

**GREENBERG TRAUIG, LLP**

Ian C. Ballon (SBN 141819)

ballon@gtlaw.com

Valerie W. Ho (SBN 200505)

hov@gtlaw.com

Wendy M. Mantell (SBN 225544)

mantellw@gtlaw.com

2450 Colorado Avenue, Suite 400 East

Santa Monica, California 90404

Telephone: (310) 586-7700

Facsimile: (310) 586-7800

*Attorneys for Plaintiff and Counterdefendants**United Westlabs, Inc., Harry Kanter,**Robert Larson, Robert Negosian,**NCX Group, Michael Fitzpatrick,**Steve Drohan, Bill Stevenson,**Alan McLellan, Brendan Cosgrove,**David Socash, Scott Margolis**and Margolis Consulting Group LLC*

Gary J. Gorham (SBN 171061)

ggorham@lglaw.la

Eric Ashton Puritsky (SBN 239577)

epuritsky@lglaw.la

**LEADER GORHAM LLP**

1990 South Bundy Drive, Suite 390

Los Angeles, California 90025

Telephone: (310) 696-3300

Facsimile: (310) 696-3305

Steven Wade Turnbull, Esq. (SBN 144277)

wade@turnbull-law.com

**TURNBULL LAW, P.C.**

270 West 19th Street, Suite 4B

New York, New York 10011

Telephone: (917) 208-3212

Facsimile: (646) 454-1215

*Attorneys for Defendant and Counter-Claimant**Seacoast Laboratory Data Systems, Inc.**and Defendant John Herring***UNITED STATES DISTRICT COURT****CENTRAL DISTRICT OF CALIFORNIA -SOUTHERN DIVISION**

1 UNITED WESTLABS, INC.,

2 Plaintiff,

3 vs.

4 SEACOAST LABORATORY DATA  
SYSTEMS, INC. and JOHN HERRING,

5 Defendant.

6  
7 AND RELATED COUNTER-CLAIM.  
8

Case No. CV 08-08649 CJC (RNBx)

**CONFIDENTIALITY  
STIPULATION AND  
~~PROPOSED~~ PROTECTIVE  
ORDER**

9  
10 WHEREAS, during the discovery proceedings in this Action, defendant and  
11 counter-claimant Seacoast Laboratory Data Systems, Inc. (“Seacoast”) and defendant  
12 John Herring and Plaintiff and counter-defendant, United WestLabs, Inc. (“UWL”) and  
13 Counter-Defendants Harry Kanter, Robert Negosian, Robert Larson, NCX Group,  
14 Steve Drohan, Scott Margolis, Margolis Consulting Group, LLC, Michael Fitzpatrick,  
15 Bill Stevenson, Alan McLellan, Brendan Cosgrove and David Socash, collectively (the  
16 “Parties”) may be requested to provide certain documents, things, responses to requests  
17 for admission, responses to interrogatories, and/or testimony that each of them  
18 contends may contain trade secrets or other confidential, commercial, financial and/or  
19 proprietary information.

20 WHEREAS, the parties are desirous of protecting such information from  
21 inappropriate disclosure;

22 IT IS HEREBY STIPULATED by and between the Parties, through their  
23 respective attorneys of record, that, subject to the approval of the Court, a protective  
24 order may be entered in the above-captioned proceeding that shall govern the handling  
25 of all information contained in documents, deposition testimony, depositions, exhibits,  
26 and any other written, recorded or graphic material, hereinafter referred to as  
27 "Discovery Material" produced by any party, or obtained by any party hereto from a  
28 non-party witness in connection with this Action, whether or not in response to a

1 formal discovery request. The provisions of this Confidentiality Stipulation and  
2 Protective Order (“Protective Order”) shall also apply to any non-party who provides  
3 Discovery Material and agrees in writing to be bound to the terms of this Protective  
4 Order. References to a "party" or "parties" herein shall also include such non-parties.

5 1. This Protective Order governs the designation, disclosure and use of  
6 confidential and highly confidential information in the above-identified action and any  
7 appeals or retrials through final judgment. This Protective Order shall govern until  
8 modified or superseded by a further order of this Court.

9 2. In this Protective Order, the terms “CONFIDENTIAL INFORMATION,”  
10 “HIGHLY CONFIDENTIAL INFORMATION – LNS,” “HIGHLY CONFIDENTIAL  
11 INFORMATION – SOURCE CODE” and “HIGHLY CONFIDENTIAL  
12 INFORMATION — ATTORNEYS' EYES ONLY” shall mean information so  
13 designated in compliance with this Protective Order. Information so designated may  
14 be (without limitation) all or part of a document or thing, testimony, interrogatory,  
15 answer, admission or other form of evidence or discovery.

