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10 *For All Other Attorneys, Please See Signature Page*

11 Attorneys for Defendant Ecolab Inc.

12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 DOUG MINER, an individual, on behalf  
 16 of himself and other persons similarly  
 situated; MOES 1 through 10,000,

17 Plaintiff,

18 v.

19 ECOLAB, INC., a Delaware  
 20 corporation; and DOES 1 through 100,  
 inclusive,

21 Defendants.

Case No. 2:17-cv-02313 FMO-JC

**MODIFIED STIPULATED PROTECTIVE ORDER**

Complaint Filed: March 24, 2017  
FAC filed: May 30, 2017

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 23  
 24 Plaintiff Doug Miner (“Plaintiff”) and Defendant Ecolab Inc. (“Defendant”), by  
 25 and through their respective counsel of record, submit this stipulation for a protective  
 26 order and agree to the following:  
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1 **Good Cause Statement**

2 1. Plaintiff’s allegations may require disclosure of private and/or  
3 confidential information regarding Defendant’s employees who opted into this case.  
4 In addition, the parties expect that Plaintiff may request and Defendant has been asked  
5 to produce/may need to produce confidential business information involving  
6 Defendant’s business policies and practices that would likely cause significant harm to  
7 Defendant if made available or accessible publicly or to Defendant’s competitors.  
8 Good cause therefore exists for the issuance of this protective order, as the protective  
9 order will allow the parties to engage in discovery in this lawsuit while providing a  
10 means for limiting access to, and disclosure of, private, confidential and/or trade  
11 secret information. The purpose of this protective order is to protect the  
12 confidentiality of such materials as much as practicable during the litigation.

13 **Definitions And Designation**

14 2. “Confidential Information” means any information contained in any  
15 paper, document, database, spreadsheet, video recording, audio recording, electronic  
16 record or any other electronic or hard copy format received in this action that is  
17 stamped with a “Confidential” designation. Confidential Information may include,  
18 but is not limited to: (a) confidential or sensitive company proprietary business  
19 information and (b) company pay plans and pay documents that applied to Plaintiff.

20 3. “Attorneys Eyes Only Material” means any information contained in any  
21 paper, document, database, spreadsheet, video recording, audio recording, electronic  
22 record or any other electronic or hard copy format received in this action that is  
23 stamped with an “Attorneys Eyes Only” designation. Attorneys Eyes Only Material  
24 may include, but is not limited to: highly confidential or sensitive business  
25 information that could cause financial harm to Defendant if disseminated to the public  
26 or competitors.

27 4. Any party may designate any material produced by that party in this  
28 action as “Confidential” or “Attorneys Eyes Only” where he, she, or it believes in

1 good faith that such material qualifies for that designation as defined above. Marking  
2 or stamping “Confidential” or “Attorneys Eyes Only” on the cover of a multiple page  
3 document shall classify all pages of the document with the same designation unless  
4 otherwise indicated by the Designating Party. Marking or stamping “Confidential  
5 Information” or “Attorneys Eyes Only Material” on a label on any electronic storage  
6 medium shall designate the entire contents of such electronic storage medium as  
7 Confidential Information or Attorneys Eyes Only Material.

8 **Access to Confidential Information And Attorneys Eyes Only Material**

9 5. Confidential Information produced or received in this action subject to  
10 this protective order shall not be disclosed by any person who has received such  
11 Confidential Information through this action except to: the Court, including assigned  
12 judges, their staff, jurors and other court personnel; court reporters and videographers  
13 recording or transcribing testimony in this action; attorneys of record for the parties  
14 and their respective associates, paralegals, clerks, and employees involved in the  
15 conduct of this litigation and in-house attorneys at Defendant. Notwithstanding the  
16 foregoing, the following designated persons may also receive and review Confidential  
17 Information:

18 (a) Plaintiff Doug Miner;

19 (b) Any person who was involved in the preparation of the document,  
20 materials or the discovery responses containing Confidential Information or who  
21 lawfully received or reviewed the documents or to whom the Confidential Information  
22 has previously been made available other than by one receiving such Confidential  
23 Information in connection with this action;

24 (c) Experts or consultants who are engaged by counsel for any party to  
25 perform investigative work, factual research, or other services relating to this action;

26 (d) Mediators used to try to resolve the action;

