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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

KIMBERLY BURKHART,

Plaintiff,

v.

WRIGHT MEDICAL TECHNOLOGY,
INC., MICROPORT ORTHOPEDICS
INC., and DOES 1-10, inclusive,

Defendants.

Case No. 2:17-cv-08561

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Magistrate Judge: Hon. Karen L.
Stevenson
Crtrm.: 8D

Trial Date: January 14, 2020

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Joint Stipulation for Protective Order ("Stipulation") filed on April 17, 2018, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been modified by the Court's amendment of paragraphs 2.1 and 6.2 of the Stipulation.

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~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

1 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND**
2 **MODIFIED BY THE COURT**¹

3
4 1. **A. PURPOSES AND LIMITATIONS**

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

18 **B. GOOD CAUSE STATEMENT**

19 This action is likely to involve trade secrets, customer and pricing lists and other
20 valuable research, design, development, manufacturing, commercial, financial,
21 technical and/or proprietary information, as well as personal medical records and health
22 information, for which special protection from public disclosure and from use for any
23 purpose other than prosecution of this action is warranted. Such confidential and
24 proprietary materials and information consist of, among other things, confidential
25 business or financial information, information regarding confidential business practices,
26

27 ¹ The Court’s additions to the agreed terms of the Protective Order are generally indicated in bold
28 typeface, and the Court’s deletions are indicated by lines through the text being deleted.

1 or other confidential research, design, development, manufacturing or commercial
2 information (including information implicating privacy rights of third parties), personal
3 medical records, information otherwise generally unavailable to the public, or which
4 may be privileged or otherwise protected from disclosure under state or federal statutes,
5 court rules, case decisions, or common law. Accordingly, to expedite the flow of
6 information, to facilitate the prompt resolution of disputes over confidentiality of
7 discovery materials, to adequately protect information the parties are entitled to keep
8 confidential, to ensure that the parties are permitted reasonable necessary uses of such
9 material in preparation for and in the conduct of trial, to address their handling at the
10 end of the litigation, and serve the ends of justice, a protective order for such
11 information is justified in this matter. It is the intent of the parties that information will
12 not be designated as confidential for tactical reasons and that nothing be so designated
13 without a good faith belief that it has been maintained in a confidential, non-public
14 manner, and there is good cause why it should not be part of the public record of this
15 case.

16
17 2. DEFINITIONS

18 2.1 Action: This pending federal lawsuit, *Kimberly Burkhart v. Wright*
19 *Medical Technology, Inc., et al.*, Case No. 2:17-cv-08561-CAS-(KSx).

20 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
21 information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
23 it is generated, stored or maintained) or tangible things that qualify for protection under
24 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
25 Statement.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
27 support staff).
28

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY.”

5 2.6 Disclosure or Discovery Material: all items or information, regardless of
6 the medium or manner in which it is generated, stored, or maintained (including, among
7 other things, testimony, transcripts, and tangible things), that are produced or generated
8 in disclosures or responses to discovery in this matter.

9 2.7 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
11 expert witness or as a consultant in this Action.

12 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
13 Information or Items: extremely sensitive “CONFIDENTIAL” Information or Items,
14 representing trade secret, business information or other information, disclosure of
15 which to another Party or Non-Party would create a substantial risk of serious harm that
16 could not be avoided by less restrictive means.

17 2.9 House Counsel: attorneys who are employees of a party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.10 Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
23 this Action but are retained to represent or advise a party to this Action and have
24 appeared in this Action on behalf of that party or are affiliated with a law firm which
25 has appeared on behalf of that party, and includes support staff.

26 2.12 Party: any party to this Action, including Kimberly Burkhart, Wright
27 Medical Technology, Inc., MicroPort Orthopedics Inc., and all of their officers,
28 directors, employees, consultants, retained experts, and Outside Counsel of Record (and

1 their support staffs).

2 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
3 Discovery Material in this Action.

4 2.14 Professional Vendors: persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
7 their employees and subcontractors.

8 2.15 Protected Material: any Disclosure or Discovery Material that is
9 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY.”