16 3. Any person, including non-parties, producing documents, information, or  
17 other materials in this Action ("Producing Party") may designate as CONFIDENTIAL  
18 INFORMATION any information, thing, testimony, answers, documents, or other  
19 Discovery Material of a confidential, sensitive nature that (a) the producing party and  
20 its counsel (if the party is represented by counsel) reasonably and in good faith believe  
21 is in fact confidential; or (b) has only been disclosed pursuant to a protective order or  
22 non-disclosure agreement.

23 4. The Producing Party shall designate as HIGHLY CONFIDENTIAL  
24 INFORMATION – LNS any computer source code or constituent components of  
25 Seacoast’s SurroundLab AR™ proprietary software (“Source Code”) that such party  
26 and its counsel (if the party is represented by counsel) allege was misappropriated by  
27 Counter-Defendants.

28 5. The Producing Party shall designate as HIGHLY CONFIDENTIAL

1 INFORMATION — SOURCE CODE any Source Code, not alleged to have been  
2 misappropriated.

3         6. Any Producing Party may designate any confidential information as  
4 HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY any  
5 information that such party and its counsel (if the party is represented by counsel)  
6 believe in good faith is of a particularly sensitive nature of the type that could be  
7 readily exploited for commercial advantage by a competitor including, without  
8 limitation, (i) proprietary trade secrets or competitively sensitive data, (ii) customer  
9 lists, (iii) customer information, (iv) business, product or marketing plans, (v) cost  
10 data, (vi) pricing information, (vii) internal training materials, (viii) market studies or  
11 forecasts, (ix) nonpublic financial data, (x) information concerning development  
12 activities for products, (xi) non-public technical information for products,  
13 (xii) information protected by statute or privacy laws and (xiii) research or  
14 development or other activities or other non-public information concerning or relating  
15 to current or future products.

16         7. A Producing Party may designate Discovery Material as  
17 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
18 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
19 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY at the time it  
20 produces the material. In the case of deposition testimony, the testimony or any  
21 portion thereof may be so designated at the deposition or within fifteen (15) days after  
22 preparation of the transcript of the deposition and transmission of the transcript to  
23 designating counsel by the deposition reporter.

24         8. CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL  
25 INFORMATION – LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
26 CODE and HIGHLY CONFIDENTIAL INFORMATION – ATTORNEYS' EYES  
27 ONLY shall be designated during discovery by the following procedure:  
28

1 (a) When a document to be produced for inspection contains  
2 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
3 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
4 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY, the Producing  
5 Party shall so notify the inspecting party by designating the document as described in  
6 paragraph 8. A document produced for inspection for which such notice has been  
7 given shall be inspected only by persons authorized to receive such information as  
8 provided herein.

9 (b) The Producing Party shall designate documents as containing  
10 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
11 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
12 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY by marking,  
13 according to the provisions of paragraph 8, each page of the copy that is or contains  
14 such information. If any page of a multi-page document is designated, the Producing  
15 Party shall also indicate on the first page of the document that it contains  
16 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
17 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
18 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY.

19 (c) In the case of information produced in electronic media, such as CDs or  
20 DVDs, the designation shall be made by placing the Legend on the exterior of the CD,  
21 DVD or other media. When information is printed out from such media, the Receiving  
22 Party shall ensure that each page of all copies of the printed-out materials contains the  
23 appropriate designation.

24 (d) When deposition testimony is or contains CONFIDENTIAL  
25 INFORMATION, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE  
26 or HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY,  
27 any attorney of record present may so designate that by notifying others present on the  
28 record of the deposition. The deposition reporter shall then so mark each page of the

1 transcript that reports designated testimony. Alternatively, any party may, until and  
2 including fifteen (15) days after transmission of a copy of said deposition transcript by  
3 the deposition reporter, designate by page and line or exhibit description those portions  
4 of the transcript or exhibits which contain CONFIDENTIAL INFORMATION,  
5 HIGHLY CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
6 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
7 — ATTORNEYS' EYES ONLY. All transcripts and exhibits from depositions taken  
8 in this Action shall be deemed to contain HIGHLY CONFIDENTIAL  
9 INFORMATION — ATTORNEYS' EYES ONLY until and including fifteen (15)  
10 days transmission of said deposition transcript to all counsel of record for the parties by  
11 the deposition reporter.

12 (e) When responses to interrogatories or requests to admit contain  
13 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
14 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
15 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY, the responding  
16 party shall so mark the cover page and each succeeding page of its response that  
17 contain such information pursuant to paragraph 8.

