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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

JEFFERY JOHN HUGHES, individually
and as successor-in-interest for decedent
JEFFERY HUGHES, and ANNIE
RUTH HUGHES, individually and as
successor-in-Interest for decedent
JEFFERY HUGHES,

Plaintiffs,

v.

OLYMPUS AMERICA, INC.;
OLYMPUS CORPORATION OF THE
AMERICAS; and OLYMPUS
MEDICAL SYSTEM CORP.;

Defendants.

CASE NO. 2:15-cv-02103-BRO-JC

**STIPULATED PROTECTIVE
ORDER**

[DISCOVERY MATTER]

1 The Court, being informed that discovery in this action is likely to involve
2 production of confidential, proprietary, or private information for which special
3 protection from public disclosure and from use for any purpose other than
4 prosecuting this litigation may be warranted, and pursuant to a joint motion by the
5 parties, enters the following Protective Order:

6 1. A. PURPOSES AND LIMITATIONS

7 This Order does not confer blanket protections on all disclosures or responses
8 to discovery. The protection it affords from public disclosure and use extends only
9 to the limited information or items that are entitled to confidential treatment under
10 the applicable legal principles. Further, as set forth in Section 12.3, below, this
11 Protective Order does not entitle the parties to file confidential information under
12 seal. Rather, when the parties seek permission from the court to file material under
13 seal, the parties must comply with Civil Local Rule 79-5 and with any pertinent
14 orders of the assigned District Judge and Magistrate Judge.

15 B. GOOD CAUSE STATEMENT

16 In light of the nature of the claims and allegations in this case and the parties'
17 representations that discovery in this case will involve the production of
18 confidential records, and in order to expedite the flow of information, to facilitate
19 the prompt resolution of disputes over confidentiality of discovery materials, to
20 adequately protect information the parties are entitled to keep confidential, to
21 ensure that the parties are permitted reasonable necessary uses of such material in
22 connection with this action, to address their handling of such material at the end of
23 the litigation, and to serve the ends of justice, a protective order for such
24 information is justified in this matter. The parties shall not designate any
25 information/documents as confidential without a good faith belief that such
26 information/documents have been maintained in a confidential, non-public manner,

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1 and that there is good cause or a compelling reason why it should not be part of the
2 public record of this case.

3 2. DEFINITIONS

4 2.1 Action: The instant action: *Hughes v. Olympus America Inc., et al.*,
5 Case No. 2:15-cv-02103-BRO-JC.

6 2.2 Challenging Party: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things disclosed or produced
10 in this litigation which is designated confidential and which qualifies for protection
11 under Federal Rule of Civil Procedure 26(c), including, but not limited to, health or
12 medical information, personal financial data, proprietary business information
13 and/or trade secret information, and as specified above in the Good Cause
14 Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
16 their support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced
23 or generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

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1 2.8 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association,
5 or other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a
7 party to this Action but are retained to represent or advise a party to this Action and
8 have appeared in this Action on behalf of that party or are affiliated with a law firm
9 which has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 3. SCOPE

24 The protections conferred by this Order cover not only Protected Material (as
25 defined above), but also (1) any information copied or extracted from Protected
26 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
27 and (3) any deposition testimony, conversations, or presentations by Parties or their
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1 Counsel that might reveal Protected Material, other than during a court hearing or at
2 trial.

3 Any use of Protected Material during a court hearing or at trial shall be
4 governed by the orders of the presiding judge. This Order does not govern the use
5 of Protected Material during a court hearing or at trial.

6 4. DURATION

7 Except with respect to those documents and information that become a
8 matter of public record, even after final disposition of this litigation, the
9 confidentiality obligations imposed by this Order shall remain in effect until a
10 Designating Party agrees otherwise in writing or a court order otherwise directs.
11 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
12 defenses in this Action, with or without prejudice; and (2) final judgment herein
13 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
14 reviews of this Action, including the time limits for filing any motions or
15 applications for extension of time pursuant to applicable law. This Court retains
16 and shall have continuing jurisdiction over the parties and recipients of the
17 “Confidential” information for enforcement of the provisions of this Order
18 following termination of this litigation.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each Party or Non-Party that designates information or items for protection under
22 this Order must take care to limit any such designation to specific material that
23 qualifies under the appropriate standards. The Designating Party must designate for
24 protection only those parts of material, documents, items, or oral or written
25 communications that qualify so that other portions of the material, documents,
26 items, or communications for which protection is not warranted are not swept
27 unjustifiably within the ambit of this Order.
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to
4 impose unnecessary expenses and burdens on other parties) may expose the
5 Designating Party to sanctions.

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

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions), that the Producing Party affix
17 at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
18 legend"), to each page that contains protected material. If only a portion or portions
19 of the material on a page qualifies for protection, the Producing Party also must
20 clearly identify the protected portion(s) (e.g., by making appropriate markings in
21 the margins).