11 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
12 from a Producing Party.

13 3. SCOPE

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

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

21 Any Protected Material subject to this Order is for use in this Action only, and
22 may not be used in any other litigation or other proceeding. No attorneys or any other
23 persons, other than the attorneys of record for Plaintiff and Defendants in this Action or
24 any other person authorized to receive and/or use Protected Material pursuant to this
25 Order, are entitled to receive and/or use any Protected Material subject to this Order.
26 Counsel for Plaintiff and Defendants in this Action, and any other person authorized to
27 receive and/or use Protected Material pursuant to this Order, are strictly prohibited from
28 sharing any Protected Material subject to this Order with any attorney(s) or other

1 persons who are not a part of this Action.

2 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection
13 under this Order must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. The Designating Party must designate for
15 protection only those parts of material, documents, items, or oral or written
16 communications that qualify so that other portions of the material, documents, items, or
17 communications for which protection is not warranted are not swept unjustifiably
18 within the ambit of this Order.

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or

1 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
2 must be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (*e.g.*, paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix at a minimum, the legend
7 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), or the legend “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (hereinafter “ATTORNEYS’
9 EYES ONLY legend”), to each page that contains protected material. If only a portion
10 or portions of the material on a page qualifies for protection, the Producing Party also
11 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in
12 the margins).

13 A Party or Non-Party that makes original documents available for inspection
14 need not designate them for protection until after the inspecting Party has indicated
15 which documents it would like copied and produced. During the inspection and before
16 the designation, all of the material made available for inspection shall be deemed
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting
18 Party has identified the documents it wants copied and produced, the Producing Party
19 must determine which documents, or portions thereof, qualify for protection under this
20 Order. Then, before producing the specified documents, the Producing Party must affix
21 the “CONFIDENTIAL legend” or “ATTORNEYS’ EYES ONLY legend” to each page
22 that contains Protected Material. If only a portion or portions of the material on a page
23 qualifies for protection, the Producing Party also must clearly identify the protected
24 portion(s) (*e.g.*, by making appropriate markings in the margins).

25 (b) for testimony given in depositions, that the Designating Party
26 identify the Disclosure or Discovery Material either on the record, or within thirty (30)
27 days of the close of the deposition, all protected testimony.

28 (c) for information produced in some form other than documentary and

1 for any other tangible items, that the Producing Party affix in a prominent place on the
2 exterior of the container or containers in which the information is stored the legend
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
4 If only a portion or portions of the information warrants protection, the Producing
5 Party, to the extent practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive the
8 Designating Party’s right to secure protection under this Order for such material. Upon
9 timely correction of a designation, the Receiving Party must make reasonable efforts to
10 assure that the material is treated in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s Scheduling
14 Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37.1, *et seq.* **and consistent with the Court’s pre-**
17 **motion discovery procedures.**

18 6.3 Burden of Persuasion. The burden of persuasion in any such challenge
19 proceeding shall be on the Designating Party. Frivolous challenges, and those made for
20 an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
21 other parties) may expose the Challenging Party to sanctions. Unless the Designating
22 Party has waived or withdrawn the confidentiality designation, all parties shall continue
23 to afford the material in question the level of protection to which it is entitled under the
24 Producing Party’s designation until the Court rules on the challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a Receiving
3 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
4 Protected Material must be stored and maintained by a Receiving Party at a location
5 and in a secure manner that ensures that access is limited to the persons authorized
6 under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
8 ordered by the Court or permitted in writing by the Designating Party, a Receiving
9 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

15 (c) In accordance with Section 7.3 below, Experts (as defined in this
16 Order) of the Receiving Party to whom disclosure is reasonably necessary for this
17 Action and who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A);

19 (d) the Court and its personnel;

20 (e) Court reporters and their staff;

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

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

26 (h) during their depositions, witnesses, and attorneys for witnesses, in
27 the Action to whom disclosure is reasonably necessary provided: (1) the deposing party
28 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will

