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14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

16 DEGUI CHEN, Ph.D., an individual,
 17 Plaintiff,
 18 v.
 19 MICHAEL E. JUNG, Ph.D., an
 20 individual and CHARLES L.
 21 SAWYERS, M.D., an individual,
 22 Defendants.

Case No. 2:18-cv-02015-R-KS

STIPULATED PROTECTIVE ORDER

Complaint Filed: March 12, 2018
 Trial Date: March 5, 2019

STIPULATED PROTECTIVE ORDER

1 Pursuant to the Stipulation for good cause filed by Plaintiff Dr. Degui Chen
2 and Defendants Dr. Jung and Dr. Sawyers (collectively the “Parties”), the Court
3 hereby enters this Protective Order (the “Order”) to protect confidential information
4 and material that may be produced or otherwise disclosed by the Parties or third
5 parties during the course of discovery in this case and in order to facilitate the
6 exchange of information and documents that may be subject to confidentiality
7 limitations on disclosure due to federal laws, state laws, and privacy rights.

8 IT IS HEREBY STIPULATED AND AGREED TO, SUBJECT TO THE
9 APPROVAL AND ORDER OF THE COURT THAT:

10 1. **Definitions**

11 (a) Action: The term “Action” shall mean the above-entitled action,
12 *Chen v. Jung & Sawyers*, No. 2:18-CV-02015-R-KS, currently pending in the U.S.
13 District Court for the Central District of California.

14 (b) Designated Material: The term “Designated Material” shall
15 mean any Discovery Material designated by a Producing Party as
16 CONFIDENTIAL or HIGHLY CONFIDENTIAL, which comprises or contains
17 information that the Producing Party claims in good faith to constitute or relate to
18 sensitive proprietary information, such as trade secrets or other confidential
19 research, development, or commercial information, as more specifically set forth
20 below:

21 (i) HIGHLY CONFIDENTIAL: The term “HIGHLY
22 CONFIDENTIAL” shall mean and include information of the Producing Party that
23 is of such a sensitive nature that it supports a reasonable good faith belief that
24 granting access to such information to an employee, consultant or officer of a
25 competitor, or an opposing party will place the Producing Party at a competitive
26 disadvantage, that is not publicly known, and which the Producing Party would not
27 normally disclose to the Receiving Party, including the Producing Party’s highly
28 sensitive trade secrets or other highly sensitive competitive or confidential

1 information that is not publicly available (e.g., inventions in progress, unpublished
2 patent applications and their prosecution histories (foreign and domestic)),
3 commercial information (including, for example, business plans, business
4 strategies, negotiations, and license agreements), financial information (including,
5 for example, budgeting, accounting, and sales figures), business relationship
6 information (including, for example, information pertaining to potential and/or
7 existing customers, competitors, suppliers, distributors, affiliates, subsidiaries, and
8 parents), and personnel information (including, for example, compensation,
9 evaluations, and other employment information). Designated Material that is
10 designated HIGHLY CONFIDENTIAL may be disclosed only to the individuals
11 identified in Paragraph 7(a) below.

12 (ii) CONFIDENTIAL: The term “CONFIDENTIAL” shall
13 mean and include other information of the Producing Party that is not publicly
14 known and which the Producing Party would not normally reveal to third parties or,
15 if disclosed, would require such third parties to maintain in confidence, including
16 the Producing Party’s confidential personal or business information, medical or
17 psychiatric information, personnel records, or such other sensitive commercial
18 information this is not publicly available. Information designated
19 CONFIDENTIAL shall include technical, research and development information,
20 including, for example, laboratory notebooks; development reports; technical
21 reports; testing records; past research plans; market and demographic research; and
22 product and advertising development. Designated Material that is designated
23 CONFIDENTIAL may be disclosed only to the individuals identified in Paragraph
24 7(b) below.

25 (c) Discovery Material: The term “Discovery Material” shall mean
26 any document, thing, electronically stored information, material, item, testimony, or
27 thing filed with or presented to the Court or produced, served, or generated during
28 the discovery process, including, for example, exhibits, answers to interrogatories,

1 responses to requests for admissions, responses to requests for production,
2 subpoenas, declarations, affidavits, deposition testimony or transcripts, and all
3 copies, extracts, summaries, compilations, designations, and portions thereof.

4 (d) Producing Party: The term “Producing Party” shall mean any
5 party to this Action or any third party, including its counsel, retained experts and
6 consultants, directors, officers, employees, or agents, who produces any Discovery
7 Material in this Action.

8 (e) Receiving Party: The term “Receiving Party” shall mean any
9 party to this Action, including its counsel, retained experts and consultants,
10 directors, officers, employees, or agents, who receives any Discovery Material in
11 this Action.