18 9. CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL  
19 INFORMATION – LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
20 CODE or HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES  
21 ONLY shall be marked pursuant to paragraph 7 of this Protective Order by the  
22 placement of an appropriate stamp, sticker or other indicia of substantially the  
23 following form:

24 CONFIDENTIAL INFORMATION;

25 HIGHLY CONFIDENTIAL INFORMATION – LNS;

26 HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE; or

27 HIGHLY CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY.  
28

1           10. (a) Any CONFIDENTIAL INFORMATION, HIGHLY  
2 CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
3 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
4 — ATTORNEYS' EYES ONLY, or any document incorporating such information,  
5 that is filed or lodged with the Court shall be filed or lodged with the Court in  
6 accordance with the procedures to file or lodge documents under seal, as set forth in  
7 the Local Rules of this Court.

8           (b) A copy of all material filed or lodged with the Court under seal, redacted  
9 to remove all confidential information, shall be placed in the public court file. Any  
10 interested member of the public (i.e., non-parties or employees or affiliates of a party)  
11 may challenge the filing under seal and, in the event of such a challenge, the party  
12 asserting confidentiality shall have the burden of persuasion.

13           (c) For any papers to be filed with the Court pursuant to Paragraph 9(a), the  
14 Receiving Party shall file an application to file the papers or the portion thereof  
15 containing the CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL  
16 INFORMATION – LNS, HIGHLY CONFIDENTIAL – SOURCE CODE or HIGHLY  
17 CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY (if such portion is  
18 segregable) under seal; and that application shall be directed to the judge to whom the  
19 papers are directed. All parties shall cooperate in good faith to seek an expedited  
20 ruling on the application.

21           11. CONFIDENTIAL INFORMATION may be disclosed only to persons in  
22 the following categories who have the actual need to review CONFIDENTIAL  
23 INFORMATION:

24           (a) outside attorneys and their working staff handling this matter for a law  
25 firm with an appearance for a party in this Action;

26           (b) the parties, employees or consultants of a party to this Action, provided  
27 that, before any CONFIDENTIAL INFORMATION is disclosed to any such  
28 individual, counsel desiring to disclose CONFIDENTIAL INFORMATION to such

1 individual shall first obtain from such individual a signed Undertaking in the form of  
2 Exhibit A hereto. Counsel shall maintain the original signed Undertakings in  
3 accordance with paragraph 23, and deliver them to the Court for *in camera* inspection  
4 as may be directed by the Court;

5 (c) outside experts or consultants (*i.e.*, not a party or its current employees or  
6 affiliates) and their support staff, retained by counsel of record in this Action, but only  
7 to the extent reasonably deemed necessary by such counsel of record, provided that,  
8 before any CONFIDENTIAL INFORMATION is disclosed to any such outside expert,  
9 advisor or consultant or their support staff, counsel desiring to disclose  
10 CONFIDENTIAL INFORMATION to such outside expert, advisor or consultant or  
11 their working staff shall first obtain from such individual a signed Undertaking in the  
12 form of Exhibit A hereto. Counsel shall maintain the original signed Undertakings in  
13 accordance with paragraph 23, deliver them to the Court for *in camera* inspection as  
14 may be directed by the Court, and deliver them to counsel for Producing Party upon  
15 entry of final judgment or dismissal in this Action;

16 (d) the Court and court reporters/videographers retained to record and/or  
17 transcribe testimony in this Action;

18 (e) any representative of the party that produced the CONFIDENTIAL  
19 INFORMATION to the extent the representative has authority to access such  
20 information;

21 (f) personnel of outside photocopy firms or graphics firms (*i.e.*, not parties or  
22 current employees or affiliates of a Party) engaged by a party;

23 (g) a former employee or former consultant of the party that produced the  
24 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
25 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
26 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY who authored,  
27 received or was shown the information during his or her employment by the Producing  
28 Party. This paragraph will not prevent the disclosure, during a deposition, of a



1 document containing CONFIDENTIAL INFORMATION, HIGHLY  
2 CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
3 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
4 — ATTORNEYS' EYES ONLY to a deponent who was an employee of the Producing  
5 Party when that document was created. Such deponent may be shown such document  
6 during the course of his or her deposition for the limited purpose of determining  
7 whether that document was authored, received by or shown to that deponent during his  
8 or her employment by the party. If the former employee authored, received or was  
9 shown the document during his or her employment by the Producing Party during this  
10 transactions at issue in this litigation, he or she may be subject to further examination  
11 regarding that document; and/or

