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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

UNITED STATES OF AMERICA,  
*ex rel.* GERALDINE GODECKE,

Plaintiffs,

v.

KINETIC CONCEPTS, INC., and  
KCI USA, INC.,

Defendants.

CASE: 2:08-cv-06403-CAS (AGR<sub>x</sub>)

**STIPULATED HIPAA  
QUALIFIED PROTECTIVE  
ORDER**

**Judge:** Hon. Christina A. Snyder  
**Magistrate Judge:** Alicia G.  
Rosenberg  
**Courtroom:** 8D

1     1. INTRODUCTION

2           1.1     Purposes and Limitations. Discovery in this action is likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than  
5 prosecuting this litigation may be warranted. Such information may include, among  
6 other information, protected health information within the meaning of 45 C.F.R. §  
7 160.3. Accordingly, the parties hereby stipulate to and petition the Court to enter the  
8 following Stipulated HIPAA Qualified Protective Order. The parties acknowledge  
9 that this Order does not confer blanket protections on all disclosures or responses to  
10 discovery and that the protection it affords from public disclosure and use extends  
11 only to the limited information or items that are entitled to confidential treatment  
12 under the applicable legal principles. The parties further acknowledge, as set forth in  
13 Section 12.3, below, that this Stipulated HIPAA Qualified Protective Order does not  
14 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets  
15 forth the procedures that must be followed and the standards that will be applied  
16 when a party seeks permission from the court to file material under seal.

17           1.2     Good Cause Statement. This action is likely to involve third parties'  
18 individually identifiable health information within the meaning of 45 C.F.R. § 160.3,  
19 patient identifying information, and other confidential and proprietary medical  
20 information for which special protection from public disclosure and from use for any  
21 purpose other than prosecution of this action is warranted, both under federal law  
22 and for the proper safeguarding of the parties' business and legal interests. This  
23 action may also involve confidential and proprietary business information, which  
24 may consist of, among other things, trade secrets, confidential business or financial  
25 information, information regarding confidential business practices, or other  
26 confidential research, development, or commercial information (including  
27 information implicating privacy rights of third parties), information otherwise  
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1 generally unavailable to the public, or which may be privileged or otherwise  
2 protected from disclosure under state or federal statutes, court rules, case decisions,  
3 or common law. Accordingly, to expedite the flow of information, to facilitate the  
4 prompt resolution of disputes over confidentiality of discovery materials, to  
5 adequately protect information the parties are entitled to keep confidential or are  
6 required to keep confidential by law, to ensure that the parties are permitted  
7 reasonable necessary uses of such material in preparation for and in the conduct of  
8 trial, to address their handling at the end of the litigation, and serve the ends of  
9 justice, a protective order for such information is justified in this matter. It is the  
10 intent of the parties that information will not be designated as protected under this  
11 order for tactical reasons and that nothing be so designated without a good faith  
12 belief that it has been maintained in a confidential, non-public manner, or that federal  
13 or state law requires it to be so maintained, and there is good cause why it should not  
14 be part of the public record of this case.

15

16 2. DEFINITIONS

17 2.1 Action: the above captioned action, *United States ex rel. Godecke v.*  
18 *Kinetic Concepts, Inc. et al.*, 2:08-cv-06403-CAS (AGRx) (C.D. Cal.).

19 2.2 Challenging Party: a Party or Non-Party that challenges the  
20 designation of information or items under this Order.

21 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
22 how it is generated, stored or maintained) or tangible things that qualify for  
23 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the  
24 Good Cause Statement.

25 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
26 their support staff).

27 2.5 Designating Party: a Party or Non-Party that designates information or  
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1 items that it produces in disclosures or in responses to discovery as  
2 “CONFIDENTIAL.”

3       2.6 Disclosure or Discovery Material: all items or information, regardless of  
4 the medium or manner in which it is generated, stored, or maintained (including,  
5 among other things, testimony, transcripts, and tangible things), that are produced or  
6 generated in disclosures or responses to discovery in this matter.

7       2.7 Expert: a person with specialized knowledge or experience in a matter  
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
9 an expert witness or as a consultant in this Action.

10       2.8 House Counsel: attorneys who are employees of a party to this Action.  
11 House Counsel does not include Outside Counsel of Record or any other outside  
12 counsel.

13       2.9 Non-Party: any natural person, partnership, corporation, association, or  
14 other legal entity not named as a Party to this action.

15       2.10 Outside Counsel of Record: attorneys who are not employees of a party  
16 to this Action but are retained to represent or advise a party to this Action and have  
17 appeared in this Action on behalf of that party or are affiliated with a law firm which  
18 has appeared on behalf of that party, and includes support staff.