12 2. Scope

13 The scope of this Order shall be understood to encompass Designated
14 Material which is expressly designated as CONFIDENTIAL or HIGHLY
15 CONFIDENTIAL, other materials which may be subject to restrictions on
16 disclosure for good cause, and any information derived therefrom, including all
17 copies, excerpts, and summaries thereof, whether partial or complete, as well as
18 testimony and oral conversations which reveal all or part of that information. This
19 Order is subject to the Local Civil Rules of the U.S. District Court of the Central
20 District of California. Nothing in this Order shall obligate a Party or third party to
21 produce any materials.

22 3. Procedure for Marking Designated Material

23 Marking designated Material as CONFIDENTIAL or HIGHLY
24 CONFIDENTIAL shall be made by the Producing Party in the following manner:

25 (a) A Producing Party may designate as CONFIDENTIAL or
26 HIGHLY CONFIDENTIAL only that portion of Discovery Material that it
27 reasonably and in good faith believes meets the definitions in Paragraphs 1(b)(i)
28 and 1(b)(ii), above.

1 (b) In the case of documents or any other tangible thing produced,
2 designation shall be made by placing the legend “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL” by stamp or other clear marking on each page of the document
4 or on the cover in a manner that will not interfere with legibility of the document or
5 in a prominent place on any other tangible thing prior to production of the
6 document or tangible thing.

7 (c) In producing original files and records for inspection, no
8 marking need be made by the Producing Party in advance of the inspection. For the
9 purposes of the inspection, all documents produced for inspection shall initially be
10 considered as marked “HIGHLY CONFIDENTIAL.” Thereafter, upon selection of
11 specified documents for copying by the Receiving Party, the Producing Party shall
12 mark Designated Material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
13 as appropriate.

14 (d) In the case of deposition testimony, transcripts, or portions
15 thereof, designation shall be made by the Producing Party by either (i) indicating on
16 the record during the deposition, in which case the reporter will bind the transcript
17 of the designated testimony in a separate volume and mark it as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” or (ii) notifying the reporter
19 and all counsel of record, in writing, within thirty (30) days after the reporter sends
20 written notice to the deponent or the deponent’s counsel that the transcript is
21 available for review, in which case all counsel receiving such notice will be
22 responsible for marking as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
23 the copies of the designated transcript or portion thereof in their possession or under
24 their control as directed by the Producing Party or deponent. Pending expiration of
25 the thirty (30) day period, all Parties and, if applicable, any third-party witnesses or
26 attorneys, will treat the entire deposition transcript as if it had been designated
27 “HIGHLY CONFIDENTIAL.” No person shall attend the portions of such
28 depositions designated HIGHLY CONFIDENTIAL unless such person is an

1 authorized recipient of material designated HIGHLY CONFIDENTIAL under the
2 terms of this Order or the Parties agree to such person's attendance.

3 (e) The designations CONFIDENTIAL or HIGHLY
4 CONFIDENTIAL do not mean that the Designated Material has any status or
5 protection by statute or otherwise except to the extent and for the purposes of this
6 Order.

7 (f) Public records and other information or materials that are
8 publicly available may not be designated as CONFIDENTIAL or HIGHLY
9 CONFIDENTIAL.

10 4. Unintentional Failure To Designate

11 If, through inadvertence, a Producing Party provides any Designated Material
12 in this Action without designating and marking the Designated Material as
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL, the Producing Party may
14 subsequently inform the Receiving Party of the confidential nature of the disclosed
15 Designated Material in writing. Thereafter, the Receiving Party will treat the
16 disclosed Designated Material as CONFIDENTIAL or HIGHLY
17 CONFIDENTIAL, to the extent the Receiving Party has not disclosed this
18 Designated Material. Disclosure of such Designated Material to persons not
19 authorized to receive that material prior to receipt of the confidentiality designation
20 shall not be deemed a violation of this Order. In the event the material has been
21 distributed in a manner inconsistent with the categorical designation, the Receiving
22 Party promptly will take the steps reasonably necessary to conform distribution to
23 the categorical designation, *i.e.*, by retrieving or destroying all copies of the
24 Designated Material, or notes or extracts thereof, in the possession of the persons
25 not authorized under this Order to possess such Designated Material and advising
26 the person to whom disclosure was made that the material is confidential and
27 should be treated as provided in the Order, and to confirm to the Producing Party in
28 writing such retrieval or destruction. In the event the materials were previously

1 submitted to the Court in a filing or motion, the Parties shall cooperate in taking
2 steps reasonably necessary to conform the filing or motion to the categorical
3 designation, for example by cooperating to allow the Producing Party to file any
4 motion or request to the Court to seal such Designated Material, in accordance with
5 the Court's rules and procedures. Nothing herein shall prevent a Receiving Party
6 from challenging the designation of the documents in accordance with Paragraph 10
7 below. In the event the Receiving Party believes it has been prejudiced by any such
8 inadvertent failure to designate, the Receiving Party may contest the designation as
9 set forth in Paragraph 10 below.

