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NOTE: CHANGES MADE BY THE COURT

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

PURETEK CORPORATION,  
a California Corporation,

Plaintiff,

v.

PATCHWERX LABS, INC. a Delaware  
corporation, PAUL SMITH, an individual,  
GULF COAST PHARMACEUTICALS  
PLUS, LLC, a Mississippi Limited  
Liability Company, SAFE CHAIN  
SOLUTIONS, LLC, a Maryland Limited  
Liability Company, and MAXIMED, A  
New York Corporation,

Defendants.

CASE NO. 2:15-cv-07044 DMG (JPR)  
**REVISED PROTECTIVE ORDER**

**1. PURPOSE AND LIMITS OF THIS ORDER**

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery,

1 and the protection it gives from public disclosure and use extends only to the specific  
2 material entitled to confidential treatment under the applicable legal principles. This  
3 Order does not automatically authorize the filing under seal of material designated  
4 under this Order. Instead, the parties must comply with L.R. 79-5.1 if they seek to file  
5 anything under seal. This Order does not govern the use at trial of material designated  
6 under this Order.

7 As used in this Order, “CONFIDENTIAL” information and materials shall  
8 include all information and materials that have not been made public, the disclosure of  
9 which the disclosing party contends could cause harm to its business operations or  
10 provide improper advantage to others. “Confidential” information and materials shall  
11 include, but shall not be limited to information that concerns or relates to (1) sales,  
12 marketing, manufacturing, or research and development; (2) financial performance; (3)  
13 manufacturing or other costs of doing business; (4) licenses or other confidential  
14 agreements; and/or (5) technical details of products or methods of doing business  
15 and/or marketing;

16 As used in this Order, “HIGHLY CONFIDENTIAL – ATTORNEY EYES  
17 ONLY” information and materials shall include trade secrets within the meaning of the  
18 Uniform Trade Secrets Act and all information and materials that the disclosing party  
19 has reasonable grounds to believe would, if known to any officer, director, employee,  
20 or agent of a receiving party, or to the public, lead to a significant harm or injury to the  
21 reputation and/or business of the disclosing party or provide improper advantage to  
22 others.

## 23 **2. DESIGNATING PROTECTED MATERIAL**

24 **2.1 Over-Designation Prohibited.** Any party or non-party who designates  
25 information or items for protection under this Order as “CONFIDENTIAL,”  
26 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” (a “designator”) must  
27 only designate specific material that qualifies under the appropriate standards. To the  
28 extent practicable, only those parts of documents, items, or oral or written

1 communications that require protection shall be designated. Designations with a  
2 higher confidentiality level when a lower level would suffice are prohibited. Mass,  
3 indiscriminate, or routinized designations are prohibited. Unjustified designations  
4 expose the designator to sanctions, including the Court’s striking all confidentiality  
5 designations made by that designator. Designation under this Order is allowed only if  
6 the designation is necessary to protect material that, if disclosed to persons not  
7 authorized to view it, would cause competitive or other recognized harm. Material  
8 may not be designated if it has been made public, or if designation is otherwise  
9 unnecessary to protect a secrecy interest. If a designator learns that information or  
10 items that it designated for protection do not qualify for protection at all or do not  
11 qualify for the level of protection initially asserted, that designator must promptly  
12 notify all parties that it is withdrawing the mistaken designation.

13 **2.2 Manner and Timing of Designations.** Designation under this Order  
14 requires the designator to affix the applicable legend (“CONFIDENTIAL,” or  
15 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page or item that  
16 contains protected material. For testimony given in deposition or other proceeding, the  
17 designator shall specify all protected testimony and the level of protection being  
18 asserted. It may make that designation during the deposition or proceeding, or may  
19 invoke, on the record or by written notice to all parties on or before the next business  
20 day, a right to have up to 21 days from the deposition or proceeding to make its  
21 designation.