19       2.11 Party: any party to this Action, including all of its officers, directors,  
20 employees, consultants, retained experts, and Outside Counsel of Record (and their  
21 support staffs).

22       2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
23 Discovery Material in this Action.

24       2.13 Professional Vendors: persons or entities that provide litigation support  
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
27 and their employees and subcontractors.  
28

1           2.14 Protected Health Information (“PHI”): information as defined in 45  
2 C.F.R. § 160.103 and as described in 45 C.F.R. § 164.514(b)(2).

3           2.15 Protected Material: any Disclosure or Discovery Material that is  
4 designated as “CONFIDENTIAL” or “PHI.”

5           2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
6 from a Producing Party.

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8 3.     SCOPE

9           The protections conferred by this Stipulation and Order cover not only  
10 Protected Material (as defined above), but also (1) any information copied or  
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
12 compilations of Protected Material; and (3) any testimony, conversations, or  
13 presentations by Parties or their Counsel that might reveal Protected Material.  
14 Any use of Protected Material at trial shall be governed by the orders of the trial  
15 judge. This Order does not govern the use of Protected Material at trial.

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17 4.     DURATION

18           Even after final disposition of this litigation, the confidentiality obligations  
19 imposed by this Order shall remain in effect, as to material designated as  
20 CONFIDENTIAL, until a Designating Party agrees otherwise in writing or a court  
21 order otherwise directs, and as to material designated as PROTECTED HEALTH  
22 INFORMATION, until a court order otherwise directs. Final disposition shall be  
23 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
24 or without prejudice; and (2) final judgment herein after the completion and  
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
26 including the time limits for filing any motions or applications for extension of time  
27 pursuant to applicable law.

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5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in

this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

- (a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend

1 “CONFIDENTIAL” (in the case of CONFIDENTIAL Information or Items)  
2 or the legend “PROTECTED HEALTH INFORMATION” (in the case of  
3 PHI; collectively, the “CONFIDENTIAL or PHI legend”), to each page that  
4 contains protected material. Where appropriate, the Producing Party may affix  
5 both legends. If only a portion or portions of the material on a page qualifies  
6 for protection as CONFIDENTIAL Information or Items or as PHI, the  
7 Producing Party also must clearly identify the portion(s) protected under each  
8 classification (e.g., by making appropriate markings in the margins).

9 A Party or Non-Party that makes original documents available for  
10 inspection need not designate them for protection until after the inspecting  
11 Party has indicated which documents it would like copied and produced.  
12 During the inspection and before the designation, all of the material made  
13 available for inspection shall be deemed “CONFIDENTIAL.” After the  
14 inspecting Party has identified the documents it wants copied and produced,  
15 the Producing Party must determine which documents, or portions thereof,  
16 qualify for protection under this Order, either as CONFIDENTIAL  
17 Information or Items or as PHI. Then, before producing the specified  
18 documents, the Producing Party must affix the CONFIDENTIAL or PHI  
19 legend to each page that contains Protected Material. If only a portion or  
20 portions of the material on a page qualifies for protection as CONFIDENTIAL  
21 Information or Items or as PHI, the Producing Party also must clearly identify  
22 the portion(s) protected under each classification (e.g., by making appropriate  
23 markings in the margins).

24 (b) for testimony given in depositions that the Designating Party  
25 identify the Disclosure or Discovery Material on the record, before the close of  
26 the deposition all protected testimony.

27 (c) for information produced in some form other than documentary and  
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1 for any other tangible items, that the Producing Party affix in a prominent  
2 place on the exterior of the container or containers in which the information is  
3 stored, as applicable, either or both of the legends “CONFIDENTIAL” or  
4 “PROTECTED HEALTH INFORMATION.” If only a portion or portions of  
5 the information warrants protection as CONFIDENTIAL Information or Items  
6 or as PHI, the Producing Party, to the extent practicable, shall identify the  
7 portion(s) protected under each classification.

8 5.3 Inadvertent Failures to Designate. If corrected timely, an inadvertent  
9 failure to designate qualified information or items does not, standing alone, waive  
10 the Designating Party’s right to secure protection under this Order for such material.  
11 Upon timely correction of a designation, the Receiving Party must make reasonable  
12 efforts to assure that the material is treated in accordance with the provisions of this  
13 Order.

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15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
17 designation of protection at any time that is consistent with the Court’s Scheduling  
18 Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
20 resolution process under Local Rule 37.1 et seq.