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

7 (b) for testimony given in depositions that the Designating Party
8 identifies on the record, before the close of the deposition as protected testimony.

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

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive
17 the Designating Party’s right to secure protection under this Order for such
18 material. Upon timely correction of a designation, the Receiving Party must make
19 reasonable efforts to assure that the material is treated in accordance with the
20 provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court’s
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process under Local Rule 37-1 et seq.

1 6.3 The burden of persuasion in any such challenge proceeding shall be on
2 the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, all parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party’s designation until the Court rules on the
8 challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a Non-Party in connection with this
12 Action only for prosecuting, defending, or attempting to settle this Action. A
13 Receiving Party shall not under any circumstances sell, offer for sale, advertise, or
14 publicize Protected Material. Such Protected Material may be disclosed only to the
15 categories of persons and under the conditions described in this Order. When the
16 Action has been terminated, a Receiving Party must comply with the provisions of
17 Section 13 below.

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

21 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated
24 “CONFIDENTIAL” only to:

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

1 (b) the officers, directors, and employees (including House Counsel) of
2 the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

6 (d) the court and its personnel;

7 (e) court reporters and their staff;

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

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

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

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

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN 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,” that Party must:

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

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

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by 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” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission, or unless otherwise required by the law or court order. The
19 Designating Party shall bear the burden and expense of seeking protection in that
20 court of its confidential material and nothing in these provisions should be
21 construed as authorizing or encouraging a Receiving Party in this Action to disobey
22 a lawful directive from another court.

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

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

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

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

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

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

15 (c) If a Non-Party represented by counsel fails to commence the process
16 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
17 notice and accompanying information or fails contemporaneously to notify the
18 Receiving Party that it has done so, the Receiving Party may produce the Non-
19 Party's confidential information responsive to the discovery request. If an
20 unrepresented Non-Party fails to seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party's confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court
26 unless otherwise required by the law or court order. Absent a court order to the

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1 contrary, the Non-Party shall bear the burden and expense of seeking protection in
2 this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain
15 inadvertently produced material is subject to a claim of privilege or other
16 protection, the obligations of the Receiving Parties are those set forth in Federal
17 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
18 whatever procedure may be established in an e-discovery order that provides for
19 production without prior privilege review. Pursuant to Federal Rule of Evidence
20 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
21 of a communication or information covered by the attorney-client privilege or work
22 product protection, the parties may incorporate their agreement into this Protective
23 Order.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.
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1 12.2 Right to Assert Other Objections. No Party waives any right it
2 otherwise would have to object to disclosing or producing any information or item
3 on any ground not addressed in this Protective Order. Similarly, no Party waives
4 any right to object on any ground to use in evidence of any of the material covered
5 by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
8 orders of the assigned District Judge and Magistrate Judge. If a Party's request to
9 file Protected Material under seal is denied by the court, then the Receiving Party
10 may file the information in the public record unless otherwise instructed by the
11 court.

12 12.4 Binding Nature of Order. This Order shall be binding upon the parties
13 and their attorneys, successors, executors, personal representatives, administrators,
14 heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents,
15 independent contractors, or other persons or organizations over which they have
16 control.

17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in Section 4, within 60
19 days of a written request by the Designating Party, each Receiving Party must
20 return all Protected Material to the Producing Party or destroy such material. As
21 used in this subdivision, "all Protected Material" includes all copies, abstracts,
22 compilations, summaries, and any other format reproducing or capturing any of the
23 Protected Material. Whether the Protected Material is returned or destroyed, the
24 Receiving Party must submit a written certification to the Producing Party (and, if
25 not the same person or entity, to the Designating Party) by the 60 day deadline that
26 (1) identifies (by category, where appropriate) all the Protected Material that was
27 returned or destroyed and (2) affirms that the Receiving Party has not retained any
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1 copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel
3 are entitled to retain an archival copy of all pleadings, motion papers, trial,
4 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
5 and trial exhibits, expert reports, attorney work product, and consultant and expert
6 work product, even if such materials contain Protected Material. Any such archival
7 copies that contain or constitute Protected Material remain subject to this Protective
8 Order as set forth in Section 4. Attorney work product may be used in subsequent
9 litigation provided that such use does not disclose "Confidential" documents or any
10 information contained therein.

11 14. VIOLATION

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

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16 IT IS SO ORDERED.

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18 DATED: January 14, 2016

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21 /s/
22 Honorable Jacqueline Chooljian
23 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 Protective Order that was issued
by the United States District Court for the Central District of California on January
14, 2016 in the case of Jeffery John Hughes, et al. v. Olympus America, Inc., et al.,
Case No. 2:15-cv-02103-BRO-JC. I agree to comply with and to be bound by all
the terms of this 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 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
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
Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____