12 (h) any third party who authored, received or was shown to documents  
13 marked by a Producing Party as CONFIDENTIAL INFORMATION, HIGHLY  
14 CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
15 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
16 – ATTORNEYS' EYES ONLY in the course of his or her activities relating to the  
17 transactions at issue in this litigation. This paragraph will not prevent the disclosure,  
18 during a deposition, of a document containing CONFIDENTIAL INFORMATION,  
19 HIGHLY CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
20 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
21 — ATTORNEYS' EYES ONLY to a deponent who authored, received or was shown  
22 the document in the course of his or her activities relating to the transactions at issue in  
23 this litigation when that document was created. Such deponent may be shown such  
24 document during the course of his or her deposition for the limited purpose of  
25 determining whether that document was authored, received by or shown to that  
26 deponent in the course of that deponent's activities relating to the transactions at issue  
27 in this litigation. If the third party authored, received or was shown the document in the  
28

1 course of that deponent's activities relating to the transactions at issue in this litigation,  
2 he or she may be subject to further examination regarding that document.

3 12. HIGHLY CONFIDENTIAL INFORMATION – LNS may be shown to  
4 the persons identified in paragraph 11, except for those individuals identified in  
5 paragraph 11(b). Notwithstanding the foregoing and those individuals identified in  
6 paragraph 11(b), HIGHLY CONFIDENTIAL INFORMATION – LNS maybe shown  
7 to Counter-Defendants Robert Negosian, Robert Larson and David Socash.

8 13. HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE and  
9 HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY may  
10 be disclosed only to the persons identified above in paragraph 11, except for those  
11 individuals identified in paragraph 11(b).

12 14. The following protocol and restrictions shall apply to production of  
13 HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE in a format that is  
14 accessible and searchable on a computer system:

- 15 (a) Seacoast shall provide access to HIGHLY CONFIDENTIAL  
16 INFORMATION – SOURCE CODE in a format that is accessible and  
17 searchable on a computer system by providing one (1) “stand-alone”  
18 computer, which shall not be linked to any network, including without  
19 limitation any local area network (“LAN”), intranet or the Internet, to be  
20 located in a separate and secure room with a suitable lock at the point of  
21 entry to that room (such as a door lock) at the offices of Greenberg  
22 Traurig;
- 23 (b) The stand-alone computer referenced in paragraph 14(a) may be  
24 connected to (i) a printer, or (ii) a device capable of temporarily storing  
25 electronic copies solely for the limited purposes permitted pursuant to  
26 subparagraphs 14(i) and 14(l) below;
- 27 (c) Counsel for the Counter-Defendants shall be responsible for maintaining  
28 the security of the separate and secure room for the “stand-alone”

1 computer referenced in paragraph 14(a) and shall restrict access to that  
2 “stand-alone” computer to the persons identified in paragraphs 11(a) and  
3 11(c);

4 (d) Seacoast shall provide the Receiving Party with information explaining  
5 how to start, log on to, and operate the stand-alone computer referenced in  
6 paragraph 14(a) in order to access and search the HIGHLY  
7 CONFIDENTIAL INFORMATION – SOURCE CODE on that computer;

8 (e) The Receiving Party may include excerpts of HIGHLY CONFIDENTIAL  
9 INFORMATION – SOURCE CODE in a pleading, exhibit, expert report,  
10 discovery documents, deposition transcript, or other court document  
11 (“Source Code Documents”), provided the Source Code Documents are  
12 appropriately marked under this Order, restricted to those who are entitled  
13 to have access to them as specified herein, and, are filed or lodged with  
14 the Court, and filed or lodged under seal in accordance with this Order;

15 (f) To the extent portions of the HIGHLY CONFIDENTIAL  
16 INFORMATION – SOURCE CODE are quoted in a Source Code  
17 Document, either (i) the entire Source Code Documents will be stamped  
18 and treated as HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
19 CODE or (ii) those pages containing quoted HIGHLY CONFIDENTIAL  
20 INFORMATION – SOURCE CODE will be separately stamped and  
21 treated as HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
22 CODE;

23 (g) Except as set forth in subparagraphs 14(i) and 14(k) below, no electronic  
24 copies of HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
25 CODE shall be made without prior written consent of Seacoast, except as  
26 necessary to create documents which, pursuant to the Court’s rules,  
27 procedures or order, must be filed, lodged or served electronically;  
28

