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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 JOSEPH LAUGHLIN,  
16 Plaintiff,

17 v.

18 MICROPORT ORTHOPEDICS, INC.;  
19 and DOES 1-10, inclusive,  
20 Defendants.

Case No. 2:17-cv-09005-RGK-RAO

**STIPULATED PROTECTIVE  
ORDER<sup>1</sup>**

Magistrate Judge: Honorable Rozella A.  
Oliver  
Courtroom: 590

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27 <sup>1</sup> This Stipulated Protective Order is substantially based on the model  
28 protective order provided under Magistrate Judge Rozella A. Oliver's Procedures.

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 may  
5        be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6        enter the following Stipulated Protective Order. The parties acknowledge that this  
7        Order does not confer blanket protections on all disclosures or responses to  
8        discovery and that the protection it affords from public disclosure and use extends  
9        only to the limited information or items that are entitled to confidential treatment  
10        under the applicable legal principles.

11        B. GOOD CAUSE STATEMENT

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

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

5 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER  
6 SEAL

7 The parties further acknowledge, as set forth in Section 13.3, below, that this  
8 Stipulated Protective Order does not entitle them to file confidential information  
9 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed  
10 and the standards that will be applied when a party seeks permission from the court  
11 to file material under seal.

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

26 Further, if a party requests sealing related to a dispositive motion or trial,  
27 then compelling reasons, not only good cause, for the sealing must be shown, and  
28 the relief sought shall be narrowly tailored to serve the specific interest to be

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

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

14  
15 **2. DEFINITIONS**

16 2.1 Action: This pending federal lawsuit, *Joseph Laughlin v. MicroPort*  
17 *Orthopedics, Inc., et al.*, 2:17-cv-09005-RGK-RAO (C.D. Cal.).

18 2.2 Challenging Party: a Party or Non-Party that challenges the  
19 designation of information or items under this Order.

20 2.3 Counsel: Outside Counsel of Record and In-House Counsel (as well  
21 as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or  
23 items that it produces in disclosures or in responses to discovery as  
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
25 ONLY.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless  
27 of the medium or manner in which it is generated, stored, or maintained (including,  
28

1 among other things, testimony, transcripts, and tangible things), that are produced  
2 or generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
5 an expert witness or as a consultant in this Action.

6 2.7 “CONFIDENTIAL” Information or Items: Disclosure or Discovery  
7 Material that qualifies for protection under Federal Rule of Civil Procedure 26(c),  
8 and as specified above in the Good Cause Statement, because it is non-public and a  
9 Party or Non-Party in good faith believes must be held confidential to protect  
10 personal privacy interests or confidential, proprietary, and/or commercially  
11 sensitive information, including trade secrets, or otherwise have a compelling need  
12 for privacy.

13 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
14 Information or Items: Disclosure or Discovery Material that is extremely  
15 confidential and/or sensitive in nature, disclosure of which to another Party or Non-  
16 Party the Producing Party reasonably believes is likely to cause economic harm or  
17 competitive disadvantage to the Producing Party, is highly personal non-public  
18 information, or will otherwise compromise or jeopardize the Producing Party’s  
19 business interests. The parties agree that the following information, if nonpublic,  
20 shall be presumed to merit the “HIGHLY CONFIDENTIAL – ATTORNEYS’  
21 EYES ONLY” designation: trade secrets, pricing information, financial data, sales  
22 information, sales or marketing forecasts or plans, business plans, sales or  
23 marketing strategy, product development information, engineering documents,  
24 testing documents, employee information, and other nonpublic information of  
25 similar competitive and business sensitivity.

26 2.9 In-House Counsel: attorneys who are employees of a party to this  
27 Action. In-House Counsel does not include Outside Counsel of Record or any  
28 other outside counsel.

1           2.10 Non-Party: any natural person, partnership, corporation, association or  
2 other legal entity not named as a Party to this action.