10 **5. Unintentional Disclosure of Designated Material**

11 If Designated Material, or any portion thereof, is disclosed by the Receiving
12 Party, through inadvertence or otherwise, to any person or party not authorized
13 under this Order, then the Receiving Party shall use its best efforts to retrieve
14 immediately all copies of such Designated Material, and to bind such person to the
15 terms of this Order. In such event, the Receiving Party shall also (a) promptly
16 inform such person of all the provisions of this Order; (b) identify such person
17 immediately to the Producing Party; (c) request such person to execute the
18 Acknowledgment of Protective Order in the form shown in Attachment A; and (d)
19 confirm in writing to the Producing Party the destruction or return of such material
20 and all copies and derivations (including any notes or work product made
21 therefrom).

22 **6. Unintentional Disclosure of Privileged Information**

23 Counsel shall exert their best efforts to identify documents or material
24 protected by the attorney-client privilege, the attorney work-product doctrine, the
25 common-interest doctrine, or any other privilege or immunity prior to the disclosure
26 of any such documents or material. If, however, a party unintentionally discloses
27 documents or material that is privileged or otherwise immune from discovery,
28 within ten (10) days of the date of discovery of the unintentional disclosure, the

1 Producing Party (or the Party holding the privilege or protection if produced by a
2 third party, such as an outside law firm) shall provide written notice to the
3 Receiving Party of the claimed privilege or immunity, request the documents or
4 material be returned, and attach a privilege log entry pertaining to the documents or
5 material that is privileged or otherwise immune from discovery. If that written
6 request is made and the privilege log provided, no Party to this Action thereafter
7 shall assert that such inadvertent disclosure waived any privilege, immunity, or
8 protection. Absent a Court order or agreement of the Parties to the contrary, no use
9 shall be made of such documents during deposition, at trial, or in any filing or
10 motion, nor shall they be shown to anyone who was not given access to them prior
11 to the request to return or destroy them. It is further agreed that the Receiving Party
12 will return or destroy such inadvertently produced documents or material, all copies
13 and derivations (including any notes or work product made therefrom), within five
14 (5) days of the Receiving Party's receipt of a written request for the return of the
15 documents or material, and shall certify such return or destruction in writing to the
16 Producing Party. The return of such items shall not be construed as an agreement
17 by the returning Party that the information is, in fact, protected by any privilege or
18 immunity. In the event that only a part of the documents or material is claimed to
19 be privileged or otherwise immune from discovery, the Producing Party giving
20 notice shall promptly furnish to the Receiving Party a redacted copy of such
21 document or material, redacting only the part(s) thereof claimed to be privileged or
22 immune from discovery. The Receiving Party, having returned or destroyed the
23 inadvertently produced documents or material may thereafter seek production of
24 any such documents in accordance with the Federal Rules of Civil Procedure, but
25 cannot assert that the privilege has been waived due to unintentional disclosure.
26 These procedures are not intended to limit in any way the right of a Party to argue
27 under Federal Rule of Evidence 502 or any other law that any inadvertent
28 production did not constitute a waiver.

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7. Access to Designated Material

(a) Access – HIGHLY CONFIDENTIAL. Designated Material marked “HIGHLY CONFIDENTIAL” shall be available only to the following persons subject to terms of Paragraph 8:

(i) Outside counsel of record to any Party in connection with this Action and the outside counsel’s partners, counsel, associates, attorneys, data entry, information processing, computer support, artist, translating, stenographic, clerical, and paralegal employees or agents whose duties and responsibilities require access to materials designated HIGHLY CONFIDENTIAL;

(ii) Outside vendors, contractors, or service providers and their employees retained by counsel to a Party for the purpose of furnishing services such as document processing, document coding, court reporting services, the creating of any computer database from documents, document management, copying services, or graphics or design services preparing demonstratives or other exhibits for this Action;

(iii) Any mediator or arbitrator that the Parties engage for this Action or that this Court appoints for this Action;

(iv) Authors, preparers, or drafters; addressees; anyone else who received the documents or information prior to the commencement of this Action or during this Action, but only if they obtained the document or information outside of this Action and not in violation of this Order, as demonstrated by the Designated Material itself or foundation testimony during a deposition or trial, but such individual shall not be permitted to retain any such materials or things or any copies thereof unless otherwise authorized to receive such information under this Order. In the case of former employees/consultants of the Producing Party permitted access under this provision, (a) the former employee/consultant reviews this Order and executes the Acknowledgement of Protective Order attached as

1 Attachment A prior to receiving Designated Material, (b) the former
2 employee/consultant of the Producing Party is not employed or retained by the
3 Receiving Party, and (c) Designated Material is shared with the former
4 employee/consultant of the Producing Party only during a deposition taken in this
5 Action. In the case of Plaintiff Dr. Chen, to the extent that the Designated Material
6 on its face demonstrates that Dr. Chen was an author, preparer, or drafter;
7 addressee; or individual who received the documents or information prior to the
8 commencement of this Action, Dr. Chen shall be permitted access under this
9 provision, provided that Dr. Chen reviews this Order and executes an
10 Acknowledgement of Protective Order attached as Attachment A prior to receiving
11 Designated Material, and adheres to one of the following processes:

12 (a) The Designated Material is shared with Dr. Chen
13 only within the United States in the presence of Plaintiff's outside counsel of
14 record, or during a deposition taken in this Action, or during trial; or

15 (b) Plaintiff's counsel serves a written notice on the
16 Producing Party identifying, by beginning and end Bates numbers, the Designated
17 Material to which Dr. Chen requests access. The Producing Party shall have five
18 (5) days from receipt of such notice to respond in writing, permitting or objecting to
19 such disclosure to Dr. Chen on an item-by-item basis, referring specifically to such
20 beginning and end Bates numbers of Designated Material identified by Plaintiff's
21 counsel. If the Parties cannot reach agreement on disclosure to Dr. Chen, Plaintiff
22 may apply to the Court for an order that disclosure should be permitted within ten
23 (10) days of receipt of the Producing Party's objection. The burden of establishing
24 the permissibility of disclosure to Dr. Chen rests with Plaintiff. Before filing any
25 motions requesting disclosure of Designated Material to Dr. Chen, Plaintiff shall
26 have an obligation to meet and confer with the Producing Party in a good faith
27 effort to resolve the objection by agreement. If Plaintiff does not apply to the Court
28 within the prescribed period, Plaintiff's request for disclosure to Dr. Chen shall be

1 deemed withdrawn. No disclosure of the Designated Material shall be made to Dr.
2 Chen until the time for the Producing Party to serve objections to the Designated
3 Material identified by Plaintiff's counsel by beginning and end Bates number has
4 passed, or, in the event that a written objection is timely served and a submission to
5 request disclosure to Dr. Chen is filed, until such time as the Court has made a
6 ruling thereon, and then, only in accordance with such ruling;

7 (v) Approved consultants or experts and their staff retained
8 by any of the Parties or their counsel in connection with this Action to consult or
9 testify in the case;

10 (vi) Court reporters, recorders, and stenographers engaged for
11 depositions in this Action;

12 (vii) Jury or trial consulting services retained by a Party to this
13 Action;

14 (viii) Mock jurors retained by a Party to this Action;

15 (ix) The Court, including Judges, Magistrate Judges, law
16 clerks, clerical or support personnel of the Court before which this Action is
17 pending, and qualified court reporters; and

18 (x) Any other person authorized to receive HIGHLY
19 CONFIDENTIAL Designated Material by order of the Court or by written
20 agreement of the Parties.

21 (b) Access – CONFIDENTIAL. Designated Material marked
22 “CONFIDENTIAL” shall be available only to the following persons subject to
23 terms of Paragraph 8:

24 (i) The persons described in Paragraphs 7(a)(i) through
25 7(a)(x) above;

26 (ii) For Defendants (collectively), three (3) in-house counsel
27 from the Regents of the University of California, whose assistance is reasonably
28 necessary and who agree to be bound by the terms of this Order and execute an

1 Acknowledgement of Protective Order attached as Attachment A prior to receiving
2 Designated Material. In the event that one or more of the below identified
3 designated in-house counsel ceases to have responsibilities relating to this Action,
4 Defendants may designate another in-house counsel to replace such person upon
5 giving written notice of such change to Plaintiff. The designated in-house counsel
6 are: (1) __; (2) __; and (3) __;

7 (iii) For the Plaintiff, Dr. Chen, who agrees to be bound by the
8 terms of this Order and executes an Acknowledgement of Protective Order attached
9 as Attachment A prior to receiving Designated Material; and

10 (iv) Any other person authorized to receive CONFIDENTIAL
11 Designated Material by order of the Court or by written agreement of the Parties.

12 **8. Conditions on Access to Designated Material**

13 (a) Consultants and Experts. Before disclosing, giving, showing,
14 making available, or communicating Designated Material to any expert or
15 consultant under Paragraphs 7(a)(v) or 7(b)(i) above, the Receiving Party shall:

16 (i) Serve a notice on the Producing Party identifying the
17 following information: expert or consultant's full name, business address, and
18 business telephone number(s); expert or consultant's present employer and position
19 (along with a job description); any previous or current relationship, if any, with the
20 Receiving Party or the Shanghai Institutes for Biological Sciences; job history,
21 including a list of each person or entity from whom the expert or consultant has
22 received compensation, and a list of prior consulting relationships at any time
23 during the preceding five (5) years; and by name and number of case and location
24 of court any litigation in which the expert or consultant has offered expert
25 testimony, including through a declaration, report, or testimony at a deposition,
26 trial, or other proceeding within the preceding five (5) years. Furthermore, if
27 available or reasonably obtainable, the most recent *curriculum vitae* or resume of
28 the expert or consultant shall be provided under this Paragraph. If the most recent

1 *curriculum vitae* or resume of the expert or consultant provides the information
2 required under this Paragraph, then the information need not be separately
3 provided.