27 (e) Any other person with the prior written consent of the designating party.  
28

1           6. Attorneys Eyes Only Material produced or received in this action subject  
2 to this protective order shall not be disclosed, revealed or disseminated by any person  
3 who has received such Confidential Information through this action except to: the  
4 Court, including assigned judges, their staff, jurors and other court personnel; court  
5 reporters and videographers recording or transcribing testimony in this action;  
6 attorneys of record for the parties and their respective associates, paralegals, clerks,  
7 and employees involved in the conduct of this litigation and in-house attorneys at  
8 Defendant. Notwithstanding the foregoing, the following designated persons may  
9 also review Attorneys Eyes Only Material:

10           (a) Experts or consultants who are engaged by counsel for any party to  
11 perform investigative work, factual research, or other services relating to this action;

12           (b) Any person who was involved in the preparation of the document,  
13 materials or the discovery responses containing Attorneys Eyes Only Material, as well  
14 as any person indicated on the face of the document to be its originator, author or a  
15 recipient of a copy thereof.

16           (c) Mediators used to try to resolve the action;

17           (d) Any other person with the prior written consent of the designating party.

18           7. Any person who falls within a category identified in Paragraph 5(a)-(e)  
19 shall not be provided with any Confidential Information, unless, prior to such  
20 provision, he/she is provided with a copy of this protective order and agrees to be  
21 bound by its terms by executing the non-disclosure agreement in the form set forth in  
22 Attachment A. Any person who falls within a category identified in Paragraph 6(a)-  
23 (d) shall not be provided with any Attorneys Eyes Only Material, unless, prior to such  
24 provision, he/she is provided with a copy of this protective order and agrees to be  
25 bound by its terms by executing the non-disclosure agreement in the form set forth in  
26 Attachment B.

27           8. The parties shall retain copies of any executed non-disclosure agreements  
28 until the end of the action. In the event of a possible violation of this protective order

1 while this action is pending, a party may request that the Court order production of the  
2 executed non-disclosure agreements for good cause. Otherwise, the non-disclosure  
3 agreements are confidential and are not subject to any discovery request while the  
4 action is pending. No more than thirty (30) calendar days after the end of litigation in  
5 the action, the party who received the Confidential Information and/or Attorneys Eyes  
6 Only Material shall provide copies of all executed non-disclosure agreements to the  
7 party who produced the Confidential Information and/or Attorneys Eyes Only  
8 Material.

9 9. The action is at an end when all of the following that are applicable  
10 occur: (a) a final judgment has been entered by the Court or the case has otherwise  
11 been dismissed with prejudice; (b) the time for any objection to or request for  
12 reconsideration of such a judgment or dismissal has expired; (c) all available appeals  
13 have concluded or the time for such appeals has expired; and (d) any post appeal  
14 proceedings have concluded.

15 **Use Of Confidential Information And Attorneys Eyes Only Material**

16 10. Either party shall use Confidential Information and Attorneys Eyes Only  
17 Material solely and exclusively for preparing for, prosecuting, and/or defending this  
18 case, including any claims on behalf of the named Plaintiff and any putative class  
19 members pending the completion of the judicial process, including appeal. Absent  
20 further order of the Court, Confidential Information and Attorneys Eyes Only Material  
21 cannot be used for any other purpose in any other matter or proceeding for any reason  
22 whatsoever.

23 11. Nothing in this protective order shall restrict any party's counsel from  
24 giving advice to its client with respect to this action and, in the course thereof, relying  
25 upon Confidential Information and/or Attorneys Eyes Only Material, provided that in  
26 giving such advice, counsel shall not disclose the other party's Confidential  
27 Information and/or Attorneys Eyes Only Material other than in a manner expressly  
28 provided for in this protective order.

1           12. Testimony taken at a deposition that involves Confidential Information or  
2 Attorneys Eyes Only Material must be designated as “Confidential” or “Attorneys  
3 Eyes Only Material” by making a statement to that effect on the record at the  
4 deposition, identifying the specific testimony or items claimed to be Confidential  
5 Information or Attorneys Eyes Only Material. Arrangements shall be made with the  
6 deposition reporter taking and transcribing information designated as Confidential  
7 and/or Attorneys Eyes Only Material to bind separately such portions of the  
8 deposition transcript, and/or to label such portions appropriately. To the extent any  
9 party wishes the Court to consider any portions of the deposition transcript and/or  
10 video or audio versions of the depositions that contain Confidential Information or  
11 Attorneys Eyes Only Material, or references thereto, the parties shall proceed in  
12 accordance with Local Rule 79-5.2.2.