3           2.11 Outside Counsel of Record: attorneys who are not employees of a  
4 party to this Action but are retained to represent or advise a party to this Action and  
5 have appeared in this Action on behalf of that party or are affiliated with a law firm  
6 that has appeared on behalf of that party, and includes support staff.

7           2.12 Party: any party to this Action, including all of its officers, directors,  
8 employees, consultants, retained experts, and Outside Counsel of Record (and their  
9 support staffs).

10          2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
11 Discovery Material in this Action.

12          2.14 Professional Vendors: persons or entities that provide litigation  
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
15 and their employees and subcontractors.

16          2.15 Protected Material: any Disclosure or Discovery Material that is  
17 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
18 ATTORNEYS’ EYES ONLY.”

19          2.16 Receiving Party: a Party that receives Disclosure or Discovery  
20 Material from a Producing Party.

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22    3.    SCOPE

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

28           Any use of Protected Material at trial shall be governed by the orders of the

1 trial judge. This Order does not govern the use of Protected Material at trial.

2 Any Protected Material subject to this Order is for use in this Action only,  
3 and may not be used in any other litigation or other proceeding. No attorneys or  
4 any other persons, other than the attorneys of record for Plaintiff and Defendant in  
5 this Action or any other person authorized to receive and/or use Protected Material  
6 pursuant to this Order, are entitled to receive and/or use any Protected Material  
7 subject to this Order. Counsel for Plaintiff and Defendant in this Action and any  
8 other person authorized to receive and/or use Protected Material pursuant to this  
9 Order, are strictly prohibited from sharing any Protected Material subject to this  
10 Order with any attorney(s) or other persons who are not a part of this Action.

11  
12 4. DURATION

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

21  
22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection under  
25 this Order must take care to limit any such designation to specific material that  
26 qualifies under the appropriate standards. The Designating Party must designate for  
27 protection only those parts of material, documents, items or oral or written  
28 communications that qualify so that other portions of the material, documents,

1 items or communications for which protection is not warranted are not swept  
2 unjustifiably within the ambit of this Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in  
12 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise  
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
14 under this Order must be clearly so designated before the material is disclosed or  
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic  
18 documents, but excluding transcripts of depositions or other pretrial or trial  
19 proceedings), that the Producing Party affix at a minimum, the legend  
20 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), or "HIGHLY  
21 CONFIDENTIAL – ATTORNEYS' EYES ONLY", to each page that contains  
22 protected material. If only a portion of the material on a page qualifies for  
23 protection, the Producing Party also must clearly identify the protected portion(s)  
24 (e.g., by making appropriate markings in the margins).

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



1 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the  
2 inspecting Party has identified the documents it wants copied and produced, the  
3 Producing Party must determine which documents, or portions thereof, qualify for  
4 protection under this Order. Then, before producing the specified documents, the  
5 Producing Party must affix the “CONFIDENTIAL” legend and/or “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to each page that  
7 contains Protected Material. If only a portion of the material on a page qualifies for  
8 protection, the Producing Party also must clearly identify the protected portion(s)  
9 (e.g., by making appropriate markings in the margins).

10 (b) for testimony given in depositions that the Designating Party  
11 identifies the Disclosure or Discovery Material on the record, before the close of  
12 the deposition all protected testimony. When it is impractical to identify separately  
13 each portion of testimony that is entitled to protection and it appears that substantial  
14 portions of the testimony may qualify for protection, the Designating Party may  
15 have up to 21 days after receipt of the final transcript to identify the specific  
16 portions of the testimony as to which protection is sought and to specify the level of  
17 protection being asserted. Only those portions of the testimony that are  
18 appropriately designated for protection within the 21 days shall be covered by the  
19 provisions of this Stipulated Protective Order. Alternatively, a Designating Party  
20 may specify, at the deposition or up to 21 days afterwards, that the entire transcript  
21 shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
22 ATTORNEYS’ EYES ONLY.”

