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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

COREY WESTGATE,  
Plaintiff,  
v.  
COLOPLAST CORP. and  
COLOPLAST MANUFACTURING  
US, LLC,  
Defendants.

Case No.: 2:18-cv-03431-DSF-RAO

**[PROPOSED] AGREED ORDER  
FOR PROTECTION OF  
CONFIDENTIAL INFORMATION**

Magistrate Judge: Honorable Rozella  
A. Oliver  
Ctrm: 590 – 5th Floor

1       **I.     SCOPE OF ORDER**

2           Disclosure and discovery in this proceeding may involve production of  
3 confidential, proprietary, and private information for which special protection from  
4 public disclosure and from any purpose other than prosecuting this litigation would  
5 be warranted. Accordingly, the parties hereby stipulate to and petition the court to  
6 enter this Agreed Protective Order in this matter.

7       **II.    THE ORDER**

8           The parties have agreed to be bound by the terms of this Agreed Protective  
9 Order and to request its entry by the presiding judge. It is hereby ORDERED as  
10 follows:

11       **A.     DISCOVERY PHASE**

- 12       1.     For purposes of this Order, the following definitions shall apply: (a) the  
13 terms “document” and “electronically stored information” (“ESI”) shall  
14 have the full meaning ascribed to them by the Federal Rules of Civil  
15 Procedure (“Fed. R. Civ. P.”); and (b) the term “producing party” shall  
16 be defined as any party or non-party who is required to produce or  
17 provide materials or testimony containing confidential information.
- 18       2.     A producing party may designate as “**CONFIDENTIAL**” any material,  
19 including any documents or ESI, the producing party believes in good  
20 faith constitutes or discloses information that qualifies for protection  
21 pursuant to Fed. R. Civ. P. 26(c), specifically information that is trade  
22 secret or other confidential research, development, or commercial  
23 information, and materials that are deemed confidential under Federal  
24 Drug Administration (“FDA”) regulations and Health Insurance  
25 Portability and Accountability Act (“HIPAA”) statutes and/or  
26 regulations.
- 27       3.     Confidential information may be further designated as “**HIGHLY**  
28       **CONFIDENTIAL**” if a Defendant produces materials that it believes in

1 good faith would, if disclosed, cause substantial economic harm to the  
2 competitive position of the entity from which the information was  
3 obtained because it is **HIGHLY CONFIDENTIAL** research and  
4 development material on a new product that has not been approved or  
5 cleared by the FDA or a similar regulatory body or reflects a party's  
6 price competitiveness in the market or marketing business strategies of a  
7 party concerning a current or new product. The plaintiff(s) will inform  
8 the producing party of its intent to disclose such information to any  
9 individual who is currently, or who at any time during the pendency of  
10 this litigation becomes, a *consultant to a competitor* of the producing  
11 party in the pelvic organ mesh business, or is a consultant to an entity  
12 actively investigating entering such business, and plaintiff(s) will follow  
13 the procedures for disclosure of such materials to such individual as  
14 provided in Paragraph II.B.8 of this Protective Order.

- 15 4. Challenges to Designations or Redacted Information: Any party may at  
16 any time that is consistent with the Court's Scheduling Order challenge  
17 the redaction or the designation of information as CONFIDENTIAL or  
18 HIGHLY CONFIDENTIAL by providing written notice of its objection  
19 to the designating party, or, in the case of a deposition, either on the  
20 record at a deposition or in writing later. Any challenge to the  
21 confidentiality designation must be specific as to which document(s) or  
22 other material is being challenged by listing Bates numbers or other  
23 identifying information if no Bates numbers are available; categorical or  
24 blanket challenges are not permitted. If, after a meet-and-confer process  
25 pursuant to Local Rule 37-1, the parties cannot reach agreement, either  
26 the designating party or challenging party may request an Informal  
27 Discovery Conference pursuant to Magistrate Judge Oliver's procedure  
28 set forth at <http://www.cacd.uscourts.gov/honorable-rozella-oliver>. If the

