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**U.S. DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GEORGE ALVAREZ AND MICHELLE
ALVAREZ, PARENTS OF CHRISTINA
ALVAREZ, DECEASED, and the
ESTATE OF CHRISTINA ALVAREZ,
DECEASED,

Plaintiffs,

v.

ABBVIE INC., ABBOTT
LABORATORIES, and CITRON
PHARMA, LLC,

Defendants.

CASE NO. 16-CV-8055-TJH-JEMx

District Judge: Hon. Terry J. Hatter, Jr.
Courtroom 9B

Magistrate Judge: Hon. John E.
McDermott
Courtroom 640

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Action Filed: 10/31/2016

1 WHEREAS, the discovery phase of this case will involve the exchange of
2 confidential business information and information involving the privacy rights of
3 individuals, including the parties;

4 WHEREAS, the Court wishes to expedite the free flow of information
5 between the parties, facilitate the prompt resolution of disputes over
6 confidentiality, protect the parties from undue burden and expense, and ensure that
7 protection is afforded only to material so entitled, now therefore, for good cause
8 shown, IT IS ORDERED as follows:

9 1. This Protective Order shall govern the use and dissemination of all
10 information, documents or materials that are produced in the above-captioned case
11 (“the Action”) and designated as Confidential or “Attorneys Eyes’ Only” during
12 the discovery phase of this litigation.

13 2. In the event that any documents, interrogatory answers, responses to
14 requests for admission, testimony, or other information or materials produced
15 during the course of discovery of the Action are designated as being “Confidential”
16 or “Attorneys’ Eyes Only” in accordance with this Order (“Protected
17 Information”), the Protected Information produced shall be maintained in
18 confidence and not disclosed to any person (including representatives and
19 employees of the producing or receiving party) except as provided herein and shall
20 be subject to the provisions of this Order.

21 3. The term “Confidential Information,” as used in this Protective Order,
22 is defined in accordance with and follows Ninth Circuit law. Confidential
23 Information is defined herein to include information that is not in the public
24 domain and contains employee information, financial data and information, and
25 any other information that may reasonably be characterized by a party as
26 intellectual property, a trade secret, or confidential and proprietary information,
27 including information protected from disclosure by FDA regulations including 21
28 C.F.R. § 20.63 and 21 C.F.R. § 314.430; information provided to defendants

1 Abbvie, Abbott Laboratories, and/or Citron Pharma, LLC (collectively,
2 “Defendants”) by third parties with the expectation that Defendants would keep
3 such information confidential or pursuant to contracts that expressly require
4 Defendants to maintain the confidentiality of the information or that is otherwise
5 protected from disclosure by statute; names and other identifying information of
6 patients in clinical studies or adverse event reports as well as the physicians who
7 reported to Defendants adverse events concerning one of their patients;
8 confidential client lists; information that is not generally available to the public that
9 relates to, reflects or was or is used to help form Defendants’ research, business
10 and legal strategies, such as information that is not generally available to the public
11 that relates to, reflects or was or is used to help form Defendants’ research,
12 business and legal strategies, such as business or marketing plans or studies; sales
13 data that is kept confidential; pricing and financial information; discount
14 information; rebate information; plaintiffs medical records and personal financial
15 information; non-public financial data that would reveal Defendants’ future
16 strategic commitments; information relating to job performance evaluations or
17 disciplinary actions; information that is not generally available to the public that
18 relates to consumer purchasing habits, pricing information, sales techniques, sales
19 volumes; and information concerning communication with government agencies.
20 For purposes of discovery, “trade secret” shall include any formula, compilation,
21 program, plan, device, design, method, technique, process or other information
22 used in the Producing Party's business and for which confidentiality or sensitivity
23 has been reasonably maintained; and “proprietary” information shall mean any
24 information in which a party has a protectable interest, including information
25 regarding a party’s finances, processes, products, services, research and
26 development, sales and marketing, strategies and technologies, trade secret or other
27 confidential research, development or commercial information or other non-public
28 information about the financial and business affairs of the parties.

1 4. The term “Attorneys’ Eyes Only” information is defined herein to
2 include any commercially sensitive, proprietary, and/or confidential business or
3 financial information (including without limitation patents or other confidential
4 research, development, commercial, financial, and/or proprietary documents and
5 information, new drug applications, abbreviated new drug applications,
6 confidential nonpublic contracts, profitability reports or estimates, sales reports,
7 sales margins, and strategic plans) which could reasonably create a competitive
8 disadvantage or cause substantial economic harm to the competitive position of the
9 Producing Party if disclosed to a Competitor of the Producing Party; and any other
10 category of material or information hereinafter given protected status by the Court,
11 to the extent said material could reasonably create a competitive disadvantage if
12 disclosed to a Competitor of the Producing Party.

