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 13

14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 16 **WESTERN DIVISION**
 17

18 EDGE SYSTEMS LLC, a California
 limited liability company, and AXIA
 19 MEDSCIENCES, LLC, a Delaware
 limited liability company,
 20 Plaintiffs,
 21 v.
 22 IMAGE MICRODERM, INC., a Nevada
 corporation,
 23 Defendant.
 24

) Civil Action No.
 2:17-CV-08699-PSG-AGR
)
) **DISCOVERY MATTER**
)
) **STIPULATED**
) **PROTECTIVE ORDER**
)
) Hon. Alicia G. Rosenberg

25 AND RELATED COUNTERCLAIMS
 26 AND COUNTERCLAIMS-IN-REPLY
 27
 28

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the
6 Court to enter the following Stipulated Protective Order. The parties
7 acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that
10 are entitled to confidential treatment under the applicable legal principles.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve trade secrets, customer and pricing lists
13 and other valuable research, development, commercial, financial, technical
14 and/or proprietary information for which special protection from public
15 disclosure and from use for any purpose other than prosecution of this action is
16 warranted. Such confidential and proprietary materials and information consist
17 of, among other things, confidential business or financial information,
18 information regarding confidential business practices, or other confidential
19 research, development, or commercial information (including information
20 implicating privacy rights of third parties), information otherwise generally
21 unavailable to the public, or which may be privileged or otherwise protected
22 from disclosure under state or federal statutes, court rules, case decisions, or
23 common law. Accordingly, to expedite the flow of information, to facilitate the
24 prompt resolution of disputes over confidentiality of discovery materials, to
25 adequately protect information the parties are entitled to keep confidential, to
26 ensure that the parties are permitted reasonably necessary uses of such material
27 in preparation for and in the conduct of trial, to address their handling at the end
28 of the litigation, and serve the ends of justice, a protective order for such

1 information is justified in this matter. It is the intent of the parties that
2 information will not be designated as confidential for tactical reasons and that
3 nothing be so designated without a good faith belief that it has been maintained
4 in a confidential, non-public manner, and there is good cause why it should not
5 be part of the public record of this case.

6 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
7 SEAL

8 The parties further acknowledge, as set forth in Section 12.3, below, that
9 this Stipulated Protective Order does not entitle them to file confidential
10 information under seal; Local Civil Rule 79-5 sets forth the procedures that
11 must be followed and the standards that will be applied when a party seeks
12 permission from the Court to file material under seal.

13 There is a strong presumption that the public has a right of access to
14 judicial proceedings and records in civil cases. In connection with non-
15 dispositive motions, good cause must be shown to support a filing under seal.
16 *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir.
17 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002),
18 *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999)
19 (even stipulated protective orders require good cause showing), and a specific
20 showing of good cause or compelling reasons with proper evidentiary support
21 and legal justification, must be made with respect to Protected Material that a
22 party seeks to file under seal. The parties' mere designation of Disclosure or
23 Discovery Material as CONFIDENTIAL does not—without the submission of
24 competent evidence by declaration, establishing that the material sought to be
25 filed under seal qualifies as confidential, privileged, or otherwise protectable—
26 constitute good cause.

27 Further, if a party requests sealing materials related to a dispositive
28 motion or trial, then compelling reasons, not only good cause, for the sealing

1 must be shown, and the relief sought shall be narrowly tailored to serve the
2 specific interest to be protected. *See Pintos v. Pacific Creditors Ass'n.*, 605
3 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information,
4 document, or thing sought to be filed or introduced under seal in connection
5 with a dispositive motion or trial, the party seeking protection must articulate
6 compelling reasons, supported by specific facts and legal justification, for the
7 requested sealing order. Again, competent evidence supporting the application
8 to file documents under seal must be provided by declaration.

9 Any document that is not confidential, privileged, or otherwise
10 protectable in its entirety will not be filed under seal if the confidential portions
11 can be redacted. If documents can be redacted, then a redacted version for
12 public viewing, omitting only the confidential, privileged, or otherwise
13 protectable portions of the document, shall be filed. Any application that seeks
14 to file documents under seal in their entirety should include an explanation of
15 why redaction is not feasible.

16 17 2. DEFINITIONS

18 2.1 Action: this pending federal lawsuit.