1 parties are unable to resolve the challenge to the confidentiality  
2 designations in the course of this Informal Discovery Conference, the  
3 parties shall also address whether they anticipate the need to extend the  
4 amount of time necessary to complete the joint stipulation as set forth in  
5 Local 37-2.2, as well as the page limits set forth in Local Rule 37-2.3. In  
6 accordance with any directions or schedule given during the Informal  
7 Discovery Conference, the challenging party then may move the Court  
8 for the relief sought pursuant to Local Rule 37-2, *et seq.* The disputed  
9 material shall continue to be treated as designated, or redacted, until the  
10 Court orders otherwise—this includes any exhibits to the application to  
11 the Court, which should be filed under seal or otherwise handled in  
12 accordance with local Court procedures to prevent public disclosure until  
13 the Court orders otherwise. In any such application concerning a ruling  
14 on confidentiality or redacted information, the party claiming the  
15 designation of confidentiality or redaction has the burden of establishing  
16 that such confidential designation or redaction is proper.

17 5. No person or party subject to this Order shall distribute, transmit, or  
18 otherwise divulge any material marked **CONFIDENTIAL** or **HIGHLY**  
19 **CONFIDENTIAL**, except in accordance with this Order. Any  
20 compilations, copies, electronic images or databases containing  
21 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** information shall  
22 be subject to the terms of this Order to the same extent as the material or  
23 information from which such compilations, copies, electronic images or  
24 databases is made or derived. Nothing in this Order shall restrict a  
25 producing party's use of their own documents.

26 6. Use of Confidential Material Limited to this Action: Any document or  
27 other material which is marked **CONFIDENTIAL** or **HIGHLY**  
28 **CONFIDENTIAL**, or the contents thereof, may be used by only this

1 Court and its personnel, court reporters, deponents, a party, or a party's  
2 attorney, paralegal, expert witness, copy services or litigation vendors  
3 employed by a party's attorney, or consultants, and only for the purpose  
4 of this action or appeal therefrom. Nothing contained in this Order shall  
5 prevent the use of any document or the contents thereof, at any  
6 deposition taken in this action. If a party intends to use material that has  
7 been marked as **HIGHLY CONFIDENTIAL** at the deposition of an  
8 employee or former employee of a non-producing party in this litigation,  
9 then the party shall notify the producing party ten (10) days in advance  
10 of the deposition that it intends to use that category of material. If the  
11 parties cannot agree on parameters for usage of the material at the  
12 deposition, then the parties will seek the direction of the Court as to the  
13 utilization of that category of material in the deposition.

- 14 7. Access to Confidential Material: If a party or attorney wishes to disclose  
15 any document or other material which is marked **CONFIDENTIAL** or  
16 **HIGHLY CONFIDENTIAL**, or the contents thereof, to any deponent  
17 or to any person actively working on, or retained to work on, this action  
18 (other than full-time employees of a party's attorney), e.g., an expert  
19 witness, or consultant, the party or attorney making the disclosure shall  
20 do the following prior to disclosing any **CONFIDENTIAL** or **HIGHLY**  
21 **CONFIDENTIAL** information or materials to such person:
- 22 (a) Provide a copy of this Order to the person to whom the disclosure  
23 is to be made;
  - 24 (b) Inform the person to whom disclosure is to be made that s/he is  
25 bound by this Order;
  - 26 (c) Require the person to whom disclosure is to be made to sign an  
27 acknowledgment and receipt of this Order (Exhibit A), except as  
28 otherwise agreed by Designating Party, or ordered by the Court;

- 1 (d) Instruct the person to whom disclosure is to be made to return or,  
2 in the alternative and with permission of the producing party, at  
3 the conclusion of the case to destroy any document or other  
4 material which is marked **CONFIDENTIAL** or **HIGHLY**  
5 **CONFIDENTIAL**, including compilations, copies, electronic  
6 images or databases made from **CONFIDENTIAL** or **HIGHLY**  
7 **CONFIDENTIAL** material;
- 8 (e) Maintain a list of persons to whom disclosure was made and the  
9 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** materials  
10 which were disclosed to that person; and
- 11 (f) At the conclusion of this action, gather the **CONFIDENTIAL** or  
12 **HIGHLY CONFIDENTIAL** materials, copies thereof, and  
13 related compilations, copies, electronic images or databases, and  
14 return them to the party or attorney who originally disclosed them,  
15 or destroy them, providing a certificate of compliance with the  
16 terms of this Protective Order.