13           13. A copy of the protective order shall be attached as an exhibit to the  
14 deposition transcript and the court reporter shall be subject to the protective order and  
15 precluded from providing the original or copies of the deposition transcript or portions  
16 thereof, any copies thereof, or portions of copies thereof, to any persons or entities  
17 other than counsel of record in the action. Any audiotape and/or videotape of said  
18 deposition shall also be subject to this protective order. The deposition videographer  
19 shall be subject to this protective order and precluded from providing the original  
20 deposition videotape or portions of the videotape to any persons or entities other than  
21 counsel of record. Any audiotape shall also be subject to this protective order and all  
22 persons shall be precluded from providing the original deposition audiotape or  
23 portions of the audiotape, to any persons or entities other than counsel of record in the  
24 action.

25           14. Only individuals permitted access to Confidential Information or  
26 Attorneys Eyes Only Material shall attend any deposition where Confidential  
27 Information or Attorneys Eyes Only Material is used. However, where feasible, an  
28 individual who is not allowed access to Attorneys Eyes Only Material may attend

1 portions of the deposition where Attorneys Eyes Only Material is not used or  
2 discussed. Individuals attending any depositions using Confidential Information or  
3 Attorneys Eyes Only Material shall not disclose to any person any statements made by  
4 deponents at depositions that reference Confidential Information or Attorneys Eyes  
5 Only Material unless that person is independently allowed access to the information.  
6 Nothing in this protective order gives any individual the right to attend a deposition  
7 that they would not otherwise be entitled to attend.

### 8 **No Waiver And Challenges to Designation**

9 15. Whether or not any evidence or testimony is, in fact, designated as  
10 “Confidential” or “Attorneys Eyes Only” shall not be conclusive of whether it is  
11 lawfully entitled to trade secret or other confidentiality protections, and the failure to  
12 make such a designation shall not constitute a waiver of any such protections.

13 16. By entering into this protective order, the parties do not waive any right  
14 to challenge whether any material designated or not designated as Confidential  
15 Information or Attorneys Eyes Only Material is properly designated or not designated  
16 as such, and do not waive the right to challenge at any hearing, trial or other  
17 proceeding whether such information is, in fact, confidential or private.

18 17. To the extent a party wishes to object to the designation of evidence or  
19 testimony as Confidential Information or Attorneys Eyes Only Material, the following  
20 procedures apply:

21 (a) Any party may in good faith object to the designation of any evidence or  
22 testimony as Confidential Information or Attorneys Eyes Only Material or to the  
23 limitations as to the use and disclosure of such information, by providing written  
24 notice of such objections to the Designating Party. The grounds for any objections  
25 shall be stated with reasonable particularity.

26 (b) The parties shall thereafter attempt to resolve such dispute in good faith  
27 on an informal basis. If the dispute cannot be resolved within fourteen (14) days after  
28 the objection is served, the party challenging the designation may apply to the Court,

1 pursuant to applicable rules of court, for an order permitting the use and dissemination  
2 of the challenged document(s) outside the conditions set forth herein relating to  
3 Confidential and Attorneys Eyes Only Material. The challenged documents shall be  
4 treated as confidential until such time as the Court has ruled on the motion.

5 **Filing Under Seal And Handling At Hearings And Trial**

6 18. To the extent any party wishes the Court to consider any Confidential  
7 Information or Attorneys Eyes Only Material, the parties shall proceed in accordance  
8 with Local Rule 79-5.2.2.

9 19. Should the need arise at a hearing or trial to offer testimony or present  
10 evidence designated as Confidential or Attorneys Eyes Only that cannot be addressed  
11 through sealing the evidence, the parties shall meet and confer in good faith to reach  
12 an agreement prior to offering said testimony or evidence. If they cannot reach an  
13 agreement, then, prior to offering the evidence, the Receiving Party will be allowed  
14 an opportunity to seek an appropriate court order to determine to what extent the  
15 Confidential Information or Attorneys Eyes Only Material may become public.  
16 Nothing shall prejudice any parties' rights to object to the introduction of any  
17 Confidential Information or Attorneys Eyes Only Material into evidence, on grounds,  
18 including, but not limited to, relevance and privilege.