4 (ii) Include with such notice, a copy of the Acknowledgement
5 of Protective Order, in the form shown in Attachment A, which is attached hereto,
6 signed by the expert or consultant and including all the information to be completed
7 therein. The Producing Party shall have five (5) days from receipt of such notice
8 and Acknowledgement of Protective Order to object in writing to such disclosure to
9 the expert or consultant. The objection shall identify with particularity the reasons
10 why such expert or consultant should not receive the Designated Material.

11 (iii) If the Parties cannot reach agreement on disclosure to the
12 expert or consultant, the party objecting to such expert or consultant may apply to
13 the Court for an order that disclosure is improper within ten (10) days of its
14 objection. The burden of establishing the validity of such written objection rests
15 with the objecting party. Before filing any motions or objections to disclosure to an
16 expert or consultant, the objecting party shall have an obligation to meet and confer
17 in a good faith effort to resolve the objection by agreement. If the objecting party
18 does not apply to the Court within the prescribed period, the objection shall be
19 deemed withdrawn.

20 (iv) No disclosure of the Designated Material shall be made to
21 the proposed expert or consultant until the time for serving objections to that expert
22 or consultant has passed, or, in the event that a written objection is timely served
23 and a submission to prevent disclosure is filed, until such time as the Court has
24 made a ruling thereon, and then, only in accordance with such ruling.

25 (v) The filing and pendency of objections shall not limit,
26 delay, or defer any disclosures of Designated Material to anyone as to whom no
27 objection has been made, nor shall it delay or defer any other pending discovery
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1 unless the level of confidentiality bears directly on the objecting party's ability to
2 conduct such discovery.

3 (b) Authorization and Acknowledgement. Each person to whom
4 Designated Material is to be given, shown, disclosed, made available, or
5 communicated in any way in accordance with this Order (excluding the Court (e.g.,
6 Judges, Magistrate Judges, law clerks, and clerical or support personnel of the
7 Court before which this Action are pending, and qualified court reports), court
8 reporters, recorders, and stenographers engaged for depositions in this Action, and
9 outside counsel of record to any Party in connection with this Action and the
10 outside counsel's partners, counsel, associates, attorneys, data entry, information
11 processing, computer support, artist, translating, stenographic, clerical, and
12 paralegal employees or agents whose duties and responsibilities require access to
13 materials designated CONFIDENTIAL or HIGHLY CONFIDENTIAL), shall first
14 execute an Acknowledgment of Protective Order in substantially the form shown in
15 Attachment A. Counsel for the Receiving Party shall keep in his or her files an
16 original of each such executed Acknowledgment of Protective Order until one (1)
17 year after the final termination of this Action.

18 **9. Procedures for Filing Papers with Designated Material**

19 (a) Designated Material may be included with, or referred to in,
20 papers filed with the Court where this Action is now pending or in any other court
21 only in accordance with the following procedures:

22 (i) The Designated Material must be filed under seal in
23 accordance with the applicable procedures set forth in Central District of California
24 L.R. 79-5, effective June 1, 2018, and any orders of the Court.

25 (ii) All papers filed with the Court, including but not limited
26 to pleadings and memoranda of law, which include all or any portion of information
27 set forth in Designated Material must be filed under seal in accordance with the
28 terms and procedures set forth in this Order, including the procedures for filing

1 materials set forth in Central District of California L.R. 79-5. Counsel for the party
2 filing papers with Designated Material shall be responsible for designating all
3 papers filed with the Court as Designated Material and marked as
4 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY
5 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” depending on the
6 contents of the papers being filed. Such papers shall be subject to the terms of this
7 Order.

8 (b) After leave of Court to file under seal has been granted, redacted
9 versions of papers with Designated Material filed under seal may be filed with the
10 Court in accordance with Central District of California L.R. 79-5.2.2(c), and made
11 publicly available provided that:

12 (i) All Designated Material set forth in the papers is deleted
13 or obscured and all Designated Material is removed as exhibits; and

14 (ii) Redacted versions of the papers are clearly marked
15 “Redacted Public Version” or a similar legend. Redacted versions of the papers
16 also must clearly identify each place where information or exhibits have been
17 deleted.

18 10. **Challenges to the Designation**

19 (a) No party to this Action shall be obligated to challenge the
20 propriety of any designation by any Producing Party, and a failure to do so shall not
21 constitute a waiver or in any way preclude a subsequent challenge in this Action or
22 any other actions to the propriety of such designation.