17 8. Disclosure Requirements for **HIGHLY CONFIDENTIAL** information  
18 to Competitor Related Consultants: Prior to disclosure, plaintiff(s) will  
19 inform the producing party of its intent to disclose **HIGHLY**  
20 **CONFIDENTIAL** material to anyone who is currently, or who at any  
21 time during the pendency of this litigation becomes, a consultant to a  
22 competitor (as such individuals are defined in Paragraph II.B.3 above) in  
23 the manner set forth below:

- 24 (a) Give at least ten (10) days' notice in writing to counsel for the  
25 party who designated such information as **HIGHLY**  
26 **CONFIDENTIAL** of the intent to so disclose that information,  
27 although the disclosing party is not required to identify the  
28 intended recipient of such materials.

- 1 (b) Within ten (10) days thereafter, counsel for the parties shall  
2 attempt to resolve any disputes between them regarding the  
3 production of the **HIGHLY CONFIDENTIAL** material to the  
4 intended individuals.
- 5 (c) If the parties are unable to resolve any dispute regarding such  
6 production, within an additional seven (7) days, the party who  
7 designated the information in question as **HIGHLY**  
8 **CONFIDENTIAL** shall file a motion objecting to the proposed  
9 disclosure. In making such motion, it shall be the producing  
10 party's burden to demonstrate good cause for preventing the  
11 disclosure.
- 12 (d) If the Court permits disclosure of the material designated as  
13 **HIGHLY CONFIDENTIAL** at issue, the information remains  
14 designated as **HIGHLY CONFIDENTIAL** and the individual  
15 receiving such information shall be bound by the requirements of  
16 Paragraph II.B.7.

17 9. Redaction of **CONFIDENTIAL** Material: The parties recognize that  
18 certain FDA, other governmental agencies, and certain federal statutes or  
19 regulations require redaction or non-disclosure of certain information  
20 prior to production of certain information by Defendants or agency non-  
21 disclosure of information and that Defendants will act consistently with  
22 those requirements and redact such information. The redacted documents  
23 shall include reason for redaction. Any party challenging information that  
24 has been redacted may do so in accordance with Paragraph II.B.4 of this  
25 Protective Order, or otherwise in accordance with the Federal Rules of  
26 Civil Procedure.

27 10. Use of **CONFIDENTIAL** Material at Depositions: All transcripts and  
28 exhibits shall be treated as if designated **CONFIDENTIAL** for a period

1 of thirty (30) days after the final transcript is provided by the court  
2 reporter to the parties. Counsel for any party may designate during the  
3 deposition or during the thirty-day period after the final transcript is  
4 provided by the court reporter any portion of the transcript as  
5 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** by denominating by  
6 page and line, and by designating any exhibits, that are to be considered  
7 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** pursuant to the  
8 criteria set forth in this Order. Such designation shall be communicated to  
9 all parties. Transcript portions and exhibits designated in accordance with  
10 this paragraph shall be disclosed only in accordance with this Order,  
11 including in any motions or other papers filed in this proceeding. A party  
12 may challenge the **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL**  
13 designation or portions thereof in accordance with the provisions of  
14 Paragraph II.B.4 above.

- 15 11. Use of **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** Material in  
16 Filings: Where any **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL**  
17 information or document is included in any papers filed with the Court, ,  
18 the filing party must provide at least 3-days advance notice to the  
19 producing party in advance of filing. The Parties shall then attempt to  
20 resolve the matter of continued confidentiality by: (a) withdrawing the  
21 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** designation, (b)  
22 creating a mutually acceptable redacted version that suffices for purposes  
23 of the case and is no longer designated as **CONFIDENTIAL** or **HIGHLY**  
24 **CONFIDENTIAL**, or (c) where appropriate (e.g., in connection with  
25 discovery and evidentiary motions) provide the information solely for in  
26 camera review, or (d) applying to file such information under seal in  
27 accordance with the local rules and practices of this Court for such  
28 pleadings and documents.