19 **Inadvertent Failure To Designate**

20 20. If, through inadvertence, any party produces or offers as testimony any  
21 Confidential Information or Attorneys Eyes Only Material without labeling it or  
22 otherwise designating it as such, the producing party may, at any time, give written  
23 notice in good faith designating such information as Confidential Information or  
24 Attorneys Eyes Only Material.

25 **Clawback Provisions**

26 21. The parties also wish to protect certain privileged and work product  
27 documents, information, and electronically stored information against claims of  
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1 waiver in the event they are inadvertently produced during the course of this litigation,  
2 whether pursuant to a Court order, a discovery request or informal production.

3 22. A party who, through inadvertence or mistake, produces any material or  
4 information subject to a legally cognizable privilege or evidentiary protection shall not  
5 be held to have waived that privilege or evidentiary protection with respect to either  
6 that document or the subject matter of that document if, within fourteen (14) days of  
7 discovering the inadvertent disclosure of the protected material, the producing party  
8 provides written notice to the receiving party (a) identifying the material or  
9 information inadvertently produced, (b) stating the privilege asserted, (c) and  
10 requesting its return by the receiving party.

11 23. Upon written notice of an unintentional production by the producing  
12 party, the receiving party must promptly return all hard and soft copies of the  
13 specified document(s). Where the document(s) have been transferred or stored  
14 electronically or are themselves privileged or attorney work product protected, the  
15 receiving party must delete the documents from the devices on which they are or were  
16 stored or accessed or otherwise make them inaccessible to the receiving party.

17 24. The receiving party shall have seven (7) days from receipt of notification  
18 of the inadvertent production to determine in good faith whether to contest such claim  
19 and to notify the producing party in writing of an objection to the claim of privilege  
20 and the grounds for that objection.

21 25. If any document produced by another party is on its face subject to a  
22 legally recognizable privilege or evidentiary protection, the receiving party shall:  
23 (a) refrain from reading the document any more closely than is necessary to ascertain  
24 that it is privileged or protected; (b) immediately notify the producing party in writing  
25 that it has discovered documents believed to be privileged or protected;  
26 (c) specifically identify the documents by Bates number range or other identifying  
27 information; and (d) return all hard and soft copies of the documents and, where the  
28 documents have been transferred or stored electronically, delete the documents from



1 or evidentiary protection, that the disclosure of the documents was not inadvertent,  
2 that the producing party did not take reasonable steps to prevent the disclosure of the  
3 privileged documents or that the producing party failed to take reasonable steps to  
4 rectify the error provided that they comply with the terms of this protective order for  
5 designating the material as privileged and requesting its return.

6 29. The parties shall meet and confer within fourteen (14) days from the  
7 receipt of the receiving party's objection notice in an effort to resolve the dispute by  
8 agreement. If an agreement is not reached, the receiving party may file an appropriate  
9 motion and, as part of that motion, request that the producing party submit the  
10 specified documents to the Court under seal for a determination of the claim and  
11 provide the Court with the grounds for the asserted privilege or protection except  
12 where such a submission would violate existing law. Any party may request  
13 expedited treatment of any request for the Court's determination of the claim.

#### 14 **Termination Of Case**

15 30. The terms of this protective order shall survive the final termination of  
16 this action and shall be binding on all of the parties thereafter.

17 31. Within thirty (30) business days of the termination or settlement of this  
18 action, each party must return Confidential Information or Attorneys Eyes Only  
19 Material received during this litigation from the other party and copies of any  
20 deposition transcripts designated as Confidential Information or Attorneys Eyes Only  
21 Material. Where Confidential Information or Attorneys Eyes Only Material has been  
22 transferred or stored electronically, the receiving party must delete the electronic  
23 versions from the devices on which they are or were stored or accessed or otherwise  
24 make them inaccessible to the receiving party. Notwithstanding these provisions, that  
25 counsel of record for the parties may keep, in strictest confidence, those copies of any  
26 part of the Confidential Information or Attorneys Eyes Only Material that have  
27 become part of the official record of this litigation and may retain abstracts or  
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1 summaries of such materials, which contain counsel's mental impressions or opinions.  
2 Such information shall remain subject to the terms of this protective order.