- 1 (h) The Receiving Party shall be permitted to make a reasonable number of  
2 printouts and photocopies of HIGHLY CONFIDENTIAL  
3 INFORMATION – SOURCE CODE, all of which shall be appropriately  
4 designated and clearly labeled either HIGHLY CONFIDENTIAL  
5 INFORMATION – SOURCE CODE, and the Receiving Party shall  
6 maintain a log of all such files that are printed or photocopied;
- 7 (i) Should such printouts or photocopies be transferred back to electronic  
8 media, such media shall be appropriately labeled HIGHLY  
9 CONFIDENTIAL INFORMATION – SOURCE CODE, and shall  
10 continue to be treated as such;
- 11 (j) If any Party or Receiving Party’s outside counsel, consultants, or experts  
12 obtain printouts or photocopies of HIGHLY CONFIDENTIAL  
13 INFORMATION – SOURCE CODE, the Receiving Party shall ensure  
14 that such Party, outside counsel, consultants, or experts keep the printouts  
15 or photocopies in a secure, locked area in the offices of such outside  
16 counsel, Party, consultants, or expert. The Receiving Party may also  
17 temporarily keep the printouts or photocopies at: (i) the Court for any  
18 proceeding(s) related to the HIGHLY CONFIDENTIAL INFORMATION  
19 – SOURCE CODE, for the dates associated with the proceeding(s);  
20 (ii) the sites where any deposition(s) relating to the HIGHLY  
21 CONFIDENTIAL INFORMATION – SOURCE CODE are taken, for the  
22 dates associated with the deposition(s); and (iii) any intermediate location  
23 reasonably necessary to transport the printouts or photocopies (*e.g.*, a  
24 hotel prior to a court proceeding or deposition); and
- 25 (k) HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE may  
26 only be transported by persons identified in paragraphs 11(a) and 11(c)  
27 above, on paper or removable electronic media (*e.g.*, a DVD, CD-ROM,  
28 or flash memory “stick”) via hand carry, Federal Express or other

1 similarly reliable courier. HIGHLY CONFIDENTIAL INFORMATION  
2 – SOURCE CODE may not be transported or transmitted electronically  
3 over a network of any kind, including a LAN, an intranet, or the Internet.  
4 HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE  
5 transferred back to electronic media under paragraph 14(i) may only be  
6 transported electronically for the purpose of court proceeding(s) or  
7 deposition(s) as set forth in paragraph 14(j) above and is at all times  
8 subject to the transportation restrictions set forth herein.

9 15. (a) The substance or content of any CONFIDENTIAL  
10 INFORMATION, as well as any notes, abstracts, copies, summaries and memoranda  
11 relating thereto shall not be disclosed to or accessible by anyone other than a person  
12 qualified to obtain CONFIDENTIAL INFORMATION pursuant to this Protective  
13 Order, and any such notes, abstracts, copies, summaries and memoranda shall be  
14 treated as CONFIDENTIAL INFORMATION in all respects.

15 (b) The substance or content of any HIGHLY CONFIDENTIAL  
16 INFORMATION – LNS or HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
17 CODE as well as any notes, abstracts, copies, summaries and memoranda relating  
18 thereto shall not be disclosed to or accessible by anyone other than a person qualified  
19 to obtain such pursuant to this Protective Order, and any such notes, abstracts, copies,  
20 summaries and memoranda shall be treated as HIGHLY CONFIDENTIAL  
21 INFORMATION – LNS or HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
22 CODE in all respects.

23 (c) The substance or content of any HIGHLY CONFIDENTIAL  
24 INFORMATION —ATTORNEYS' EYES ONLY, as well as any notes, abstracts,  
25 copies, summaries and memoranda relating thereto shall not be disclosed to or  
26 accessible by anyone other than a person qualified to obtain HIGHLY  
27 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY pursuant to this  
28 Protective Order, and any such notes, abstracts, copies, summaries and memoranda

1 shall be treated as HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS'  
2 EYES ONLY in all respects.

3 (d) Notwithstanding the restrictions of this paragraph, an attorney qualified to  
4 receive CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL  
5 INFORMATION – LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
6 CODE or HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES  
7 ONLY under this Protective Order shall not be precluded (except as set forth in  
8 paragraphs 11, 12 and 14) from rendering legal advice to or discussing with his or her  
9 client in this litigation the merits of any issue in this litigation, as long as the specific  
10 substance or content of CONFIDENTIAL INFORMATION, HIGHLY  
11 CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
12 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
13 — ATTORNEYS' EYES ONLY is not revealed to a person not qualified to receive  
14 such information under the terms of this Protective Order.

15 16. All CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL  
16 INFORMATION – LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
17 CODE or HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES  
18 ONLY shall be used solely in preparation for trial and/or any appeal(s) in this Action,  
19 and for no other action, dispute or claim. Except as otherwise provided in this  
20 Protective Order, these materials shall not be used or disclosed at any other time or for  
21 any other purpose whatsoever.

22 17. Information acquired from the opposing side that is designated as  
23 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
24 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
25 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY may be used by  
26 the recipient only for this Action and not for any business purpose, or for publicity, or  
27 for any purpose other than pursuit of its claims in this Court. Such material may not be  
28

1 used or published in press releases, interviews, advertising, or communications with  
2 customers of the Producing or Receiving Parties.