21 6.3 The burden of persuasion in any such challenge proceeding shall be on  
22 the Designating Party. Frivolous challenges, and those made for an improper purpose  
23 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
24 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
25 or withdrawn the confidentiality designation, all parties shall continue to afford the  
26 material in question the level of protection to which it is entitled under the Producing  
27 Party’s designation until the Court rules on the challenge.  
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7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order and, for PHI, otherwise complies with federal law and regulations concerning the storage, security, and disclosure of personal health information.

7.2 Disclosure of “CONFIDENTIAL” Information or Items and PHI.

Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” or “PROTECTED HEALTH INFORMATION” only to:

- (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

- 1 (d) the court and its personnel;
- 2 (e) court reporters and their staff;
- 3 (f) professional jury or trial consultants, mock jurors, and Professional
- 4 Vendors to whom disclosure is reasonably necessary for this Action and who
- 5 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 6 (g) the author or recipient of a document containing the information or a
- 7 custodian or other person who otherwise possessed or knew the information;
- 8 (h) during their depositions, witnesses, and attorneys for witnesses, in
- 9 the Action to whom disclosure is reasonably necessary provided: (1) the
- 10 deposing party requests that the witness sign the form attached as Exhibit A
- 11 hereto; and (2) they will not be permitted to keep any confidential information
- 12 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
- 13 A), unless otherwise agreed by the Designating Party or ordered by the court.
- 14 Pages of transcribed deposition testimony or exhibits to depositions that reveal
- 15 Protected Material may be separately bound by the court reporter and may not
- 16 be disclosed to anyone except as permitted under this Stipulated Protective
- 17 Order; and
- 18 (i) any mediator or settlement officer, and their supporting personnel,
- 19 mutually agreed upon by any of the parties engaged in settlement discussions.

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21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN

22 OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation

24 that compels disclosure of any information or items designated in this Action as

25 “CONFIDENTIAL” or “PROTECTED HEALTH INFORMATION,” that Party

26 must:

- 27 (a) promptly notify in writing the Designating Party. Such notification
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1 shall include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or  
3 order to issue in the other litigation that some or all of the material covered by  
4 the subpoena or order is subject to this Protective Order. Such notification  
5 shall include a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be  
7 pursued by the Designating Party whose Protected Material may be affected.  
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9 If the Designating Party timely seeks a protective order, the Party served with  
10 the subpoena or court order shall not produce any information designated in this  
11 action as “CONFIDENTIAL” or “PROTECTED HEALTH INFORMATION”  
12 before a determination by the court from which the subpoena or order issued, unless  
13 the Party has obtained the Designating Party’s permission. The Designating Party  
14 shall bear the burden and expense of seeking protection in that court of its  
15 confidential material and nothing in these provisions should be construed as  
16 authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
17 directive from another court.  
18

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
20 PRODUCED IN THIS LITIGATION

21 9.1 The terms of this Order are applicable to information produced by a  
22 Non-Party in this Action and designated as “CONFIDENTIAL” or “PROTECTED  
23 HEALTH INFORMATION.” Such information produced by Non-Parties in  
24 connection with this litigation is protected by the remedies and relief provided by  
25 this Order. Nothing in these provisions should be construed as prohibiting a Non-  
26 Party from seeking additional protections.

27 9.2 In the event that a Party is required, by a valid discovery request, to  
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1 produce a Non-Party’s confidential information or PHI in its possession, and the  
2 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s  
3 confidential information or PHI, then the Party shall:

4 (a) promptly notify in writing the Requesting Party and the Non-Party  
5 that some or all of the information requested is subject to a confidentiality  
6 agreement with a Non-Party;

7 (b) promptly provide the Non-Party with a copy of the Stipulated  
8 Protective Order in this Action, the relevant discovery request(s), and a  
9 reasonably specific description of the information requested; and

10 (c) make the information requested available for inspection by the Non-  
11 Party, if requested.

12 9.3 If the Non-Party fails to seek a protective order from this court within  
13 14 days of receiving the notice and accompanying information, the Receiving Party  
14 may produce the Non-Party’s confidential information responsive to the discovery  
15 request, and may produce the Non-Party’s PHI responsive to the discovery request to  
16 the extent and in the manner required by federal and state laws and regulations. If the  
17 Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
18 information in its possession or control that is subject to the confidentiality  
19 agreement with the Non-Party before a determination by the court. Absent a court  
20 order to the contrary, the Non-Party shall bear the burden and expense of seeking  
21 protection in this court of its Protected Material.