13 5. The terms “Competitor” and “Competitors” means any individual or
14 entity that is currently, or at any time during the pendency of this litigation
15 becomes, engaged in a business competing with that of any of the Defendants. This
16 includes any individual or entity researching, developing, manufacturing,
17 marketing, or selling any pharmaceutical that directly competes with Depakote or
18 divalproex sodium/valproic acid, or is actively investigating entering such
19 business.

20 6. Any party to this Action or other person or entity, including any third
21 party, who produces or supplies information, documents or other materials used in
22 the Action (hereinafter the “Producing Party”) may designate as “Confidential” or
23 “Attorneys’ Eyes Only” any such information, document or material that it
24 reasonably and in good faith believes constitutes or contains such information.

25 7. All materials designated “Confidential” or “Attorneys’ Eyes Only”
26 under this Order shall be clearly stamped by the party or other person desiring such
27 designation. For information produced in some form other than paper, and for any
28 other tangible items, including, without limitation, compact discs or DVDs, the

1 producing party shall affix in a prominent place on the exterior of the container or
2 containers in which the information or item is stored the legend “Confidential” or
3 “Attorneys’ Eyes Only.” If only portions of the information or item warrant
4 protection, the Producing Party shall identify the “Confidential” or “Attorneys’
5 Eyes’ Only” portions in an accompanying cover letter or by designation in the
6 accompanying load file.

7 8. All testimony and exhibits provided at the depositions in this Action
8 initially shall be considered “Attorneys’ Eyes Only,” and the court reporter shall
9 mark all pages of deposition transcripts with the designation “Attorneys’ Eyes
10 Only - Subject to Further Confidentiality Review.” In order to maintain the
11 protected status of such testimony (including exhibits), the Producing Party must
12 notify all other parties and the court reporter in writing of the specific pages and
13 lines of the transcript that should be treated as Confidential or Attorneys’ Eyes
14 Only within thirty (30) days of receipt of the final transcript. Only the exhibits and
15 those portions of the transcript so designated within that thirty (30) day period shall
16 be deemed Confidential or Attorneys’ Eyes Only. Counsel for the opposing parties
17 may have immediate access to the deposition transcript, but prior to the page and
18 line designations, shall treat the entire transcript as Attorneys’ Eyes Only.

19 9. All Confidential Protected Information, including any writing or
20 communication reproducing, paraphrasing, or otherwise disclosing such
21 information, shall not be used for any purpose by the receiving party except for
22 purposes in connection with the Action. However, nothing in this Protective Order
23 shall affect Defendants’ ability to review information that plaintiffs marked
24 “Confidential” and report such information to regulatory agencies in compliance
25 with their obligations under federal law.

26 10. Confidential Information that has been produced in this litigation,
27 including any writing or communication reproducing, paraphrasing, or otherwise
28 disclosing such information, may be disclosed only to:

1 a. The parties to this Action, including designated in-house
2 counsel for Defendants (and the clerical, secretarial and other staff working for in-
3 house counsel in the legal department) and any employee that Defendants deem
4 necessary to disclose such information for the purpose of assisting in, or consulting
5 with respect to, the preparation of this Action;

6 b. The attorneys for the parties to this Action, including the
7 partners, associates, and stenographic, secretarial, paralegal, clerical and other
8 employees of such counsel;

9 c. The experts or consultants retained or consulted by the parties
10 to this Action, including the partners, associates, and stenographic, secretarial,
11 paralegal, clerical and other employees of such expert or consultant;

12 d. Any person who prepared or originated the document, who is
13 indicated on its face as a recipient of a copy thereof, or who otherwise legitimately
14 received a copy;

15 e. Any person who is scheduled to be a witness at deposition,
16 hearing or trial in this Action where the Confidential Information is reasonably
17 anticipated to relate to the testimony or knowledge of such witness;

18 f. The Court and related officials involved in this litigation,
19 including judges, magistrates, commissioner, mediators, referees, jurors, court
20 reporters, videographers, and other Court personnel (provided, however, that any
21 material designated Confidential and filed with the Court is filed in accordance
22 with the procedures for filing under seal described below); and

23 g. Any person designated by the Court and in the interest of
24 justice, upon such terms the Court deems proper.