3 18. Except as provided in Paragraph 19, it shall be the duty and responsibility  
4 of counsel of record to ensure that documents and things containing CONFIDENTIAL  
5 INFORMATION, HIGHLY CONFIDENTIAL INFORMATION – LNS, HIGHLY  
6 CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
7 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY subject to  
8 counsel's control shall at all times be kept in a safe and secure fashion to ensure that  
9 such information is not disclosed to or made accessible to persons other than those  
10 specifically authorized to review such information under this Protective Order and all  
11 copies of such information shall not be kept on any of the premises of the Receiving  
12 Party. Counsel of record shall be directly responsible to the Court for fulfilling these  
13 responsibilities.

14 19. The inadvertent or unintended disclosure by a party of privileged,  
15 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
16 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
17 CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY, including but not  
18 limited to an inadvertent failure to designate as confidential or privileged such  
19 Discovery Material within the time periods prescribed by this Protective Order, shall  
20 not be deemed a waiver in whole or in part of a subsequent claim of privilege or  
21 protection under this Protective Order, either as to the specific information disclosed or  
22 as to any other information, provided that the inadvertent or unintended disclosure is  
23 promptly identified after discovery by the Producing Party and notice of the claim of  
24 privilege or protection is given to the other parties. A party receiving notice of a  
25 changed designation or claim of privilege shall take reasonable steps to comply with  
26 such designation, including the retrieval of documents that have been distributed in a  
27 manner inconsistent with the new designation.  
28

1           20. A party shall not be obligated to challenge the propriety of any  
2 designation of CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL  
3 INFORMATION – LNS, HIGHLY CONFIDENTIAL – SOURCE CODE or HIGHLY  
4 CONFIDENTIAL INFORMATION ATTORNEYS' – EYES ONLY at the time of  
5 designation, and a failure to do so shall not preclude a subsequent challenge to the  
6 designation. If a party objects to any designation of such information the parties shall  
7 first try to resolve such dispute in good faith on an informal basis. If the dispute cannot  
8 be resolved informally, the objecting party may seek appropriate relief from the Court  
9 by filing a Joint Stipulation pursuant to Local Rules 37-1 and 37-2 and by following  
10 the Court's orders concerning the attorneys' meet and confer procedures in this Action.  
11 The burden of showing entitlement to a designation shall be on the Producing Party.  
12 Pending resolution of an objection, the designated material shall be treated as  
13 CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION –  
14 LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
15 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY in accordance  
16 with the designation.

17           21. Within forty-five (45) days after the termination of this Action including  
18 all appeals thereof, the originals and all copies of any CONFIDENTIAL  
19 INFORMATION, HIGHLY CONFIDENTIAL INFORMATION – LNS, HIGHLY  
20 CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
21 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY received by any  
22 party or its attorney or third-party as a result of this Action shall be destroyed or given  
23 to the party that produced such information or to its attorney. A copy of all court  
24 filings, discovery responses, and court and deposition transcripts (including exhibits)  
25 may be retained in the files of outside counsel for the parties. Similarly,  
26 correspondence, electronic drafts, written discovery responses, expert reports and  
27 attorney notes containing any such information may be retained by outside counsel.  
28 Any information retained shall be maintained pursuant to this Protective Order, and by



1 retaining the information, outside counsel agrees to the continuing jurisdiction of the  
2 Court for purposes of enforcing this Protective Order.

3 22. Parties shall provide a certification in writing to all other parties in this  
4 Action that they have complied with the requirements of paragraph 21 within sixty (60)  
5 days of the termination of this Action.

6 23. Unless otherwise directed by the Court, counsel of record for each party  
7 shall maintain the original signed Undertakings provided to such counsel under  
8 paragraph 11(b) until after entry of final judgment or dismissal in this Action. Unless  
9 otherwise directed by the Court, counsel of record responsible for retention of outside  
10 experts, advisors or consultants and their support staff under paragraph 11(d) shall  
11 maintain the original signed Undertakings for such individuals retained by that counsel  
12 until entry of final judgment or dismissal in this Action. Counsel of record for each  
13 party shall also make every reasonable effort to ensure that all persons or entities that  
14 have been provided CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL  
15 INFORMATION – LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE  
16 CODE or HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES  
17 ONLY provided under the provisions of this Protective Order comply with the  
18 obligations of paragraph 18. This includes, among other things, an obligation by  
19 counsel of record for each party to make every reasonable effort to ensure that  
20 consultants or experts retained by that party comply with paragraph 18.