19 2.2 Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.3 “CONFIDENTIAL” Information or Items: information (regardless
22 of how it is generated, stored or maintained) or tangible things that qualify for
23 protection under Federal Rule of Civil Procedure 26(c). As a general guideline,
24 “CONFIDENTIAL” information is material that a producing party reasonably
25 believes to constitute or include information that is not known or freely
26 accessible to the general public in the categories of 1) confidential and trade
27 secret technical information, 2) financial information, 3) personal information,
28 or 4) information furnished to it in confidence by any third-party. There is a

1 particularized need for information in each of these categories to be covered by
2 the Order in order to protect its confidential nature, either because it is protected
3 by confidentiality agreements or otherwise generally not known by the public.

4 2.4 Counsel: Outside Counsel of Record and House Counsel (as well
5 as their support staff).

6 2.5 Designating Party: a Party or Non-Party that designates
7 information or items that it produces in disclosures or in responses to discovery
8 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY.”

10 2.6 Disclosure or Discovery Material: all items or information,
11 regardless of the medium or manner in which it is generated, stored, or
12 maintained (including, among other things, testimony, transcripts, and tangible
13 things), that are produced or generated in disclosures or responses to discovery
14 in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a
16 matter pertinent to the litigation who has been retained by a Party or its counsel
17 to serve as an expert witness or as a consultant in this Action.

18 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items: extremely sensitive “CONFIDENTIAL” information or
20 items, the disclosure of which to another party or non-party would result in the
21 disclosure of information only known on a “need-to-know basis” and generally
22 not known by individuals not affiliated with a party, including information in
23 the categories of 1) trade secrets, 2) other highly sensitive research, 3)
24 development, 4) production, 5) personnel, 6) commercial, 7) technical, 8)
25 financial, 9) customer identification, or 10) business information (with
26 information in these categories including but not limited to proprietary
27 information, contracts, bids, corporate planning documents, strategic planning
28 documents, documents that reveal market or customer analyses, competitive

1 strategy, research and development documents, financial statements, and other
2 financial or budgetary documents). There is a particularized need for
3 information in each of these categories to be covered by the Order in order to
4 protect its highly sensitive and confidential nature, as disclosure could create a
5 substantial risk of serious harm that could not be avoided by less restrictive
6 means.

7 2.9 House Counsel: attorneys who are employees of a party to this
8 Action, and including specifically Rajiv Yadav, counsel for Plaintiff.

9 2.10 Non-Party: any natural person, partnership, corporation, association
10 or other legal entity not named as a Party to this action.

11 2.11 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action
13 and have made a formal appearance in this matter, and including support staff.

14 2.12 Party: any party to this Action, including all of its officers,
15 directors, employees, consultants, retained experts, Outside Counsel of Record
16 and House Counsel (and their support staffs).

17 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 2.14 Professional Vendors: persons or entities that provide litigation
20 support services (e.g., photocopying, videotaping, translating, preparing exhibits
21 or demonstrations, and organizing, storing, or retrieving data in any form or
22 medium) and their employees and subcontractors.

23 2.15 Protected Material: any Disclosure or Discovery Material that is
24 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.”

26 2.16 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

28

1 3. SCOPE

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

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

9
10 4. DURATION

11 Once a case proceeds to trial, information that was designated as
12 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY or maintained pursuant to this protective order used or introduced as an
14 exhibit at trial becomes public and will be presumptively available to all
15 members of the public, including the press, unless compelling reasons supported
16 by specific factual findings to proceed otherwise are made to the trial judge in
17 advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good
18 cause” showing for sealing documents produced in discovery from “compelling
19 reasons” standard when merits-related documents are part of court record).
20 Accordingly, the terms of this protective order do not extend beyond the
21 commencement of the trial.

22
23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for
25 Protection. Each Party or Non-Party that designates information or items for
26 protection under this Order must take care to limit any such designation to
27 specific material that qualifies under the appropriate standards. The Designating
28 Party must designate for protection only those parts of material, documents,

1 items or oral or written communications that qualify so that other portions of the
2 material, documents, items or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix at a minimum, the legend
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
23 ONLY" (hereinafter "CONFIDENTIALITY legend"), to each page that
24 contains protected material.