23 (b) Any party or nonparty with standing to object (hereinafter
24 “challenging party”) may contest a claim of confidentiality. Any challenging party
25 objecting to the designation of any Designated Material as CONFIDENTIAL or
26 HIGHLY CONFIDENTIAL must serve upon outside counsel of record for the
27 Producing Party a written notice stating with particularity the grounds of the
28 objection. Failing resolution after ten (10) days of service of the written notice of

1 its reasons for the objection, the challenging party may seek an order changing or
2 removing the designation. In the resolution of such matter, the Producing Party
3 asserting confidentiality shall have the burden of proving that the material
4 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL warrants
5 protection under the Order, but information designated as CONFIDENTIAL or
6 HIGHLY CONFIDENTIAL shall be deemed as such until the matter is resolved.
7 Before filing any motions or objections to a confidentiality designation with the
8 Court, the challenging party shall have an obligation to meet and confer in a good
9 faith effort to resolve the objection by agreement. If agreement is reached
10 confirming, changing, or removing the designation as CONFIDENTIAL or
11 HIGHLY CONFIDENTIAL, the Producing Party shall serve on all parties a notice
12 specifying the Designated Material and nature of the agreement.

13 **11. Restrictions on Disclosure and Use**

14 (a) Confidentiality. Designated Material and the information
15 derived from such Designated Material (excluding information which is derived
16 lawfully from an independent source) (i) shall be kept confidential and used solely
17 for the prosecution and defense of this Action and any appeals thereto, or
18 attempting to settle this Action, and not used in any other proceeding in this or any
19 other jurisdiction or before any government or regulatory body including the U.S.
20 Patent and Trademark Office (“PTO”) and U.S. Food and Drug Administration
21 (“FDA”), and (ii) shall not be given, shown, made available, discussed, or
22 otherwise communicated in any manner, to any person not authorized to receive the
23 information under the terms of this Order, unless and to the extent that this Order is
24 otherwise modified by Court order. Designated Material shall not be used for any
25 business, commercial, regulatory, competitive, personal, or other purpose. In
26 particular, Designated Material disclosed in this Action shall not be used for
27 prosecution of any patent application(s) (foreign or domestic), as a basis for judicial
28 or administrative action, or submission to or communication with any foreign or

1 domestic government agency or regulatory body including FDA and the PTO,
2 unless and until the restrictions herein are removed either by written agreement of
3 counsel for the Parties, or by order of the Court. Designated Material disclosed in
4 this Action shall not be used in any other litigation. Any summary, compilation,
5 notes, memoranda, analysis, electronic image, or database containing Designated
6 Material shall be subject to the terms of this Order to the same extent as the
7 material or information from which such summary, compilation, notes, memoranda,
8 analysis, electronic image, or database is derived.

9 (b) Maintenance of Designated Material. Counsel for the Parties
10 shall take reasonable and appropriate measures to prevent unauthorized disclosure
11 of Designated Materials pursuant to the terms of this Order. Designated Material
12 shall be maintained by the Receiving Party at a location and under circumstances to
13 ensure that access is limited to those persons entitled to have access under this
14 Order.

15 (c) Nothing contained in this Order, however, will affect or restrict
16 the rights of a Producing Party with respect to its own Designated Material.

17 **12. Non-Party Request/Subpoena of Designated Material**

18 If a Receiving Party receives a subpoena or other compulsory process from a
19 non-party to this Order seeking production or other disclosure of a Producing
20 Party's Designated Material, that Receiving Party shall give written notice to the
21 outside counsel of record for the Producing Party within ten (10) days after receipt
22 of the subpoena or other compulsory process identifying the specific Designated
23 Material sought and enclosing a copy of the subpoena or other compulsory process.
24 If the Producing Party timely seeks a protective order, the Receiving Party to whom
25 the subpoena or other compulsory process was issued or served shall not produce
26 the Designated Material requested prior to receiving a court order or consent of the
27 Producing Party. In the event that Designated Material is produced to the non-
28 party, such material shall be treated as Designated Material pursuant to this Order.

1 **13. Final Disposition**

2 Within sixty (60) days of the final disposition of this action (i.e., termination,
3 dismissal, settlement, or final judgment on this Action, including exhaustion of all
4 appeals), the originals and all copies of Designated Material shall either be
5 destroyed or turned over to the Producing Party, or to their respective outside
6 counsel. If Designated Material is destroyed pursuant to this Paragraph, outside
7 counsel for the Receiving Party shall provide by the sixty (60) day deadline a
8 written certification to outside counsel for the Producing Party that affirms that the
9 destruction was performed and that it has not retained any copies, abstracts,
10 compilations, summaries, or other forms of reproducing or capturing any of the
11 Designated Material. Notwithstanding this provision, outside counsel of record in
12 this Action may retain an archival copy of all pleadings, court filings, motion
13 papers; trial, deposition, and hearing transcripts; expert reports; correspondence;
14 attorney and consultant work product; and deposition and trial exhibits for archival
15 purposes, even if such materials contain Designated Material, and all such archival
16 material shall continue to be Designated Material subject to this Order. The
17 Receiving Party shall provide to outside counsel for the Producing Party a
18 certification that electronic copies have been deleted from active media. Nothing in
19 this Order shall require the Receiving Party to search inactive media (for example,
20 back-up tapes and/or disaster-recovery tapes or media) to destroy from such sources
21 documents or material covered by this Order. The provisions of this Order insofar
22 as it restricts the disclosure, communication of, and use of Designated Material
23 produced hereunder shall continue to be binding after the conclusion of this Action.