25 11. Attorneys' Eyes Only Information that has been produced in this
26 litigation, including any writing or communication reproducing, paraphrasing, or
27 otherwise disclosing such information, may be disclosed only to:

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1 a. The attorneys for the parties to this Action, including the
2 partners, associates, and stenographic, secretarial, paralegal, clerical and other
3 employees of such counsel;

4 b. The experts or consultants retained or consulted by the parties
5 to this Action, including the partners, associates, and stenographic, secretarial,
6 paralegal, clerical and other employees of such expert or consultant, provided that
7 such experts and consultants are not employees of or consultants to a Competitor;

8 c. Any person who prepared or originated the document, who is
9 indicated on its face as a recipient of a copy thereof, or who otherwise legitimately
10 received a copy;

11 d. The Court and related officials involved in this litigation,
12 including judges, magistrates, commissioner, mediators, referees, jurors, court
13 reporters, videographers, and other Court personnel (provided, however, that any
14 material designated Attorneys' Eyes Only and filed with the Court is filed in
15 accordance with the procedures for filing under seal described below); and

16 e. Any person designated by the Court and in the interest of
17 justice, upon such terms the Court deems proper.

18 12. Prior to disclosing Confidential or "Attorneys' Eyes Only"
19 Information to any person listed in Paragraphs 10(c), 10(g), 11(b), or 11(e) above,
20 the receiving party shall:

21 a. provide such person with a copy of this Protective Order;

22 b. and obtain from such person a signed statement in the form
23 attached hereto as Exhibit A. Such statement shall be retained by the party and
24 need not be filed with the Court or served upon opposing counsel unless required
25 by the Court. Parties are required to maintain copies of all such statements
26 obtained by them and may be required to produce them in camera to the Court
27 upon request.

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1 13. Any person listed in Paragraph 10(a), 10(b), 10(d), or 10(e) who
2 receives materials containing Confidential Information shall:

- 3 a. be advised of this Order;
- 4 b. be directed to use such Confidential Information only for
5 purposes in connection with this Action, and not for any other purpose; and
- 6 c. be directed to refrain from disclosing or discussing such
7 Confidential Information with any person other than those already subject to the
8 terms of this Order.

9 14. Any person listed in Paragraph 11(a) or 11(c) who receives materials
10 containing Attorneys' Eyes Only Information shall:

- 11 a. be advised of this Order;
- 12 b. directed to use such Attorneys' Eyes Only only for purposes in
13 connection with this Action and not for any other purpose; and
- 14 c. be directed to refrain from disclosing or discussing such
15 Attorneys' Eyes Information with any person other than those already subject to
16 the terms of this Order.

17 15. In the event the nonproducing party wishes to file materials
18 designated as "CONFIDENTIAL," the nonproducing party shall file the materials
19 conditionally under seal pursuant to the procedures set forth in Local Rule 79-
20 5.2(b). Pursuant to that rule, if the document cannot be suitably redacted by
21 agreement, the filing party may file an Application pursuant to Local Rule 79-
22 5.2(a), but the supporting declaration must identify the material previously
23 designated as Protected Information as well as the Producing Party, and must
24 describe in detail the efforts made to resolve the issue. Within four days of days of
25 the filing of the Application, the Producing Party who wishes the document to be
26 sealed must file a declaration pursuant to Local Rule 79-5.2(b)(i). If the
27 Application to seal is denied, the filing party may file the document in the public
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1 case file (i.e., unsealed) no earlier than four days, and no later than ten days, after
2 the Application is denied, unless the Court orders otherwise.

3 16. Any summary, compilation, notes, copy, electronic image or database
4 containing Confidential Information or Attorneys' Eyes Only Information shall be
5 subject to the terms of the Protective Order to the same extent as the materials or
6 information from which such summary, compilation, notes, copy, electronic image
7 or database is made or derived.

8 17. Nothing contained herein shall be construed to affect in any way the
9 admissibility of any document, testimony, or other evidence at trial.

10 18. Any party who has designated any material "Confidential" or
11 "Attorneys' Eyes Only" pursuant to this Order may consent to the removal of such
12 designation by so notifying counsel for the other parties in writing.

13 19. Any party may object to a designation as follows:

14 a. The party objecting shall notify the Producing Party in writing
15 of that objection and shall specify the designated materials, or category or sub-set
16 of information, to which the objection is made.