23 (c) for information produced in some form other than documentary  
24 and for any other tangible items, that the Producing Party affix in a prominent place  
25 on the exterior of the container or containers in which the information is stored the  
26 legend “CONFIDENTIAL” or the legend “HIGHLY CONFIDENTIAL –  
27 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information  
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1 warrants protection, the Producing Party, to the extent practicable, shall identify the  
2 protected portion(s).

3       5.3 Inadvertent Failures to Designate and Re-designation. A Designating  
4 Party that inadvertently fails to designate Disclosure or Discovery Material as  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
6 ONLY” pursuant to this Order at the time of its production shall be able to correct  
7 its designation, with the Receiving Party reserving the right to assert that such re-  
8 designation is improper pursuant to the procedures set forth herein regarding  
9 challenging designations. Such inadvertent failure shall be corrected by providing  
10 to the Receiving Party written notice of the error and substituted copies of the  
11 inadvertently unmarked or mis-marked Disclosure or Discovery Materials. Any  
12 Receiving Party that receives such inadvertently unmarked or mis-marked  
13 Disclosure or Discovery Materials shall, within five (5) days of receipt of the  
14 substitute copies, destroy or return to the law firm representing the Designating  
15 Party all copies of such mis-designated documents. The Designating Party shall  
16 comply with Section 5.2 when re-designating Disclosure or Discovery Material as  
17 Protected Material. Following any re-designation of Disclosure or Discovery  
18 Material as Protected Material (or re-designation of “CONFIDENTIAL” material as  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) the Party receiving  
20 such Protected Material shall take reasonable steps to comply with the re-  
21 designation, including, without limitation, retrieving all copies and excerpts of any  
22 re-designated Protected Material from persons not entitled to receive it as re-  
23 designated.

24       A Receiving Party shall not be in breach of this Stipulated Protective Order  
25 for any use of such inadvertently non-designated or inadvertently mis-designated  
26 material before the Receiving Party receives notice of the inadvertent failure to  
27 designate, unless an objectively reasonable person would have realized that the  
28 material should have been appropriately designated with a confidentiality

1 designation under this Stipulated Protective Order. Once a Receiving Party has  
2 received notice of the inadvertent failure to designate pursuant to this provision, the  
3 Receiving Party shall treat such material at the appropriately designated level  
4 pursuant to the terms of this Stipulated Protective Order, reserving all rights to  
5 assert that such re-designation is not proper under the procedures set forth herein  
6 regarding challenging designations.

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8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
10 designation of confidentiality at any time that is consistent with the Court's  
11 Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
13 resolution process under Local Rule 37.1 et seq.

14 6.3 The burden of persuasion in any such challenge proceeding shall be on  
15 the Designating Party. Frivolous challenges, and those made for an improper  
16 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
17 parties) may expose the Challenging Party to sanctions. Unless the Designating  
18 Party has waived or withdrawn the confidentiality designation, all parties shall  
19 continue to afford the material in question the level of protection to which it is  
20 entitled under the Producing Party's designation until the Court rules on the  
21 challenge.

22  
23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

1 Receiving Party must comply with the provisions of Section 14 below (FINAL  
2 DISPOSITION).

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

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

10 (a) the Receiving Party’s Outside Counsel of Record in this Action,  
11 as 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 In-House  
14 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
15 Action;

16 (c) Experts (as defined in this Order) of the Receiving Party to  
17 whom disclosure is reasonably necessary for this Action and who have signed the  
18 “Acknowledgment and Agreement to Be Bound” (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  
22 Professional Vendors to whom disclosure is reasonably necessary for this Action  
23 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
24 A);

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

27 (h) during their depositions, witnesses, and attorneys for witnesses,  
28 in the Action to whom disclosure is reasonably necessary provided: (1) the

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

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

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
12 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted  
13 in writing by the Designating Party, a Receiving Party may disclose any  
14 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
15 EYES ONLY” only to:

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

19 (b) Experts (as defined in this Order) of the Receiving Party to  
20 whom disclosure is reasonably necessary for this Action, who have signed the  
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and as to whom the  
22 procedures set forth in Section 7.4 below have been followed;

23 (c) the Court and its personnel;

24 (d) court reporters and their staff;

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

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

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

6 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to  
8 Experts.