24 **14. Termination**

25 The Parties agree and acknowledge that the terms of this Order shall survive
26 the termination of the Action, and persons subject to this Order shall be bound by
27 the confidentiality obligations of this Order until the Producing Party agrees
28 otherwise in writing or this Court (or any other court of competent jurisdiction)

1 orders otherwise.

2 **15. Information Not Covered by this Order**

3 The restrictions set forth in this Order shall not apply to information which is
4 in the possession of or otherwise known to the Receiving Party or the public before
5 the date of its transmission to the Receiving Party, or which lawfully comes into the
6 possession of or becomes known to the Receiving Party or lawfully comes into the
7 possession of or otherwise becomes known to the public after the date of its
8 transmission to the Receiving Party, provided that such information does not
9 become publicly known by any act or omission of the Receiving Party which would
10 be in violation of this Order.

11 **16. Responsibility of Attorneys**

12 Outside counsel of record shall be responsible for providing a copy of this
13 Order to all persons entitled access to Designated Material under Paragraph 7 and to
14 employ reasonable measures to control duplication of, access to, and distribution of
15 copies of materials so designated. All copies, electronic images, duplicates,
16 extracts, summaries, descriptions, and translations of Designated Material, or any
17 individual portion of such Designated Materials must be appropriately marked
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and are subject to this Order,
19 including Paragraph 13 of this Order.

20 **17. No Limitation of Other Rights**

21 This Order shall be without prejudice to the right of any Party to oppose
22 production of any information on any and all grounds other than confidentiality.

23 **18. Release From or Modification of this Order**

24 This Order is entered without prejudice to the right of any Party to apply to
25 the Court at any time for additional protection; or to release, rescind, or modify the
26 restrictions of this Order; to determine whether a particular person shall be entitled
27 to receive any particular information; or to seek relief from inadvertent disclosure
28 of privileged or work-product information. This Order does not preclude all of the

1 Parties to this Order from entering into any stipulation (in writing or on the record)
2 constituting a modification of this Order. On any application seeking disclosures
3 beyond those authorized by this Order, the burden will be on the Receiving Party to
4 justify the disclosure.

5 **19. Other Proceedings**

6 By entering this Order and limiting the disclosure of information in this
7 Action, the Court does not intend to preclude another court from finding that
8 information may be relevant and subject to disclosure in another case. Any person
9 or Party subject to this Order who becomes subject to a motion to disclose another
10 Party's information designated CONFIDENTIAL or HIGHLY CONFIDENTIAL
11 pursuant to this Order in another case shall promptly notify that Party of the motion
12 so that the party may have an opportunity to appear and be heard on whether that
13 information should be disclosed.

14 **20. Discovery from Third Parties**

15 If discovery is sought of a person not a Party to this Action ("third party")
16 requiring disclosure of such third party's Designated Material, the Designated
17 Material disclosed by any such third party will be accorded the same protection as
18 the Parties' Designated Material, and will be subject to the same procedures as
19 those governing disclosure of the Parties' Designated Material pursuant to this
20 Order.

21 **21. Admissibility**

22 Nothing herein shall be construed to affect in any way the evidentiary
23 admissibility of any document, testimony, or other matter at any Court proceeding
24 related to this Action. The marking of Designated Material as "CONFIDENTIAL"
25 or "HIGHLY CONFIDENTIAL" pursuant to this Order shall not, for that reason
26 alone, bar its introduction or use at any court proceeding related to this Action
27 pursuant to such terms and conditions as the Court may deem appropriate,
28 consistent with the need for a complete and accurate record of the proceedings,

1 provided, however, that every effort shall be made, through the use of procedures
2 agreed upon by the Parties or otherwise, to preserve the confidentiality of
3 Designated Material marked as “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL.” Nothing in this Order or any action or agreement of a party
5 under this Order limits the Court’s power to make any orders that may be
6 appropriate with respect to the use and disclosure of any materials produced or used
7 in discovery or at trial.

8 **22. Use of Designated Material or Information at Trial**

9 All trials are open to the public. Absent order of the Court, there will be no
10 restrictions on the use of any material that may be introduced by any Party during
11 the trial. If a Party intends to present at trial Designated Material or information
12 derived therefrom, such party shall provide advanced notice to the other Party at
13 least five (5) days before the commencement of trial by identifying the Designated
14 Material or information at issue as specifically as possible (i.e., by Bates number,
15 page range, deposition transcript lines, etc.) without divulging the actual Designated
16 Material. The Court may thereafter make such orders as are necessary to govern
17 the use of such Designated Material or information at trial.

