisions or restrictions provided herein.



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**IT IS SO STIPULATED:**

Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: \_\_\_\_\_ By: \_\_\_\_\_

John B. Sganga, Jr.  
Paul Stewart  
John N. Kandara

Attorneys for Plaintiffs  
and Counterdefendants  
NOBEL BIOCARE USA, LLC,  
NOBEL BIOCARE SERVICES AG  
and NOBEL BIOCARE AB

KLEINBERG & LERNER, LLP

Dated: \_\_\_\_\_ By: \_\_\_\_\_

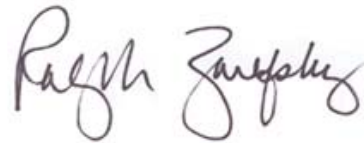
Marvin H. Kleinberg  
Michael Hurey  
Christopher J. Dugger

Attorneys for Defendant  
and Counterclaimant  
BLUE SKY BIO, LLC

1 **ORDER**

2 For good cause shown, IT IS HEREBY ORDERED THAT the Stipulated  
3 Protective Order, set forth herein, be entered on the date set forth below, with the  
4 following modifications:

- 5
- 6 1. The order is limited to those categories of information which the parties  
7 have identified in Paragraph 2 of the stipulation, and therefore to the  
8 categories for which, arguably, they have demonstrated good cause:  
9 technical product drawings; manufacturing data which the parties have  
10 heretofore treated as confidential; royalties, licenses and confidential  
11 business relationships with third parties; detailed product cost, sales and  
12 profitability information, to the extent that the parties have treated such  
13 information heretofore as confidential; customer and vendor lists; and  
14 strategic marketing information.
- 15 2. The order is limited to the discovery and pre-trial phase of the action. If  
16 protection is desired for use of information at trial, such protection must be  
17 sought separately from the judicial officer who will preside at trial.
- 18 3. The order shall not govern information used in connection with dispositive  
19 motions. If protection is desired for such information, such protection must  
20 be sought separately from the judicial officer who will hear the motions.

21 

22  
23 Dated: September 29, 2008

24 \_\_\_\_\_  
25 The Honorable Ralph Zarefsky  
26 UNITED STATES MAGISTRATE JUDGE  
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Exhibit A

ACKNOWLEDGMENT AND NONDISCLOSURE AGREEMENT

I, \_\_\_\_\_, do solemnly swear or affirm that I have read and fully understand the Stipulated Protective Order entered in Nobel Biocare USA, LLC, et al. v. Blue Sky Bio, LLC, Civil Action No. CV08-1407 ODW (RZx). I agree that I will not disclose any information received by me pursuant to the Stipulated Protective Order, and I will comply with and be bound by the terms and conditions of said Order unless and until modified by further order of the Court. I hereby consent to the jurisdiction of the United States District Court for the Central District of California for purposes of enforcing this Order.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this **STIPULATED [PROPOSED] PROTECTIVE ORDER** via the Court's CM/ECF system pursuant to General Order No. 07-08 II(G) and III(C) on September 25, 2008.

\_\_\_\_\_  
Linda Rivera

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