17 b. Pursuant to Local Rule 37-1, the parties shall confer in good
18 faith concerning any such objection. If the objection is not resolved within 10 days
19 after mailing of the notice, then the receiving party shall follow the procedures set
20 forth in Local Rule 37-2 to formulate a written stipulation and file a motion to
21 remove the designation of Confidential or Attorneys' Eyes only. The party
22 designating the document as Confidential or Attorneys' Eyes shall have the burden
23 of evidentiary proof to establish grounds for such treatment as to each document or
24 sub-set of documents where the designation has been placed at issue. Any such
25 motion must be filed and served within 30 days after the expiration of the 10-day
26 period for reaching agreement referenced to previously. Any briefing on this issue
27 shall be filed under seal pursuant to the procedures set forth in Local Rule 79-

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1 5.2(b). If a motion is filed, information subject to dispute shall, until further order
2 of the court, be treated consistently with its designation.

3 20. If a receiving party is served with a subpoena or an order issued in
4 other litigation that would compel disclosure of any Protected Material, the
5 receiving party shall:

6 a. Promptly notify the Producing Party, in writing, and in no event
7 more than five (5) court days after receiving the subpoena or order. Such
8 notification must include a copy of the subpoena or court order;

9 b. Promptly notify in writing the party who caused the subpoena
10 or order to issue in the other litigation that some or all of the material covered by
11 the subpoena or order is Protected Material under this Protective Order. Such
12 notification must include a copy of the Protective Order; and

13 c. Cooperate with respect to all reasonable procedures sought to
14 be pursued by the Producing Party whose Protected Material may be affected.

15 21. If the Producing Party timely seeks a protective order and/or seeks to
16 quash the subpoena, the party served with the subpoena or court order shall not
17 produce any Protected Material before determination by the court from which the
18 subpoena or order issued, unless the party has obtained the Producing Party's
19 written permission. The Producing Party shall bear the burdens and the expenses of
20 seeking protection in the applicable court of its Protected Material, and nothing in
21 paragraphs 20 and 21 of this Protective Order should be construed as authorizing
22 or encouraging a receiving party in this Action to disobey a lawful directive from
23 another court.

24 22. Neither the taking of any action in accordance with the provisions of
25 this Protective Order, nor the failure to object thereto shall be construed as a
26 waiver of any claim or defense in this Action. Moreover, the failure to designate
27 information in accordance with this Order and the failure to object to a designation
28 at a given time shall not preclude a party from seeking to impose such designation

1 or challenging the propriety thereof. In the event a party discovers that it
2 inadvertently produced materials containing Protected Information without
3 marking them as such in accordance with this Protective Order, that party may
4 provide written notice to the receiving party that the materials should be treated as
5 Confidential or Attorneys' Eyes Only, as applicable, in accordance with this Order.
6 Upon receipt of such notice, the receiving party shall treat such materials as
7 Confidential or Attorneys' Eyes Only, as applicable, and upon receipt of materials
8 properly marked as "Confidential," or Attorneys' Eyes Only shall return or destroy
9 the unmarked materials and shall reasonably ensure that others to whom the
10 unmarked materials were disclosed have not retained copies. In the case of
11 inadvertently produced privileged and/or work product documents, Fed. R. Civ. P.
12 26(b)(5)(B) shall apply.

13 23. This Protective Order does not govern the use of Protected
14 Information at trial. The Parties and the Court (or a Magistrate Judge to whom
15 proceedings have been referred) shall determine the appropriate procedures to
16 govern the use of Protected Information at trial.

17 24. The terms of this Order shall remain in full force and effect after
18 termination of this action, unless modified, superseded, or terminated by the
19 written agreement of the parties or by Order of this Court. Within 30 days after
20 completion of this litigation, all Protected Information, including any writing or
21 communication reproducing, paraphrasing, or otherwise disclosing such
22 information, shall be collected by counsel for the receiving party and returned to
23 the Producing Party; provided, however, that attorney work product or pleadings
24 containing information derived from Protected Information may be destroyed
25 rather than returned to the party who supplied such Protected Information. For
26 purposes of this Order, this Action shall be considered "completed" upon entry of a
27 dismissal with prejudice of the entire action or upon ten days following the entry of
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1 judgment that has become final and non-appealable, or from which all appeals
2 have been exhausted.

3 25. If any attorney work product or pleadings containing information
4 derived from Protected Information is destroyed rather than returned to the party
5 who supplied Protected Information pursuant to paragraph 22, counsel for the
6 receiving party shall produce a certificate confirming the destruction of all such
7 Protected Information (including, but not limited to, the original versions, all
8 copies made, and all electronic versions) to counsel for the producing party within
9 60 days after completion of this Action.

10 26. All parties and other persons who receive Protected Information shall
11 be under a continuing duty not to disclose such information obtained in the course
12 of this litigation, and this duty shall continue in full force and effect after the
13 completion of this Litigation.