3 32. Upon returning to the other side all Confidential Information or  
4 Attorneys Eyes Only Material and/or deposition testimony, the returning party must  
5 also execute and furnish the Certificate of Surrender and Deletion of Confidential  
6 Information and Attorneys Eyes Only Material Agreement in the form set forth in  
7 Attachment C.

8 **Miscellaneous Provisions**

9 33. The parties expressly agree that, by entering into this protective order,  
10 they do not waive any objections to any discovery requests and, further, that they do  
11 not agree to the production of any information or documents, or type or category of  
12 information or documents.

13 34. This protective order is subject to modification by stipulation of the  
14 parties. The Court may modify the terms and conditions of this protective order for  
15 good cause, or in the interest of justice, or on its own order at any time in these  
16 proceedings. The parties request that the Court provide them with notice of the  
17 Court's intent to modify the protective order and the content of those modifications,  
18 prior to making such modifications.

19 IT IS SO STIPULATED.

20 Dated: August 23, 2017

21 /s/ Alejandro P. Gutierrez  
22 (e-signature affixed with consent)  
23 ALEJANDRO P. GUTIERREZ  
24 HATHAWAY, PERRETT, WEBSTER,  
25 POWERS, CHRISMAN & GUTIERREZ  
26 A Professional Corporation

27 Attorneys for Plaintiff  
28 DOUG MINER

1 Dated: August 23, 2017

2 /s/ Jody A. Landry

3 JODY A. LANDRY  
4 LITTLER MENDELSON, P.C.  
5 Attorneys for Defendant  
6 ECOLAB INC.

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22 Attorneys for Defendant  
23 ECOLAB INC.

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**ORDER**

Upon review of the parties' Stipulation for Protective Order and upon a finding of good cause, it is hereby ordered that the foregoing Modified Stipulated Protective Order is approved and the parties are ordered to act in compliance therewith.

IT IS SO ORDERED.

Dated: August 31, 2017

/s/  
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JACQUELINE CHOOLJIAN  
U.S. MAGISTRATE JUDGE

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**ATTACHMENT A**

**CONFIDENTIAL INFORMATION NON-DISCLOSURE AGREEMENT**

The undersigned hereby agrees that:

1. I have reviewed the protective order in this action.

2. I agree that I am one of the following: (a) a named plaintiff to the action; (b) a person who was involved in the preparation of the document, materials or the discovery responses containing Confidential Information or who lawfully received or reviewed the documents or to whom the Confidential Information has previously been made available other than by receipt of such Confidential Information in connection with this action; (c) an expert or consultant who has been engaged by counsel for any party to perform investigative work, factual research, or other services relating to this action; (d) a mediator used to try to resolve the action; or (e) a person who the parties to the action have agreed in writing may receive Confidential Information.

3. I agree not to disclose any of the Confidential Information to any third person and further agree that my use of any Confidential Information shall only be for the prosecution, defenses, discovery, mediation and/or settlement of this action, and not for any other purpose.

4. I further agree that on or before the termination or settlement of this action, I will return all Confidential Information which is in my possession, custody, or control to the attorneys involved in the action so that it can be returned as provided in the protective order.

5. By signing this Confidential Information Non-Disclosure Agreement, I stipulate to the jurisdiction of this Court to enforce the terms of this Agreement.

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Sign Name: \_\_\_\_\_



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**ATTACHMENT C**  
**CERTIFICATE OF SURRENDER AND DELETION OF CONFIDENTIAL**  
**INFORMATION AND/OR ATTORNEYS EYES ONLY MATERIAL**

The undersigned hereby represents that, pursuant to the protective order, all Confidential Information and/or Attorneys Eyes Only Material within the possession, custody or control of the undersigned has been returned to the producing party to the extent it could be returned either in hard or soft copy. The undersigned further represents that, pursuant to the protective order, and to the extent Confidential Information or Attorneys Eyes Only Material was transferred or stored electronically, all electronic versions of the material and information have been deleted from the devices on which they were stored or accessed or otherwise rendered inaccessible.

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Sign Name: \_\_\_\_\_

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