21 24. Should any party, or person qualified to obtain CONFIDENTIAL  
22 INFORMATION, HIGHLY CONFIDENTIAL INFORMATION – LNS, HIGHLY  
23 CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
24 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY hereunder, or  
25 their agents or representatives, receive any request for such information produced in  
26 this Action, whether through formal compulsory process or lawful authority of the  
27 court or otherwise, prior to responding thereto, such person or counsel shall promptly  
28 serve written notice of receipt of same on counsel for all parties hereto in order to

1 allow said party or parties to move an appropriate court or tribunal for a ruling  
2 respecting the necessity of compliance therewith. Nothing in this Protective Order  
3 shall be construed as authorizing a party to disobey a lawful subpoena issued in another  
4 action.

5 25. If any designated material is disclosed to any person other than as  
6 authorized by this Protective Order, the party learning of the disclosure will  
7 immediately bring all pertinent facts relating to such disclosure to the attention of the  
8 designating party. The party learning of the disclosure will make every reasonable  
9 effort to retrieve the improperly disclosed material and to prevent further unauthorized  
10 disclosure on its own part, and will also make every reasonable effort to prevent further  
11 use and disclosure on the part of the unauthorized recipient of such information or  
12 material.

13 26. If the discovery process calls for the production of information that a party  
14 does not wish to produce because the party believes its disclosure would breach an  
15 express or implied agreement with a third party to maintain such information in  
16 confidence, the party requested to produce the information shall promptly give written  
17 notice to the third party that its information is subject to discovery in this litigation, and  
18 shall provide the third party with a copy of this Protective Order. Unless otherwise  
19 provided in an express written agreement between the party requested to provide the  
20 information and the third party, and when the above-referenced written notice is given  
21 to the third party, the party requested to produce the information will advise the  
22 potential Receiving Party that such notice has been given. The third party shall have  
23 twenty-one (21) days from receipt of such written notice in which to seek relief from  
24 the Court, if the third party so desires. If the twenty-one (21) days elapse without the  
25 third party seeking relief from the Court, the requested information shall be produced  
26 in accordance with the terms of this Protective Order. Notwithstanding the foregoing,  
27 if there is an express written agreement between the party requested to produce the  
28 information and the third party, the provisions of that written agreement shall control

1 with respect to the production of materials governed by that written agreement, unless  
2 otherwise ordered by the Court.

3 27. Upon final termination of this Action, whether by settlement, dismissal or  
4 other disposition, the provisions of this Protective Order shall continue to be binding  
5 upon all persons or entities who are subject to the terms hereof, and the Court shall  
6 retain jurisdiction for enforcement of this Protective Order.

7 28. The Parties agree to be bound by the terms of this Protective Order prior  
8 to its entry by the Court such that they may begin marking and producing documents  
9 pursuant to the terms herein immediately.

10 29. Nothing in this Protective Order prevents a party from disclosing its own  
11 documents and information as it sees fit. Parties may also agree among themselves in a  
12 signed writing to permit access to their own documents and information  
13 notwithstanding this Protective Order. Such agreements may be submitted to the Court  
14 for entry as an order.

15 30. Third parties who are requested to produce documents or things or provide  
16 testimony in this Action may avail themselves of the provisions of this Protective  
17 Order and designate documents, things or testimony containing confidential  
18 information in accordance with the provisions of this Protective Order.

19 31. Any party may apply to the Court for additional protection or disclosure  
20 beyond the terms of this Protective Order as that party may consider appropriate,  
21 including such information that it may have relating to third parties to this Action.  
22 Similarly, any party may apply to the Court for relief from the provisions of this  
23 Protective Order at any time.

24 32. Nothing in this Protective Order shall be deemed to be, or construed as, an  
25 admission that any confidential information or Discovery Material is relevant or  
26 otherwise admissible in evidence, and the parties expressly reserve all objections as to  
27 the admissibility, authenticity and/or relevance of any confidential information or  
28 Discovery Material at trial.

1 33. The restrictions and obligations set forth herein relating to confidential  
2 information shall not apply to any information which (i) is already public knowledge,  
3 (ii) becomes public knowledge other than as a result of disclosure by a Receiving Party  
4 or (iii) has come or shall come into the Receiving Party's legitimate possession  
5 independently of the Producing Party. The party seeking to use information designated  
6 as CONFIDENTIAL INFORMATION, HIGHLY CONFIDENTIAL INFORMATION  
7 – LNS, HIGHLY CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
8 CONFIDENTIAL INFORMATION — ATTORNEYS' EYES ONLY shall have the  
9 burden of proving that it is entitled to the use of such information.