22 Parties shall give advance notice if they expect a deposition or other proceeding  
23 to include designated material so that the other parties can ensure that only authorized  
24 individuals are present at those proceedings when such material is disclosed or used.  
25 The use of a document as an exhibit at a deposition shall not in any way affect its  
26 designation. Transcripts containing designated material shall have a legend on the title  
27 page noting the presence of designated material, and the title page shall be followed by  
28 a list of all pages (including line numbers as appropriate) that have been designated,

1 and the level of protection being asserted. The designator shall inform the court  
2 reporter of these requirements. Any transcript that is prepared before the expiration of  
3 the 21-day period for designation shall be treated during that period as if it had been  
4 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY unless  
5 otherwise agreed. After the expiration of the 21-day period, the transcript shall be  
6 treated only as actually designated.

7           2.2.1 Any outside counsel-of-record that receives documents or materials  
8 produced by a non-party in response to a subpoena (“Subpoenaed Material”) shall,  
9 within two (2) court days of receiving Subpoenaed Material, provide notice to all other  
10 outside counsel-of-record of such receipt. Any outside counsel-of-record may, within  
11 two (2) court days of receiving such notice of Subpoenaed Material, request delivery  
12 of the Subpoenaed Material, which delivery must be made within two (2) business  
13 days thereafter, with the requesting party paying the reasonable cost of such delivery.  
14 If no outside counsel-of-record requests delivery of the Subpoenaed Material within  
15 two (2) business days after receiving such notice of the Subpoenaed Material, the  
16 Subpoenaed Material shall receive no designation under this Order. If, however, any  
17 outside counsel-of-record requests delivery of the Subpoenaed Material, the outside  
18 counsel-of-record may designate the Subpoenaed Material in accordance with this  
19 Order (“the Subpoenaed Document Quarantine”) within five (5) court days after  
20 receiving the Subpoenaed Material. At all times between a non-party’s production of  
21 Subpoenaed Material and expiration of the Subpoenaed Document Quarantine, if any,  
22 the Subpoenaed Material shall be afforded the highest level of protection under this  
23 Order and thus shall be deemed “HIGHLY CONFIDENTIAL-ATTORNEY EYES  
24 ONLY.” After the expiration of the five-day period, the Subpoenaed Material shall be  
25 treated only as actually designated; any portions not designated under this order shall  
26 not be protected by it.

27           **2.3 Inadvertent Failures to Designate.** An inadvertent failure to designate  
28 does not, standing alone, waive protection under this Order. Upon timely assertion or

1 correction of a designation, all recipients must make reasonable efforts to ensure that  
2 the material is treated according to this Order.

3 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 All challenges to confidentiality designations shall proceed under L.R. 37-1  
5 through L.R. 37-4.

6 **4. ACCESS TO DESIGNATED MATERIAL**

7 **4.1 Basic Principles.** A receiving party may use designated material only for  
8 this litigation. Designated material may be disclosed only to the categories of persons  
9 and under the conditions described in this Order.

10 **4.2 Disclosure of CONFIDENTIAL Material.** Unless otherwise ordered by  
11 the Court or permitted in writing by the designator, a receiving party may disclose any  
12 material designated CONFIDENTIAL only to:

13 4.2.1 The receiving party's outside counsel of record in this action and  
14 employees of outside counsel of record to whom disclosure is reasonably necessary;

15 4.2.2 The officers, directors, and employees of the receiving party to  
16 whom disclosure is reasonably necessary, and who have signed the Agreement to Be  
17 Bound (Exhibit A);

18 4.2.3 Experts retained by the receiving party's outside counsel of record  
19 to whom disclosure is reasonably necessary, and who have signed the Agreement to Be  
20 Bound (Exhibit A);

21 4.2.4 The Court and its personnel;

22 4.2.5 Outside court reporters and their staff, professional jury or trial  
23 consultants, and professional vendors to whom disclosure is reasonably necessary, and  
24 who have signed the Agreement to Be Bound (Exhibit A);

25 4.2.6 During their depositions, witnesses in the action to whom  
26 disclosure is reasonably necessary and who have signed the Agreement to Be Bound  
27 (Exhibit A); and  
28

1           4.2.7 The author or recipient of a document containing the material, or a  
2 custodian or other person who otherwise possessed or knew the information.