1 12. Subpoenas or Discovery Requests From Other Courts or Agencies. If  
2 another court or administrative agency subpoenas or orders production of  
3 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** information that a  
4 party has obtained under the terms of this Order, or if parties to a different  
5 action serve discovery requests on a party in this action that would require  
6 disclosure of **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL**  
7 information that a party has obtained under the terms of this Order, such  
8 party shall within two (2) days<sup>1</sup> of receiving the subpoena, order, or  
9 discovery request notify the producing party of the pendency of the  
10 subpoena, order, or discovery request in writing, and shall not produce the  
11 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** information until the  
12 producing party has had reasonable time to take appropriate steps to  
13 protect the material unless otherwise ordered by the Court. It shall be the  
14 responsibility of the producing party to obtain relief from the subpoena,  
15 order, or discovery request prior to the due date of compliance, and to  
16 give the producing party an opportunity to obtain such relief, the party  
17 from whom the information is sought shall not make the disclosure before  
18 the actual due date of compliance set forth in the subpoena or order.

19 13. Inadvertent Failure to Properly Designate **CONFIDENTIAL** Material:  
20 Inadvertent production of any document or information without a  
21 designation of **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** will  
22 not be deemed to waive a party's claim to its **CONFIDENTIAL** nature or  
23 stop said party from designating said document or information as  
24 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL** at a later date.  
25 Disclosure of said document or information by another party prior to such

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26 <sup>1</sup> If the second day falls on a Saturday, Sunday, or legal holiday, the two-day period  
27 continues to run until the end of the next day that is not a Saturday, Sunday, or legal  
28 holiday.

1 later designation shall not be deemed a violation of the provisions of this  
2 Order.

3 14. Disclosure of Privileged Documents, “Clawback” Procedure:

4 (a) This Order invokes the protections afforded by Federal Rule of  
5 Evidence (Fed. R. Evid.) 502(d). If a producing party produces (or  
6 discloses) to a receiving party any documents or information  
7 subject to a claim of privilege or immunity from discovery  
8 (including but not limited to attorney-client privilege, work  
9 product, and immunities created by federal or state statute or  
10 regulation), such production (or disclosure) shall not be deemed a  
11 waiver in whole or in part of the producing party’s claim of  
12 privilege or immunity from discovery, either as to specific  
13 documents and information produced (or disclosed) or on the same  
14 or related subject matter, either in this case or in any other action,  
15 investigation, or proceeding. In the event that a party produces or  
16 discloses documents, ESI, or other materials subject to a claim of  
17 privilege or immunity, the producing party shall, within ten (10)  
18 days of the discovery of the production or disclosure, notify the  
19 other party in writing of the production (or disclosure) of materials  
20 protected by any privilege or immunity. From the moment a party  
21 provides notice of production (or disclosure) of materials protected  
22 by any privilege or immunity, a receiving party shall not copy,  
23 distribute, or otherwise use in any manner the disputed documents  
24 or information, and shall instruct all persons to whom the receiving  
25 party has disseminated a copy of the documents or information that  
26 the documents or information are subject to this Order and may not  
27 be copied, distributed, or otherwise used pending further notice  
28 from the Court. The producing party may, in the notice, request a

1 “clawback” of the produced or disclosed material. The producing  
2 party shall provide or supplement the privilege log with a  
3 description of the produced or disclosed documents, or provide a  
4 redacted version of the document, where appropriate, stating the  
5 reason for redaction within five (5) days of providing such notice.  
6 The party receiving such clawback notice shall immediately and  
7 diligently act to retrieve the produced or disclosed documents, and  
8 all copies, including any loaded to databases, and within ten (10)  
9 days return them to the producing party or destroy them as agreed  
10 between the parties except as provided in paragraph (b). All notes  
11 or other work product of the receiving party reflecting the contents  
12 of such materials shall be destroyed and not used.

13 (b) The party receiving such materials, after receipt of the producing  
14 party’s notice, may move the Court to dispute the claim of privilege  
15 or immunity by serving a letter pursuant to Local Rule 37-1. If the  
16 receiving party elects to file such a motion, the receiving party,  
17 subject to the requirements below, may retain possession of the  
18 Inadvertently Produced Documents as well as any notes or other  
19 work product of the receiving party reflecting the contents of such  
20 materials pending resolution by the Court of the motion below, but  
21 shall segregate and shall not copy, use, or distribute them pending  
22 resolution of the motion.