1 not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
3 by the Designating Party or ordered by the Court. Pages of transcribed deposition
4 testimony or exhibits to depositions that reveal Protected Material may be separately
5 bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this Stipulated Protective Order; and

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

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in
11 writing by the Designating Party, any information or item designated “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

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

16 (b) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this Action, who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and who comply with the
19 provisions of subsection (h) below;

20 (c) the Court and its personnel;

21 (d) Court reporters and their staff;

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

25 (f) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information;

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

1 (h) in no event shall a Receiving Party make disclosures to employees,
2 contractors, consultants, officers, or directors of any competitors of Wright Medical
3 Technology, Inc. or MicroPort Orthopedics Inc., or anyone who at the time of
4 disclosure is anticipated to become an employee, contractor, consultant, officer, or
5 director of any competitor of Wright Medical Technology, Inc. or MicroPort
6 Orthopedics Inc. In the event a Receiving Party wishes to make disclosure to any
7 current employees, contractors, consultants, officers, or directors of any competitors of
8 Wright Medical Technology, Inc. or MicroPort Orthopedics Inc., or to anyone who, at
9 the time of disclosure, is anticipated to become an employee, contractor, consultant,
10 officer, or director of any competitor of Wright Medical Technology, Inc. or MicroPort
11 Orthopedics Inc., irrespective of whether they are retained as a consultant/expert for
12 Plaintiff, the parties shall “meet and confer.” A “competitor” shall be defined as any
13 medical device manufacturer that manufactures hip implants, foot and ankle devices,
14 upper extremity (elbow, hand, shoulder and wrist) products, and biologics. The “meet
15 and confer” will not require disclosure of the identity of the consultant/expert to whom
16 “Protected Material” will be provided. A party wishing to make a disclosure to any
17 current employees, contractors, consultants, officers, or directors of any competitors of
18 Wright Medical Technology, Inc. or MicroPort Orthopedics Inc., or to anyone who, at
19 the time of disclosure, anticipates becoming an employee, contractor, consultant,
20 officer, or director of any competitor of Wright Medical Technology, Inc. or MicroPort
21 Orthopedics Inc., shall identify the bates range of documents that may be provided to
22 such consultant/expert without disclosing the identity of the person. Within fourteen
23 (14) days of the disclosure of the bates range of documents, Wright Medical
24 Technology, Inc. or MicroPort Orthopedics Inc. may designate as “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” any document that Wright Medical
26 Technology, Inc. or MicroPort Orthopedics Inc. believes in good faith to contain such
27 highly confidential information that if potentially disclosed to a competitor of Wright
28 Medical Technology, Inc. or MicroPort Orthopedics Inc., such disclosure would cause

1 Wright Medical Technology, Inc. or MicroPort Orthopedics Inc. significant competitive
2 harm. If such a designation is not made within fourteen (14) days, the documents in the
3 bates range may be provided to the consultant/expert pursuant to this Protective Order.
4 A party may object to the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY” designation of a document within fourteen (14) days of the designation. If the
6 parties cannot agree to the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” designation, the matter shall be resolved by the Court, and no disclosure shall
8 be made until the matter is resolved by the Court. A document which the parties agree
9 to designate, or the Court designates, as “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY,” shall not be provided to any employees, contractors,
11 consultants, officers, or directors of any competitor of Wright Medical Technology, Inc.
12 or MicroPort Orthopedics Inc., or to anyone who, at the time of disclosure, anticipates
13 becoming an employee, contractor, consultant, officer, or director of any competitor of
14 Wright Medical Technology, Inc. or MicroPort Orthopedics Inc.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
16 IN OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation that
18 compels disclosure of any information or items designated in this Action as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
20 that Party must:

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

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

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

1 Party timely seeks a protective order, the Party served with the subpoena or court order
2 shall not produce any information designated in this action as “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination
4 by the court from which the subpoena or order issued, unless the Party has obtained the
5 Designating Party’s permission. The Designating Party shall bear the burden and
6 expense of seeking protection in that court of its confidential material and nothing in
7 these provisions should be construed as authorizing or encouraging a Receiving Party
8 in this Action to disobey a lawful directive from another court.