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23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
25 Protected Material to any person or in any circumstance not authorized under this  
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
27 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
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1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
2 persons to whom unauthorized disclosures were made of all the terms of this Order,  
3 and (d) request such person or persons to execute the “Acknowledgment and  
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

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6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain  
9 inadvertently produced material is subject to a claim of privilege or other protection,  
10 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
12 may be established in an e-discovery order that provides for production without prior  
13 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
14 parties reach an agreement on the effect of disclosure of a communication or  
15 information covered by the attorney-client privilege or work product protection, the  
16 parties may incorporate their agreement in the stipulated protective order submitted  
17 to the court.

18  
19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
23 Protective Order no Party waives any right it otherwise would have to object to  
24 disclosing or producing any information or item on any ground not addressed in this  
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
26 ground to use in evidence any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. Before filing any pleadings or other  
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1 documents of any nature, including any brief, memorandum, motion, letter, or other  
2 document, all or part of which contain material designated “CONFIDENTIAL” or  
3 “PROTECTED HEALTH INFORMATION,” the Parties shall confer and seek in  
4 good faith to agree on redactions or other accommodations that would permit the  
5 filing of such documents in the public record. To the extent that any part of such  
6 documents must be redacted or filed under seal, the Party that seeks to file the  
7 Protected Material must comply with Civil Local Rule 79-5.2.2(b). No un-redacted  
8 pleadings or other documents which contain material designated  
9 “CONFIDENTIAL” or “PROTECTED HEALTH INFORMATION” shall be filed in  
10 the public record prior to the Court’s ruling on that Party’s application under Local  
11 Rule 79-5. If a Party's request to file Protected Material under seal is denied by the  
12 court, then the Receiving Party may file the information in the public record unless  
13 otherwise instructed by the court.

14  
15 13. FINAL DISPOSITION

16 If this Action proceeds to final disposition without trial, then after the final  
17 disposition of this Action, as defined in paragraph 4, within 60 days of a written  
18 request by the Designating Party, each Receiving Party must return all Protected  
19 Material to the Producing Party or destroy such material. As used in this subdivision,  
20 “all Protected Material” includes all copies, abstracts, compilations, summaries, and  
21 any other format reproducing or capturing any of the Protected Material. Whether the  
22 Protected Material is returned or destroyed, the Receiving Party must submit a  
23 written certification to the Producing Party (and, if not the same person or entity, to  
24 the Designating Party) by the 60 day deadline that (1) identifies (by category, where  
25 appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
26 that the Receiving Party has not retained any copies, abstracts, compilations,  
27 summaries or any other format reproducing or capturing any of the Protected  
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1 Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
2 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
3 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
4 work product, and consultant and expert work product, even if such materials contain  
5 Protected Material, insofar as Counsel retaining PHI under this provision observe all  
6 requirements for, restrictions on, and specifications governing retention of PHI under  
7 federal and state law and regulations. Any such archival copies that contain or  
8 constitute Protected Material remain subject to this Protective Order as set forth in  
9 Section 4 (DURATION).

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14. VIOLATIONS

Any violation of this Order may be punished by any and all appropriate  
measures including, without limitation, contempt proceedings and/or monetary  
sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2

3 DATED: September 3, 2021 \_\_\_\_\_

4

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1 DATED: September 3, 2021

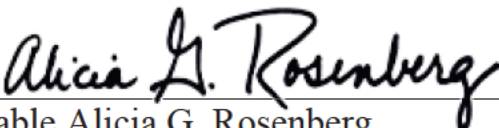
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25 *Attorneys for Kinetic Concepts, Inc. & KCI, USA, Inc.*

26 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

27 DATED: September 3, 2021

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Honorable Alicia G. Rosenberg  
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated HIPAA Qualified  
Protective Order that was issued by the United States District Court for the Central  
District of California on [date] in the case of *United States ex rel. Godecke v. Kinetic  
Concepts, Inc. et al.*, 2:08-cv-06403-CAS (AGRx). I agree to comply with and to be  
bound by all the terms of this Stipulated HIPAA Qualified Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions  
and punishment in the nature of contempt. I solemnly promise that I will not disclose  
in any manner any information or item that is subject to this Stipulated HIPAA  
Qualified Protective Order to any person or entity except in strict compliance with  
the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Central District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of  
this action. I hereby appoint \_\_\_\_\_ [print or type full  
name] of \_\_\_\_\_ [print or type full address  
and telephone number] as my California agent for service of process in connection  
with this action or any proceedings related to enforcement of this Stipulated HIPAA  
Qualified Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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