10 34. This Protective Order does not govern the use of any material at trial or in  
11 other public proceedings before the Court. Prior to any trial, the parties shall meet and  
12 confer in good faith to determine a method for introducing at trial documents and  
13 materials which have been designated as CONFIDENTIAL INFORMATION,  
14 HIGHLY CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
15 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
16 – ATTORNEYS' EYES ONLY. The parties shall also agree to remove any and all  
17 legends designating any documents and materials as CONFIDENTIAL  
18 INFORMATION, HIGHLY CONFIDENTIAL INFORMATION – LNS, HIGHLY  
19 CONFIDENTIAL INFORMATION – SOURCE CODE or HIGHLY  
20 CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY that may be  
21 introduced into evidence at trial prior to the members of the jury viewing such  
22 documents and materials. The parties shall submit their proposed method to the Court  
23 for approval.

24 IT IS SO ORDERED.

25  
26  
27 DATED: March 17, 2010



28 HON. ROBERT N. BLOCK  
United States Magistrate Judge

1 DATED: March 16, 2010

LEADER GORHAM LLP

2  
3 /s/

4 Gary J. Gorham

5 *Attorneys for Defendant and Counter-*  
6 *Claimant Seacoast Laboratory Data*  
7 *Systems, Inc. and Defendant JOHN*  
8 *HERRING*

9 DATED: March 16, 2010

GREENBERG TRAURIG, LLP

10 /s/ Valerie W. Ho

11 Ian C. Ballon

12 Valerie W. Ho

13 *Attorneys for Plaintiff and Counter-*  
14 *Defendant United Westlabs, Inc., and*  
15 *Counter-Defendants Harry Kanter,*  
16 *Robert Negosian, Robert Larson,*  
17 *NCX Group, Steve Drohan,*  
18 *Scott Margolis, Margolis Consulting*  
19 *Group, LLC, Michael Fitzpatrick,*  
20 *Bill Stevenson, Alan McLellan,*  
21 *Brendan Cosgrove and David Socash*

1  
2 EXHIBIT A

3 **UNITED STATES DISTRICT COURT**  
4 **CENTRAL DISTRICT OF CALIFORNIA -SOUTHERN DIVISION**

5  
6 UNITED WESTLABS, INC.,

7 Plaintiff,

8 vs.

9 SEACOAST LABORATORY DATA  
SYSTEMS, INC. and JOHN HERRING,

10 Defendant.

Case No. CV 08-08649 CJC (RNBx)

**UNDERTAKING**

11 AND RELATED COUNTER-CLAIM.  
12

13 **UNDERTAKING**

- 14
- 15 1. My full name is: \_\_\_\_\_
  - 16 2. My address is: \_\_\_\_\_
  - 17 3. My present employer is: \_\_\_\_\_
  - 18 4. My job description is: \_\_\_\_\_
  - 19 5. My prior regular employment or past or present regular employments with  
20 any party to the above-referenced action are: \_\_\_\_\_
- 21 \_\_\_\_\_

22 6. I request access to the following types of information designated under  
23 the

24 Protective Order in this case (check all that apply):

25 \_\_\_\_\_ CONFIDENTIAL INFORMATION

26 \_\_\_\_\_ HIGHLY CONFIDENTIAL INFORMATION — LNS

27 \_\_\_\_\_ HIGHLY CONFIDENTIAL INFORMATION — SOURCE CODE

1 \_\_\_\_\_ HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS' EYES  
2 ONLY

3 7. I have received a copy of the Protective Order entered in the above-  
4 referenced action. I have carefully read and understand the provisions of the Protective  
5 Order. I will comply with all of the provisions of the Protective Order and agree to be  
6 bound by the Order's terms.

7 8. I will not disclose any CONFIDENTIAL INFORMATION, HIGHLY  
8 CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
9 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
10 — ATTORNEYS' EYES ONLY to anyone not authorized to gain access to that  
11 information under the Protective Order. I will use any such information only with  
12 respect to this Action including any appeals or retrials.

13 9. I will return all CONFIDENTIAL INFORMATION, HIGHLY  
14 CONFIDENTIAL INFORMATION – LNS, HIGHLY CONFIDENTIAL  
15 INFORMATION – SOURCE CODE or HIGHLY CONFIDENTIAL INFORMATION  
16 — ATTORNEYS' EYES ONLY that comes into my possession and all documents or  
17 things which I have prepared relating to such information, to an attorney representing  
18 the party that has employed or retained me.

19 10. I submit to the jurisdiction of this Court for the purpose of enforcing the  
20 terms of this Protective Order.

21 \_\_\_\_\_  
22 Dated

\_\_\_\_\_  
Signature

Print name and address  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employer or business affiliation  
\_\_\_\_\_