3           **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**

4 **ONLY Material.** Unless permitted in writing by the designator, a receiving party may  
5 disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES  
6 ONLY without further approval only to:

7           4.3.1 The receiving party’s outside counsel of record in this action and  
8 employees of outside counsel of record to whom it is reasonably necessary to disclose  
9 the information;

10          4.3.2 The Court and its personnel;

11          4.3.3 Outside court reporters and their staff, professional jury or trial  
12 consultants, and professional vendors to whom disclosure is reasonably necessary, and  
13 who have signed the Agreement to Be Bound (Exhibit A); and

14          4.3.4 The author or recipient of a document containing the material, or a  
15 custodian or other person who otherwise possessed or knew the information.

16           **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**  
17 **CONFIDENTIAL – ATTORNEY EYES ONLY.** Unless agreed to in writing by the  
18 designator:

19          4.4.1 A party seeking to disclose to in-house counsel or the employees or  
20 officers of the receiving party (“proposed recipient”) any material designated HIGHLY  
21 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written request to  
22 the designator providing the full name of the proposed recipient, the city and state of  
23 his or her residence, and the recipient’s current and reasonably foreseeable future  
24 primary job duties and responsibilities in sufficient detail to determine present or  
25 potential involvement in any competitive decision-making.

26          4.4.2 A party seeking to disclose to an expert retained by outside counsel  
27 of record any information or item that has been designated HIGHLY  
28 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written request to

1 the designator that (1) identifies the general categories of HIGHLY CONFIDENTIAL  
2 – ATTORNEY EYES ONLY information that the receiving party seeks permission to  
3 disclose to the expert, (2) sets forth the full name of the expert and the city and state of  
4 his or her primary residence, (3) attaches a copy of the expert’s current resume, (4)  
5 identifies the expert’s current employer(s), (5) identifies each person or entity from  
6 whom the expert has received compensation or funding for work in his or her areas of  
7 expertise (including in connection with litigation) in the past two years, and (6)  
8 identifies (by name and number of the case, filing date, and location of court) any  
9 litigation where the expert has offered expert testimony, including by declaration,  
10 report, or testimony at deposition or trial, in the past two years. If the expert believes  
11 any of this information at (4) - (6) is subject to a confidentiality obligation to a third  
12 party, then the expert should provide whatever information the expert believes can be  
13 disclosed without violating any confidentiality agreements, and the party seeking to  
14 disclose the information to the expert shall be available to meet and confer with the  
15 designator regarding any such confidentiality obligations.

16 4.4.3 A party that makes a request and provides the information specified  
17 in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified  
18 recipient unless, within seven days of delivering the request, the party receives a  
19 written objection from the designator providing detailed grounds for the objection.

20 4.4.4 All challenges to objections from the designator shall proceed  
21 under L.R. 37-1 through L.R. 37-4.

## 22 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED** 23 **PRODUCED IN OTHER LITIGATION**

24 **5.1 Subpoenas and Court Orders.** This Order in no way excuses non-  
25 compliance with a lawful subpoena or court order. The purpose of the duties described  
26 in this section is to alert the interested parties to the existence of this Order and to give  
27 the designator an opportunity to protect its confidentiality interests in the court where  
28 the subpoena or order issued.

1           **5.2 Notification Requirement.** If a party is served with a subpoena or a  
2 court order issued in other litigation that compels disclosure of any information or  
3 items designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL –  
4 ATTORNEY EYES ONLY must:

5                   5.2.1 Promptly notify the designator in writing. Such notification shall  
6 include a copy of the subpoena or court order;

7                   5.2.2 Promptly notify in writing the party who caused the subpoena or  
8 order to issue in the other litigation that some or all of the material covered by the  
9 subpoena or order is subject to this Order. Such notification shall include a copy of  
10 this Order; and

11                   5.2.3 Cooperate with all reasonable procedures sought by the designator  
12 whose material may be affected.