23 (c) Nothing in this Order overrides an attorney’s ethical responsibilities  
24 with regard to materials that an attorney knows or reasonably  
25 should know were misdirected or inadvertently produced.

26 **B. POST DISCOVERY PHASE**

27 1. If any party or attorney wishes to file, or use as an exhibit or as  
28 testimonial evidence at a hearing or trial, any **CONFIDENTIAL** or

1           **HIGHLY CONFIDENTIAL** material, such party must provide  
2 reasonable notice to the producing party of the intended use of such  
3 information. The parties shall then attempt to resolve the matter of  
4 continued confidentiality by either (a) removing the **CONFIDENTIAL**  
5 or **HIGHLY CONFIDENTIAL** marking, (b) creating a mutually  
6 acceptable redacted version that suffices for purposes of the case, or (c)  
7 conferring about methods to avoid or limit public disclosure of such  
8 information during testimony. If an amicable resolution proves  
9 unsuccessful, the parties may present the issue to the Court for resolution  
10 in accordance with Paragraph II.B.4. The proponent of continued  
11 confidentiality will have the burden of persuasion that the document or  
12 material should be withheld from the public record in accordance with  
13 local rules, procedures, and governing jurisprudence.

14       2. Survival of Protective Order: Throughout and after the conclusion of this  
15 litigation, including any appeals, the restrictions on communication and  
16 disclosure provided for herein shall continue to be binding upon the  
17 parties and all other persons to whom **CONFIDENTIAL** and **HIGHLY**  
18 **CONFIDENTIAL** material has been communicated or disclosed  
19 pursuant to the provisions of this Order or any other order of the Court.

20       3. Return or Destruction of **CONFIDENTIAL** Material Upon Termination  
21 of Litigation: Within sixty (60) days after the final termination of this  
22 action, each party, upon request of the other party, shall either return to  
23 the producing party, or destroy, all **CONFIDENTIAL** and **HIGHLY**  
24 **CONFIDENTIAL** material designated by any other party (including any  
25 such material disclosed to third persons), except for any attorneys' work-  
26 product for the party returning the material, and shall provide  
27 confirmation in writing to opposing counsel if such materials are  
28 destroyed.

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4. Modification of this Order: Nothing in this Order shall prevent any other party from seeking amendments broadening or restricting the rights of access to or the use of **CONFIDENTIAL** and/or **HIGHLY CONFIDENTIAL** material or otherwise modifying this Order; and this Order may be amended without leave of the Court by the agreement of the undersigned attorneys for the parties in the form of a Stipulation that shall be filed in this case.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: May 12, 2020

Respectfully submitted,

KIESEL LAW LLP

By:           /s/ Paul R. Kiesel            
Paul R. Kiesel  
Melanie Palmer

SALIM-BEASLEY, LLC  
Robert L. Salim  
Lisa Causey-Streete

Attorneys for Plaintiff

DATED: May 12, 2020

KING & SPALDING LLP

By:           /s/ William E. Steimle            
Donald F. Zimmer  
William E. Steimle

Attorneys for Defendants

**FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

DATED: MAY 12, 2020

          Rozella A. Oliver            
*Honorable Rozella A. Oliver*  
*United States Magistrate Judge*

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**EXHIBIT A**

**ACKNOWLEDGEMENT AND RECEIPT OF ORDER FOR PROTECTION OF  
CONFIDENTIAL INFORMATION**

I have read and understand the Protective Order entered in *Westgate v. Coloplast Corp. et al.*, No. 2:18-cv-03431 (C.D. Cal.) and I agree to be bound by its terms.

I hereby agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcement of this Protective Order.

**Name (print):** \_\_\_\_\_

**By (sign):** \_\_\_\_\_

**Date:** \_\_\_\_\_

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

\_\_\_\_\_  
Attorneys for Plaintiff

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

\_\_\_\_\_  
Attorneys for Defendant