18 **23. No Prior Judicial Determination**

19 This Order is entered based on the representations and agreements of the
20 Parties and for the purpose of facilitating discovery. Nothing herein shall be
21 construed or presented as a judicial determination that any Designated Material is
22 subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or
23 otherwise until such time as the Court may rule on a specific material or issue.

24 **24. Counsel’s Right To Provide Advice**

25 Nothing in this Order shall bar or otherwise restrict any counsel herein from
26 rendering advice to the counsel’s Party-client with respect to this Action, and in the
27 course thereof, relying upon an examination of Designated Material, provided,
28 however, that in rendering such advice and in otherwise communicating with the

1 Party-client, the counsel shall not disclose any Designated Material to anyone not
2 authorized to receive such Designated Material pursuant to the terms of this Order.

3 **25. No Contract**

4 To the extent that the Parties have agreed on the terms of this Order, such
5 stipulation is for the Court's consideration and approval as an Order. The Parties'
6 stipulation shall not be construed to create a contract between the Parties or
7 between the Parties and their respective counsel.

8 **26. Effective Date**

9 This Order shall be effective on the date of its execution provided that all
10 materials previously produced shall be deemed HIGHLY CONFIDENTIAL unless
11 and until they are re-designated by the Producing Party or by further order of the
12 Court. The Parties acknowledge that any disclosure or exchange of material that
13 has occurred prior to the date of entry of this Order is subject to this Order.

14 **27. Persons Bound**

15 This Order shall be binding upon all counsel and their law firms, the Parties,
16 and persons made subject to this Order by its terms. This Court will retain
17 jurisdiction over all persons subject to this Order to the extent necessary to enforce
18 any obligations arising hereunder or to impose sanctions for any contempt thereof.

19
20 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.**

21
22 Dated: November 6, 2018

AMIN TALATI UPADHYE, LLP

23
24 By: /s/ Samuel J. Ruggio
Samuel J. Ruggio

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26 Jennifer Adams (Bar No. 319347)
27 Shashank Upadhye
28 Joseph E. Cwik
Samuel J. Ruggio

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Dated: November 6, 2018

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*Attorneys for Defendants
MICHAEL E. JUNG, Ph.D., and
CHARLES L. SAWYERS, M.D.*

1 Pursuant to Local Rule 5-4.3.4(2), the filer attests that all signatories listed, and on
2 whose behalf the filing is submitted, concurs in the filing's content and have
3 authorized the filing.

4
5 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

6
7 Dated: November 13, 2018



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HON. MANUEL L. REAL

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Attachment A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

DEGUI CHEN, Ph.D., an individual,
Plaintiff,

Case No. 2:18-cv-02015-R-KS

v.

MICHAEL E. JUNG, Ph.D., an
individual and CHARLES L.
SAWYERS, M.D., an individual,
Defendants.

**ACKNOWLEDGEMENT OF
PROTECTIVE ORDER**

I, _____, state that:

1. My present address is: _____
_____.

2. My present employer is: _____
and the address of my present employer is _____
_____.

3. My present occupation or job description is:
_____.

4. I have received a copy of the Protective Order (the “Order”) entered in
the case of *Chen v. Jung et al.*, United States District Court – Central District of
California, Case No. 2:18-cv-02015.

5. I have read and understand the Order. I hereby agree to be bound by
and to comply with all of the terms of the Order, including holding in confidence
and not disclosing to any unqualified persons all documents, things, or information
subject to the Order.

6. I hereby expressly covenant that I will use the documents, things, or
information subject to the Order solely for purposes relating to the above-

1 referenced litigation and that I will not use such documents, things, or information
2 subject to the Order or information derived therefrom, directly or indirectly, for any
3 other purpose. Further, I expressly covenant that I will not use such documents,
4 things, or information subject to the Order or information derived therefrom,
5 directly or indirectly, for the benefit of myself or any other person or entity. I
6 understand that I must abide by all of the provisions of the Order.

7 7. At the termination of this litigation, or any time requested by outside
8 counsel for the Party by whom I am engaged, I expressly covenant that I will return
9 or destroy all documents, things, or information, including notes, computer data,
10 summaries, abstracts, or any other materials containing or reflecting documents,
11 things, or information subject to the Order that have come into my possession, and I
12 will return or destroy all documents or things I have prepared relating to or
13 reflecting such information. If requested by outside counsel for the Party by whom
14 I am engaged, I will also provide a Declaration, submitted under penalty of perjury,
15 certifying that I have returned or destroyed all such materials.

16 8. I understand that if I violate the provisions of the Order, I will be in
17 violation of a Court order and subject to sanctions or other remedies that may be
18 imposed by the Court and potentially liable in a civil action for damages. I hereby
19 consent to the jurisdiction of the United States District Court – Central District of
20 California for the purpose of enforcing the Order and this agreement to be bound
21 thereby.

22 9. I declare under penalty of perjury of the laws of the United States that
23 the foregoing is true and correct.

24
25 Dated: _____

Signature

Print Name