13           **5.3 Wait For Resolution of Protective Order.** If the designator timely seeks  
14 a protective order, the party served with the subpoena or court order shall not produce  
15 any information designated in this action as CONFIDENTIAL or HIGHLY  
16 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the court  
17 where the subpoena or order issued, unless the party has obtained the designator’s  
18 permission. The designator shall bear the burden and expense of seeking protection of  
19 its confidential material in that court.

20 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

21           If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
22 designated material to any person or in any circumstance not authorized under this  
23 Order, it must immediately (1) notify in writing the designator of the unauthorized  
24 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated  
25 material, (3) inform the person or persons to whom unauthorized disclosures were  
26 made of all the terms of this Order, and (4) use reasonable efforts to have such person  
27 or persons execute the Agreement to Be Bound (Exhibit A).  
28



1     **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
2     **PROTECTED MATERIAL**

3             When a producing party gives notice that certain inadvertently produced  
4 material is subject to a claim of privilege or other protection, the obligations of the  
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). If  
6 a receiving party learns that it has received from a disclosing party a document or thing  
7 that appears on its face to contain privileged material that has been inadvertently  
8 disclosed, the receiving party shall immediately notify the disclosing party of the  
9 identity of the material that appears on its face to be privileged. This provision is not  
10 intended to modify whatever procedure may be established in an e-discovery order that  
11 provides for production without prior privilege review pursuant to Federal Rule of  
12 Evidence 502(d) and (e).

13     **8. FILING UNDER SEAL**

14             Without written permission from the designator or a Court order, a party may  
15 not file in the public record in this action any designated material. A party seeking to  
16 file under seal any designated material must comply with L.R. 79-5.1. Filings may be  
17 made under seal only pursuant to a court order authorizing the sealing of the specific  
18 material at issue. The fact that a document has been designated under this Order is  
19 insufficient to justify filing under seal. Instead, parties must explain the basis for  
20 confidentiality of each document sought to be filed under seal. Because a party other  
21 than the designator will often be seeking to file designated material, cooperation  
22 between the parties in preparing, and in reducing the number and extent of, requests  
23 for under seal filing is essential. If a *receiving party's* request to file designated  
24 material under seal pursuant to L.R. 79-5.1 is denied by the Court, then the receiving  
25 party *may file the material in the public record* unless (1) *the designator* seeks  
26 reconsideration within four days of the denial, or (2) as otherwise instructed by the  
27 Court.

28     **9. FINAL DISPOSITION**

1           Within 60 days after the final disposition of this action, each party shall return  
2 all designated material to the designator or destroy such material, including all copies,  
3 abstracts, compilations, summaries, and any other format reproducing or capturing any  
4 designated material. The receiving party must submit a written certification to the  
5 designator by the 60-day deadline that (1) identifies (by category, where appropriate)  
6 all the designated material that was returned or destroyed, and (2) affirms that the  
7 receiving party has not retained any copies, abstracts, compilations, summaries, or any  
8 other format reproducing or capturing any of the designated material. This provision  
9 shall not prevent counsel from retaining an archival copy of all pleadings, motion  
10 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and  
12 expert work product, even if such materials contain designated material. Any such  
13 archival copies remain subject to this Order.

14  
15  
16 **IT IS SO ORDERED.**

17 DATED: September 12, 2016



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19 Hon. Jean P. Rosenbluth  
20 United States Magistrate Judge

1 EXHIBIT A

2 AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full  
4 name], of \_\_\_\_\_ [print or type full address],  
5 declare under penalty of perjury that I have read in its entirety and understand the  
6 Protective Order that was issued by the United States District Court for the Central  
7 District of California on \_\_\_\_\_ [date] in the cases of *Puretek Corp. v.*  
8 *Patchwerx Labs, Inc. et al.*, Case No. 2:15-cv-07044 DMG (JPR). I agree to comply  
9 with and to be bound by all the terms of this Protective Order, and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and punishment  
11 for contempt. I solemnly promise that I will not disclose in any manner any  
12 information or item that is subject to this Protective Order to any person or entity  
13 except in strict compliance with this Order.

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

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

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

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

25 Signature:  
26  
27  
28