9 (a) Unless otherwise ordered by the court or agreed to in writing by  
10 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
11 Order) any information or item that has been designated “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b)  
13 first must make a written request to the Designating Party that (1) sets forth the full  
14 name of the Expert and the city and state of his or her primary residence, (2)  
15 identifies the Expert’s current employer(s), and (3) identifies any orthopedic  
16 implant manufacturer from whom the Expert has received compensation or funding  
17 for work in his or her areas of expertise or to whom the expert has provided  
18 professional services, including in connection with a litigation, at any time during  
19 the preceding five years.

20 (b) A Party that makes a request and provides the information  
21 specified in the preceding respective paragraphs may disclose the subject Protected  
22 Material to the identified Expert unless, within seven days of delivering the request,  
23 the Party receives a written objection from the Designating Party. Any such  
24 objection must set forth in detail the grounds on which it is based. Absent  
25 extraordinary circumstances, the Designating Party will not object unless the  
26 identified Expert has received compensation or funding from a direct competitor.

27 (c) A Party that receives a timely written objection must meet and  
28 confer with the Designating Party to try to resolve the matter by agreement within

1 seven days of the written objection. If no agreement is reached, the Party seeking  
2 to make the disclosure to the Expert may file a motion seeking permission from the  
3 court to do so. Any such motion must describe the circumstances with specificity,  
4 set forth in detail the reasons why the disclosure to the Expert is reasonably  
5 necessary, assess the risk of harm that the disclosure would entail, and suggest any  
6 additional means that could be used to reduce that risk. In addition, any such  
7 motion must be accompanied by a competent declaration describing the parties'  
8 efforts to resolve the matter by agreement (i.e., the extent and the content of the  
9 meet and confer discussions) and setting forth the reasons advanced by the  
10 Designating Party for its refusal to approve the disclosure.

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

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

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

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

24 (b) promptly notify in writing the party who caused the subpoena or  
25 order to issue in the other litigation that some or all of the material covered by the  
26 subpoena or order is subject to this Stipulated Protective Order. Such notification  
27 shall include a copy of this Stipulated Protective Order; and  
28

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

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

12  
13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
14 PRODUCED IN THIS LITIGATION

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

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

25 (1) promptly notify in writing the Requesting Party and the  
26 Non-Party that some or all of the information requested is subject to a  
27 confidentiality agreement with a Non-Party;  
28



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

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

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

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16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
18 Protected Material to any person or in any circumstance not authorized under this  
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
20 writing the Designating Party of the unauthorized disclosures, (b) use its best  
21 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
22 person or persons to whom unauthorized disclosures were made of all the terms of  
23 this Order, and (d) request such person or persons to execute the "Acknowledgment  
24 and Agreement to Be Bound" that is attached hereto as Exhibit A. Unauthorized or  
25 inadvertent disclosure does not change the status of Disclosure or Discovery  
26 Material or waive the right to maintain the disclosed document or information as  
27 Protected.

28

1 11. PRIVILEGED MATERIAL

2 The parties shall log any asserted privileges regarding written discovery as  
3 required under the Federal Rules of Civil Procedure, except that no party shall be  
4 required to log communications with Counsel (as defined in Section 2.3) or  
5 communications about this Action taking place after it was filed. The parties must  
6 provide a privilege log within thirty days of a production.