25 A Party or Non-Party that makes original documents available for
26 inspection need not designate them for protection until after the inspecting Party
27 has indicated which documents it would like copied and produced. During the
28 inspection and before the designation, all of the material made available for

1 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY.” After the inspecting Party has identified the documents it wants
3 copied and produced, the Producing Party must determine which documents, or
4 portions thereof, qualify for protection under this Order. Then, before
5 producing the specified documents, the Producing Party must affix the
6 appropriate CONFIDENTIALITY legend to each page that contains Protected
7 Material.

8 (b) for testimony given in depositions that the Designating Party
9 identifies the Disclosure or Discovery Material on the record, the Designating
10 Party shall specify all protected testimony and the level of protection being
11 asserted. It may make that designation during the deposition or proceeding, or
12 may invoke, on the record or by written notice to all parties on or before the
13 next business day, a right to have up to 21 days from the date the transcript of
14 the deposition or proceeding is made available to make its designation, pursuant
15 to which all testimony will be treated as “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” until the Designating Party specifies its
17 designation or the 21-day period expires, whichever is earlier.

18 (c) for information produced in some form other than documentary and
19 for any other tangible items, that the Producing Party affix in a prominent place
20 on the exterior of the container or containers in which the information is stored
21 the proper CONFIDENTIALITY legend. If only a portion or portions of the
22 information warrants protection, the Producing Party, to the extent practicable,
23 shall identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. An inadvertent failure to
25 designate qualified information or items does not, standing alone, waive the
26 Designating Party’s right to secure protection under this Order for such material.
27 Upon correction of a designation, the Receiving Party must make reasonable
28

1 efforts to assure that the material is treated in accordance with the provisions of
2 this Order.

3
4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37-1 et seq.

10 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via
11 a joint stipulation pursuant to Local Rule 37-2.

12 6.4 The burden of persuasion in any such challenge proceeding shall be
13 on the Designating Party. Frivolous challenges, and those made for an improper
14 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
15 parties) may expose the Challenging Party to sanctions. Unless the Designating
16 Party has waived or withdrawn the confidentiality designation, all parties shall
17 continue to afford the material in question the level of protection to which it is
18 entitled under the Producing Party's designation until the Court rules on the
19 challenge.

20
21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material
23 that is disclosed or produced by another Party or by a Non-Party in connection
24 with this Action only for prosecuting, defending or attempting to settle this
25 Action. Such Protected Material may be disclosed only to the categories of
26 persons and under the conditions described in this Order. When the Action has
27 been terminated, a Receiving Party must comply with the provisions of section
28 13 below (FINAL DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party,
6 a Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

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

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

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

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

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

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

23 (h) during their depositions, witnesses, and attorneys for witnesses, in
24 the Action to whom disclosure is reasonably necessary provided: (1) the
25 deposing party requests that the witness sign the form attached as Exhibit A
26 hereto; and (2) they will not be permitted to keep any confidential information
27 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
28 A), unless otherwise agreed by the Designating Party or ordered by the Court.

1 Pages of transcribed deposition testimony or exhibits to depositions that reveal
2 Protected Material may be separately bound by the court reporter and may not
3 be disclosed to anyone except as permitted under this Stipulated Protective
4 Order; and,

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

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY” Information or Items. Unless otherwise ordered by the court or
9 permitted in writing by the Designating Party, a Receiving Party may disclose
10 any information or item designated “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY” only to:

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

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

18 (c) the court and its personnel;

19 (d) court reporters and their staff;

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

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

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

28

1 7.4 Procedures for Approving or Objecting to Disclosure of HIGHLY
2 CONFIDENTIAL – ATTORNEY EYES ONLY Material to Experts

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

20 (b) A party that makes a request and provides the information specified
21 in paragraph 7.4(a) may disclose the designated material to the identified expert
22 unless, within seven days of delivering the request, the party receives a written
23 objection from the designator providing detailed grounds for the objection.

24 (c) A Party that receives a timely written objection must meet and confer
25 with the Designating Party (through direct voice-to-voice dialogue) to try to
26 resolve the matter by agreement within seven days of the written objection. If no
27 agreement is reached, the Party seeking to make the disclosure to the Expert
28

1 may file a motion as provided under L.R. 37-1 through L.R. 37-4, seeking
2 permission from the Court to do so.