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

11 (a) The terms of this Order are applicable to information produced by a Non-
12 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by
14 Non-Parties in connection with this litigation is protected by the remedies and relief
15 provided by this Order. Nothing in these provisions should be construed as prohibiting
16 a Non-Party from seeking additional protections.

17 (b) In the event that a Party is required, by a valid discovery request, to
18 produce a Non-Party’s confidential information in its possession, and the Party is
19 subject to an agreement with the Non-Party not to produce the Non-Party’s confidential
20 information, then the Party shall:

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

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

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

1 (c) If the Non-Party fails to seek a protective order from this Court within 14
2 days of receiving the notice and accompanying information, the Receiving Party may
3 produce the Non-Party's confidential information responsive to the discovery request.
4 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
5 any information in its possession or control that is subject to the confidentiality
6 agreement with the Non-Party before a determination by the Court. Absent a court
7 order to the contrary, the Non-Party shall bear the burden and expense of seeking
8 protection in this Court of its Protected Material.

9 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

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

1 the court.

2 12. MISCELLANEOUS

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
4 person to seek its modification by the Court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order, no Party waives any right it otherwise would have to object to
7 disclosing or producing any information or item on any ground not addressed in this
8 Stipulated Protective Order. Similarly, no Party waives any right to object on any
9 ground to use in evidence of any of the material covered by this Protective Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
12 only be filed under seal pursuant to a court order authorizing the sealing of the specific
13 Protected Material at issue. If a Party's request to file Protected Material under seal is
14 denied by the Court, then the Receiving Party may file the information in the public
15 record unless otherwise instructed by the Court.

16 13. FINAL DISPOSITION

17 After the final disposition of this Action, as defined in paragraph 4, within sixty
18 (60) days of a written request by the Designating Party, each Receiving Party must
19 return all Protected Material to the Producing Party or destroy such material. As used
20 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
21 summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
23 must submit a written certification to the Producing Party (and, if not the same person
24 or entity, to the Designating Party) by the sixty (60) day deadline that (1) identifies (by
25 category, where appropriate) all the Protected Material that was returned or destroyed
26 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
27 compilations, summaries or any other format reproducing or capturing any of the
28 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an

1 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
2 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
3 work product, and consultant and expert work product, even if such materials contain
4 Protected Material. Any such archival copies that contain or constitute Protected
5 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
6 14. Any violation of this Order may be punished by any and all appropriate measures
7 including, without limitation, contempt proceedings and/or monetary sanctions.

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9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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1 DATED: April 17, 2018

Respectfully submitted,

2 KERSHAW, COOK & TALLEY PC, and
3 OSBORNE & ASSOCIATES LAW FIRM, P.A.

4
5 By: /s/ Stuart C. Talley

6 William A. Kershaw
7 Stuart C. Talley
8 Joseph A. Osborne (*pro hac vice*)

9 Attorneys for Plaintiff
Kimberly Burkhart

10 DATED: April 17, 2018

DUANE MORRIS LLP

11
12 By: /s/ Katherine L. Nichols

13 J. Robert Renner
14 Katherine L. Nichols
15 Dana J. Ash (*pro hac vice*)
16 Sean K. Burke (*pro hac vice*)
17 Ryan J. O'Neil (*pro hac vice*)

18 Attorneys for Defendants
19 Wright Medical Technology, Inc., and
20 MicroPort Orthopedics Inc.

21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22 DATED: April 19, 2018

23 

24 Hon. Karen L. Stevenson
25 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued
6 by the United States District Court for the Central District of California on
7 _____ [date] in the case of *Kimberly Burkhart v. Wright Medical*
8 *Technology, Inc., et al.*, Case No. 2:17-cv-08561-CAS-KS. I agree to comply with and
9 to be bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment in
11 the nature of contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person or
13 entity except in strict compliance with the provisions of 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 the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or
18 type full name] of _____ [print or type full
19 address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this Stipulated
21 Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26
27 Signature: _____

28