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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MIOTOX LLC, a California Limited
Liability Company,

Plaintiff,

v.

ALLERGAN, INC., a Delaware
Corporation; and ALLERGAN
BOTOX LIMITED, an Irish
Corporation,

Defendants.

CASE NO: 2:14-cv-8723 ODW (PJWx)

STIPULATED PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1 B. GOOD CAUSE STATEMENT

2 This action is likely to involve confidential and sensitive information regarding
3 patient healthcare and the administration and use of pharmaceutical compositions by
4 patients and physicians, as well as sensitive commercial, financial, technical and/or
5 proprietary information for which special protection from public disclosure and from
6 use for any purpose other than prosecution of this action is warranted. Such
7 confidential and proprietary materials and information consist of, among other things,
8 confidential business or financial information, information regarding confidential
9 business practices, or other confidential research, development, or commercial
10 information (including information implicating privacy rights of third parties),
11 information otherwise generally unavailable to the public, or which may be privileged
12 or otherwise protected from disclosure under state or federal statutes, court rules, case
13 decisions, or common law. Accordingly, to expedite the flow of information, to
14 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
15 to adequately protect information the parties are entitled to keep confidential, to
16 ensure that the parties are permitted reasonable necessary uses of such material in
17 preparation for and in the conduct of trial, to address their handling at the end of the
18 litigation, and serve the ends of justice, a protective order for such information is
19 justified in this matter. It is the intent of the parties that information will not be
20 designated as confidential for tactical reasons and that nothing be so designated
21 without a good faith belief that it has been maintained in a confidential, non-public
22 manner, and there is good cause for why it should not be part of the public record of
23 this case.

24 2. DEFINITIONS

25 2.1 Action: the above captioned-case.

26 2.2 Challenging Party: a Party or Non-Party that challenges the designation
27 of information or items under this Order.

28 2.3 “CONFIDENTIAL” Information or Items: information (regardless of

1 how it is generated, stored or maintained) or tangible things that qualify for protection
2 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
3 Cause Statement.

4 2.4 Designating Party: a Party or Non-Party that designates information or
5 items that it produces in disclosures or in responses to discovery as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

7 2.5 Disclosure of Discovery Material: all items or information, regardless of
8 the medium or manner in which it is generated, stored, or maintained (including,
9 among other things, testimony, transcripts, and tangible things), that are produced or
10 generated in disclosures or responses to discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its Outside Counsel of
13 Record to serve as an expert witness or as a consultant in this Action.

14 2.7 “HIGHLY CONFIDENTIAL” Information or Items: extremely sensitive
15 “CONFIDENTIAL Information or Items,” disclosure of which to another Party or
16 Non-Party would create a substantial risk of serious harm that could not be avoided by
17 less restrictive means.

18 2.8 Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.9 Outside Counsel of Record: attorneys who are not employees of a party
21 to this Action but are retained to represent or advise a party to this Action and have
22 appeared in this Action on behalf of that party or are affiliated with a law firm which
23 has appeared on behalf of that party, and includes support staff.

24 2.10 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, representatives and in-house counsel (and
26 their support staffs).

27 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

1 2.12 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.13 Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

7 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9 3. SCOPE

10 The protections conferred by this Stipulation and Order cover not only
11 Protected Material (as defined above), but also (1) any information copied or extracted
12 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
13 Protected Material; and (3) any testimony, conversations, or presentations by Parties
14 or their Outside Counsel of Record that might reveal Protected Material.

15 Any use of Protected Material at trial shall be governed by the orders of the trial
16 judge. This Order does not govern the use of Protected Material at trial.

17 4. DURATION

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

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Non-Party that designates information or items for protection under this

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

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

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

15 5.2 Manner and Timing of Designations. Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), that the Producing Party affix at a minimum, the legend
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (hereinafter "confidentiality
25 legend"), to each page that contains protected material. If only a portion or portions of
26 the material on a page qualifies for protection, the Producing Party also must clearly
27 identify the protected portion(s) (e.g., by making appropriate markings in the
28 margins).

1 A Party or Non-Party that makes original documents available for inspection
2 need not designate them for protection until after the inspecting Party has indicated
3 which documents it would like copied and produced. During the inspection and before
4 the designation, all of the material made available for inspection shall be deemed
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” After the inspecting Party has
6 identified the documents it wants copied and produced, the Producing Party must
7 determine which documents, or portions thereof, qualify for protection under this
8 Order. Then, before producing the specified documents, the Producing Party must
9 affix the “confidentiality legend” to each page that contains Protected Material. If only
10 a portion or portions of the material on a page qualifies for protection, the Producing
11 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
12 markings in the margins).

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

16 (c) for information produced in some form other than documentary and for
17 any other tangible items, that the Producing Party affix in a prominent place on the
18 exterior of the container or containers in which the information is stored the legend
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” If only a portion or portions
20 of the information warrants protection, the Producing Party, to the extent practicable,
21 shall identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive the
24 Designating Party’s right to secure protection under this Order for such material.
25 Upon timely correction of a designation, the Receiving Party must make reasonable
26 efforts to assure that the material is treated in accordance with the provisions of this
27 Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be on
8 the Designating Party. Frivolous challenges, and those made for an improper purpose
9 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
10 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
11 withdrawn the confidentiality designation, all parties shall continue to afford the
12 material in question the level of protection to which it is entitled under the Producing
13 Party’s designation until the Court rules on the challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
16 disclosed or produced by another Party or by a Non-Party only in connection with this
17 Action and only for prosecuting, defending, or attempting to settle this Action. Such
18 Protected Material may be disclosed only to the categories of persons and under the
19 conditions described in this Order. When the Action has been terminated, a Receiving
20 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a
22 location and in a secure manner that ensures that access is limited to the persons
23 authorized under this Order.