3 (d) In any such proceeding, the Party opposing disclosure to the Expert
4 shall bear the burden of proving that the risk of harm that the disclosure would
5 entail (under the safeguards proposed) outweighs the Receiving Party's need to
6 disclose the Protected Material to its Expert.

7
8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
9 PRODUCED IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other
11 litigation that compels disclosure of any Protected Material, that Party must:

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

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

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

20 If the Party fails to seek a protective order from this court within 14 days
21 of receiving the notice and accompanying information, the Receiving Party may
22 produce the Designating Party's confidential information responsive to the
23 subpoena or court order. If the Designating Party timely seeks a protective
24 order, the Party served with the subpoena or court order shall not produce any
25 information designated in this action as "CONFIDENTIAL" or "HIGHLY
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by
27 the court from which the subpoena or order issued, unless the Party has obtained
28 the Designating Party's permission. The Designating Party shall bear the burden

1 and expense of seeking protection in that court of its confidential material and
2 nothing in these provisions should be construed as authorizing or encouraging a
3 Receiving Party in this Action to disobey a lawful directive from another court.
4

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

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

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

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

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

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

25 (c) If the Non-Party fails to seek a protective order from this court
26 within 14 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party’s confidential information
28 responsive to the discovery request. If the Non-Party timely seeks a protective

1 order, the Receiving Party shall not produce any information in its possession or
2 control that is subject to the confidentiality agreement with the Non-Party before
3 a determination by the court. Absent a court order to the contrary, the Non-
4 Party shall bear the burden and expense of seeking protection in this court of its
5 Protected Material.

6
7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17
18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
19 PROTECTED MATERIAL

20 The Parties acknowledge that regardless of the diligence of any party, an
21 inadvertent production of privileged or attorney work product documents may
22 occur. If a producing party, through inadvertence, produces or provides
23 discovery that it reasonably believes is privileged or otherwise immune from
24 discovery, the producing party may claw back the protected document by
25 making a written request to the receiving party specifically identifying the
26 protected document, including the date, author, addressees, and topic of the
27 document, as well as a brief explanation substantiating the claim of privilege. If
28 these conditions are met, the receiving party shall destroy or return to the

1 producing party such inadvertently produced materials and all copies thereof
2 within five (5) calendar days of receipt of the written request. The inadvertent
3 production of privileged documents does not constitute a waiver of the privilege
4 and the receiving party may not bring a motion to compel based on a waiver
5 caused by the inadvertent production. Return of the materials shall not
6 constitute an admission or concession, or permit any inference, that the returned
7 materials are, in fact, properly subject to a claim of privilege or immunity from
8 discovery.

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in Federal
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review.

15
16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of
18 any person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order, no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in
22 this Stipulated Protective Order. Similarly, no Party waives any right to object
23 on any ground to use in evidence of any of the material covered by this
24 Protective Order.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any
26 Protected Material must comply with Local Civil Rule 79-5. Protected Material
27 may only be filed under seal pursuant to a court order authorizing the sealing of
28 the specific Protected Material at issue. If a Party's request to file Protected

1 Material under seal is denied by the court, then the Receiving Party may file the
2 information in the public record unless otherwise instructed by the court.

3
4 13. FINAL DISPOSITION

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

24
25 14. VIOLATION

26 Any violation of this Order may be punished by appropriate measures
27 including, without limitation, contempt proceedings and/or monetary sanctions.
28 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 9, 2018

By: /s/ Ali S. Razai
Paul A. Stewart
paul.stewart@knobbe.com
Ali S. Razai
ali.razai@knobbe.com

Attorneys for Plaintiffs
EDGE SYSTEMS LLC and
AXIA MEDSCIENCES, LLC

HANKIN PATENT LAW, APC

Dated: November 9, 2018

By: /s/ Marc E. Hankin (with permission)
Marc E. Hankin
marc@hankinpatentlaw.com
Anooj Patel
anooj@hankinpatentlaw.com

Attorneys for Defendant,
IMAGE MICRODERM, INC.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: November 14, 2018

Alicia G. Rosenberg
HON. ALICIA G. ROSENBERG
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District
of California on [date] in the case of *Edge Systems LLC and Axia Medsciences,
LLC v. Image Microderm, Inc.*, C.A. 2:17-CV-08699-PSG-AGR. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name]
of _____ [print or type full address
and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____