14 27. No party may refuse or delay to answer or respond to any discovery
15 request on the basis that the response or answer would contain Protected
16 Information. Responsive documents may not be withheld from production on the
17 basis that such documents contain or include Protected Information.

18 28. "Privileged" materials include any materials that contain information
19 protected from disclosure as defined by the Federal Rules of Civil Procedure
20 and/or the Federal Rules of Evidence.

21 29. The entry of this Order shall neither be construed as a waiver of any
22 right to object to the furnishing of information in response to discovery nor relieve
23 any party of the obligation of producing information in the course of discovery. In
24 the event that any responsive documents are withheld from production on the basis
25 that such documents contain or include Privileged materials, the party withholding
26 production of such documents shall provide a Privilege Log on a rolling basis,
27 updated at regular and reasonable intervals, which shall state with respect to each
28 responsive document being withheld or redacted on the basis that it contains

1 Privileged materials the following information: (1) the date of the document; (2)
2 the author of the document; (3) the recipients of the document; (4) the specific
3 privilege being invoked; and (5) a description of the document necessary to
4 establish the existence of the privilege invoked. Information qualifying as attorney
5 work product under federal law and created after August 17, 2010 are exempt from
6 the requirements of this paragraph.

7 30. Parties withholding information on the basis of a privilege are
8 required to redact privileged information from documents also containing non-
9 privileged information and to produce the redacted document. A party cannot
10 refuse to produce an entire document on the basis that the document contains both
11 privileged and non-privileged information.

12 31. If there is a challenge to a “Privileged,” “Confidential,” or “Attorneys’
13 Eyes Only” designation and the parties are unable in good faith to agree on
14 whether the designation should remain, the party challenging the designation may
15 move the Court to have the producing, responding or withholding party, as the case
16 may be, make a witness available for a deposition limited to an inquiry concerning
17 the “Confidential,” “Privileged,” or “Attorneys’ Eyes Only” designation of any so-
18 designated materials.

19 32. The inadvertent production of materials subject to a claim of
20 privilege, work product, or other statutory or Court-ordered confidentiality shall
21 not result in a waiver of any of the foregoing protections for the materials, or for
22 any other privileged or immune materials containing the same or similar subject
23 matter. An inadvertent production by a party in this Action shall not be used as a
24 basis for arguing that a claim of privilege, work product, or other statutory or
25 Court-ordered confidentiality has been waived in any other proceeding. If any
26 party inadvertently produces such materials, upon receipt of notice of such
27 disclosure, the receiving party shall promptly return or delete from its litigation
28 support or other database(s) such materials; return or destroy its other copies, if

1 any, of such materials; destroy its notes or other work product reflecting the
2 contents of such materials; and confirm in writing to the producing party that all
3 copies of the recalled materials have been returned or destroyed in accordance with
4 this Order. If the receiving party seeks to challenge the disclosing party's claim that
5 the materials are privileged, protected, or otherwise subject to recall, it shall
6 present the materials in dispute to the Court under seal for a determination.

7 33. This Court shall retain jurisdiction even after the termination of this
8 Action to enforce the terms of this Order and to make such amendments,
9 modifications, deletions and additions as the Court deems necessary and
10 appropriate.

11 34. Parties and counsel are advised that an intentional failure to comply
12 with this Protective Order may be considered contempt of court and/or
13 sanctionable conduct.

14 IT IS SO ORDERED.

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16 DATED: October 23, 2017

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19 Hon. John E. McDermott
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EXHIBIT A

CERTIFICATE OF ACKNOWLEDGMENT OF PROTECTIVE ORDER

I _____, declare that:

I have been given a copy of and have read the Protective Order entered in the action entitled *George Alvarez, et al. v. AbbVie, Inc., et al.*, U.S. District Court, Central District of California, Case No. 16-CV-8055-TJH-JEMx (the "Action"). I agree to abide by the Protective Order and not to reveal or otherwise communicate to anyone or utilize any of the information designated "Confidential" or "Attorneys' Eyes Only" that is disclosed to me except in accordance with the terms of such Order. Specifically, but not by way of limitation, I agree to use such Protected Information only for purposes in connection with this Action, and not for any other purpose.

I acknowledge that any violation of the Protective Order may be punishable as contempt of court or through monetary sanctions ordered by the Court, or both, and agree to submit to the jurisdiction of the Court in the above-referenced case for purposes of enforcing compliance with the Protective Order.

Dated:

Signature

Printed Name

Address