24 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
25 otherwise ordered by the court or permitted in writing by the Designating Party, a
26 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
27 only to:

28 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well

1 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
2 disclose the information for this Action;

3 (b) the officers, directors, and employees of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action;

5 (c) Experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff;

10 (f) professional jury or trial consultants, mock jurors, and Professional
11 Vendors to whom disclosure is reasonably necessary for this Action and who have
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (g) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information;

15 (h) during their depositions, witnesses, and attorneys for witnesses, in the
16 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
17 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
18 not be permitted to keep any confidential information unless they sign the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
20 by the Designating Party or ordered by the court. Pages of transcribed deposition
21 testimony or exhibits to depositions that reveal Protected Material may be separately
22 bound by the court reporter and may not be disclosed to anyone except as permitted
23 under this Stipulated Protective Order; and

24 (i) any mediator or settlement officer, and their supporting personnel,
25 mutually agreed upon by any of the parties engaged in settlement discussions.

26 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items.

27 Unless otherwise ordered by the court or permitted in writing by the Designating
28 Party, a Receiving Party may disclose any information or item designated “HIGHLY

1 CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
3 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
4 disclose the information for this Action;

5 (b) Two representatives or in-house counsel of the Receiving Party to whom
6 disclosure is reasonably necessary for this Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this Action and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and Professional
13 Vendors to whom disclosure is reasonably necessary for this Action and who have
14 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information;

17 (h) during their depositions, witnesses, and attorneys for witnesses, in the
18 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
19 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
20 not be permitted to keep any confidential information unless they sign the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
22 by the Designating Party or ordered by the court. Pages of transcribed deposition
23 testimony or exhibits to depositions that reveal Protected Material may be separately
24 bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this Stipulated Protective Order; and

26 (i) any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by any of the parties engaged in settlement discussions.

28

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” that Party must:

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

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

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” before a
17 determination by the court from which the subpoena or order issued, unless the Party
18 has obtained the Designating Party’s permission. The Designating Party shall bear the
19 burden and expense of seeking protection in that court of its confidential material and
20 nothing in these provisions should be construed as authorizing or encouraging a
21 Receiving Party in this Action to disobey a lawful directive from another court.

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

24 (a) The terms of this Order are applicable to information produced by a Non-
25 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL.” Such information produced by Non-Parties in connection with
27 this litigation is protected by the remedies and relief provided by this Order. Nothing
28 in these provisions should be construed as prohibiting a Non-Party from seeking

1 additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to
3 produce a Non-Party's confidential information in its possession, and the Party is
4 subject to an agreement with the Non-Party not to produce the Non-Party's
5 confidential information, then the Party shall:

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

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

12 (3) make the information requested available for inspection by the Non-
13 Party, if requested.

14 (c) If the Non-Party fails to seek a protective order from this court within 14
15 days of receiving the notice and accompanying information, the Receiving Party may
16 produce the Non-Party's confidential information responsive to the discovery request.
17 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
18 any 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.

22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
26 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
27 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
28 persons to whom unauthorized disclosures were made of all the terms of this Order,

1 and (d) request such person or persons to execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

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

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in this
21 Stipulated Protective Order. Similarly, no Party waives any right to object on any
22 ground to use in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
25 only be filed under seal pursuant to a court order authorizing the sealing of the
26 specific Protected Material at issue. If a Party's request to file Protected Material
27 under seal is denied by the court, then the Receiving Party may file the information in
28 the public record unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within 60
3 days of a written request by the Designating Party, each Receiving Party must return
4 all Protected Material to the Producing Party or destroy such material. As used in this
5 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected
7 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
8 must submit a written certification to the Producing Party (and, if not the same person
9 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
10 category, where appropriate) all the Protected Material that was returned or destroyed
11 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
12 compilations, summaries or any other format reproducing or capturing any of the
13 Protected Material. Notwithstanding this provision, Outside Counsel of Record are
14 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
15 and hearing transcripts, legal memoranda, correspondence, deposition and trial
16 exhibits, expert reports, attorney work product, and consultant and expert work
17 product, even if such materials contain Protected Material. Any such archival copies
18 that contain or constitute Protected Material remain subject to this Protective Order as
19 set forth in Section 4 (DURATION).

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

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24
25 DATED: March 18, 2015



Honorable Patrick J. Walsh
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ declare under penalty of perjury that I have read in its entirety
5 and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Central District of California on [date] in the case of
7 _____ *Miotox LLC v. Allergan, Inc. and Allergan Botox Limited*, Case No.
8 2:14-cv-8723 ODW (PJWx). I agree to comply with and to be bound by all the terms
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order. I further agree to submit to the
14 jurisdiction of the United States District Court for the Central District of California for
15 the purpose of enforcing the terms of this Stipulated Protective Order, even if such
16 enforcement proceedings occur after termination of this action.

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with
20 this action or any proceedings related to enforcement of this Stipulated Protective
21 Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____