7  
8 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
9 PROTECTED MATERIAL

10 12.1 The parties agree that the inadvertent or mistaken production or  
11 disclosure of documents or other information subject to a claim of the attorney-  
12 client privilege, the work product doctrine, or other privilege or immunity,  
13 regardless of the reason for or care taken in connection with the inadvertent or  
14 mistaken production, shall not be deemed a waiver of a claim of privilege or  
15 immunity, either as to the specific information disclosed or as to any other related  
16 information. Further, the parties expressly agree that this agreement shall supplant  
17 the requirements of Fed. R. Evid. 502(b)(2) and Fed. R. Evid. 502(b)(3). If a  
18 Producing Party inadvertently produces, or otherwise discloses to a Receiving  
19 Party, information that is subject to such a claim of privilege or immunity, the  
20 Producing Party shall promptly upon discovery of such disclosure so advise the  
21 Receiving Party in writing and request that the inadvertently disclosed information  
22 be returned. The Receiving Party shall immediately cease all review of such  
23 inadvertently produced material, immediately segregate such inadvertently  
24 produced material, and return all copies of the inadvertently produced material  
25 within five business days of receipt of the request. Any notes, summaries, or  
26 analyses referring or relating to any inadvertently produced privileged material  
27 shall be destroyed. Nothing in this Stipulated Protective Order shall preclude the  
28 Receiving Party returning the inadvertently produced material from seeking an

1 order compelling the production of information previously produced inadvertently  
2 on the grounds that the material was improperly designated as privileged.

3 12.2 The production or disclosure of privileged or work-product protected  
4 information, whether inadvertent or otherwise, is not a waiver of the privilege or  
5 protection from discovery in this action or in any other federal or state proceeding.  
6 This provision shall be interpreted to provide the maximum protection allowed by  
7 Fed. R. Evid. 502(d). Notwithstanding, nothing contained herein is intended to or  
8 shall serve to limit a party's right to conduct a review of any document, ESI, or  
9 information (including metadata) for relevance, responsiveness, and/or segregation  
10 of privileged and/or protected information before production.

11 12.3 No challenge in this Action to the designation of Protected Material as  
12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
13 ONLY" or to a claim of privilege or immunity from disclosure shall assert as a  
14 ground for the challenge that the materials were initially produced with an incorrect  
15 or with no confidentiality designation or initially produced inadvertently. No  
16 challenge in this Action to a claim of privilege or immunity from disclosure of any  
17 material initially produced inadvertently shall refer to the information contained in  
18 the material produced inadvertently, except the information that appears on any  
19 applicable privilege log.

20  
21 13. MISCELLANEOUS

22 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
23 person to seek its modification by the Court in the future.

24 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
25 Stipulated Protective Order, no Party waives any right it otherwise would have to  
26 object to disclosing or producing any information or item on any ground not  
27 addressed in this Stipulated Protective Order. Similarly, no Party waives any right  
28

1 to object on any ground to use in evidence of any of the material covered by this  
2 Stipulated Protective Order.

3 13.3 Filing Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Local Civil Rule 79-5. Protected Material  
5 may only be filed under seal pursuant to a court order authorizing the sealing of the  
6 specific Protected Material at issue. If a Party's request to file Protected Material  
7 under seal is denied by the court, then the Receiving Party may file the information  
8 in the public record unless otherwise instructed by the court.

9  
10 14. FINAL DISPOSITION

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

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15. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: September 12, 2018

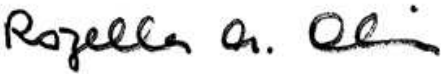
/s/ Brad Snyder  
Attorneys for Plaintiff

DATED: September 12, 2018

/s/ Erin M. Bosman  
Attorneys for Defendant

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: September 14, 2018

  
HON. ROZELLA A. OLIVER  
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 *Joseph Laughlin v. MicroPort Orthopedics, Inc., et al.*,  
2:17-cv-09005-RGK-RAO. 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: \_\_\_\_\_

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**ATTESTATION**

Pursuant to C.D. Cal. Local Rule 5-4.3.4(a)(2)(i), I, Erin Bosman, attest that the other signatory listed, and on whose behalf the filing is submitted, concurs in this filing's content and has authorized the filing.

Dated: September 12, 2018

By: /s/ Erin M. Bosman  
Erin M. Bosman