

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 2 Including Professional Corporations
 BRUCE G. CHAPMAN, Cal. Bar No. 164258
 3 bchapman@sheppardmullin.com
 SCOTT R MILLER, Cal. Bar No. 112656
 4 smiller@sheppardmullin.com
 333 South Hope Street, 43rd Floor
 5 Los Angeles, California 90071-1422
 Telephone: 213.620.1780
 6 Facsimile: 213.620.1398

NOTE: CHANGES MADE BY THE COURT

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 8 Including Professional Corporations
 CRISTINA M. SALVATO, Cal. Bar No. 295898
 9 csalvato@sheppardmullin.com
 1901 Avenue of the Stars, 16th Floor
 10 Los Angeles, California 90067
 Telephone: 310.228.3700
 11 Facsimile: 310.228.3701

12 Attorneys for Plaintiff
 MILLENNIUM BIOMEDICAL, INC.

14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

17 MILLENNIUM BIOMEDICAL, INC.,
 18 Plaintiff,
 19 v.
 20 Z OPTICS, INC., a Delaware
 corporation, successor-in-interest to Z
 21 OPTICS LLC, a Tennessee limited
 liability company,
 22 Defendant.

Case No. 19-cv-05311-SVW-JPRx
DISCOVERY MATTER
**STIPULATED PROTECTIVE
 ORDER**

[Complaint Filed: June 18, 2019]
 [FAC Filed: July 5, 2019]

24
 25 Plaintiff Millennium Biomedical, Inc. (“MBI”) and Defendant Z Optics, Inc.
 26 (“ZOI”) hereby stipulate to the following protective order governing the disclosure
 27 and use of confidential material (“Protective Order” or “Order”).
 28

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 **1.1. Purpose and Limits.** Discovery in this action is likely to involve at
3 least some confidential, proprietary, or private information that the parties believe
4 deserves special protection from public disclosure and from use for any purpose
5 other than this litigation. Thus, the Court enters this Protective Order. This Order
6 does not confer blanket protections on all disclosures or responses to discovery, and
7 the protection it gives from public disclosure and use extends only to the specific
8 material entitled to confidential treatment under applicable legal principles. This
9 Order does not automatically authorize the filing under seal of material designated
10 under this Order. Instead, the parties must comply with L.R. 79-5 if they seek to file
11 anything under seal. This Order does not govern the use at trial of material
12 designated under this Order.

13 **1.2. Good Cause Statement.** This action is likely to involve trade secrets
14 and/or other valuable research, development, commercial, financial, technical and/or
15 proprietary information for which the parties believe special protection from public
16 disclosure and from use for any purpose other than prosecution of this action is
17 warranted. Such confidential and proprietary materials and information may
18 include, among other things, confidential business or financial information,
19 information regarding confidential business practices, or other confidential research,
20 development, or commercial information (including information implicating privacy
21 rights of third parties), information otherwise generally unavailable to the public, or
22 which may be privileged or otherwise protected from disclosure under state or
23 federal statutes, court rules, case decisions, or common law. Accordingly, to
24 expedite the flow of information, to facilitate the prompt resolution of disputes over
25 confidentiality of discovery materials, to adequately protect information the parties
26 believe they are entitled to keep confidential, to ensure that the parties are permitted
27 reasonable necessary uses of such material in preparation for trial, to address their
28 handling at the end of the litigation, and serve the ends of justice, a protective order

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

6 **2. DEFINITIONS**

7 The following definitions apply to this Order:

8 **2.1. “CONFIDENTIAL” Material:** information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under
10 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
11 Statement, and which is produced or revealed pursuant to discovery in this action.

12 **2.2. “HIGHLY CONFIDENTIAL -- ATTORNEY EYES ONLY”**
13 **Material:** extremely sensitive “CONFIDENTIAL” Material, the disclosure of
14 which to another party or non-party would create a substantial risk of serious harm
15 that could not be avoided by less restrictive means.

16 **3. DESIGNATING PROTECTED MATERIAL**

17 **3.1. Over-Designation Prohibited.** Any party or non-party who designates
18 information or items for protection under this Order as “CONFIDENTIAL,” or
19 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” (a “designator”) must
20 only designate specific material that qualifies under the appropriate standards. To
21 the extent practicable, only those parts of documents, items, or oral or written
22 communications that require protection shall be designated. Designations with a
23 higher confidentiality level when a lower level would suffice are prohibited. Mass,
24 indiscriminate, or routinized designations are prohibited. Designation under this
25 Order is allowed only if the designation is necessary to protect material that, if
26 disclosed to persons not authorized to view it, would cause competitive or other
27 recognized harm. Material may not be designated if it has been made public, or if
28 designation is otherwise unnecessary to protect a secrecy interest. If a designator

1 learns that information or items that it designated for protection do not qualify for
2 protection at all or do not qualify for the level of protection initially asserted, that
3 designator must promptly notify all parties that it is withdrawing the mistaken
4 designation.

5 **3.2. Manner and Timing of Designations.** Designation under this Order
6 requires the designator to affix the applicable legend (“CONFIDENTIAL,” or
7 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that
8 contains protected material. For testimony given in deposition or other proceeding,
9 the designator shall specify all protected testimony and the level of protection being
10 asserted. It may make that designation during the deposition or proceeding, or may
11 invoke, on the record or by written notice to all parties on or before the next
12 business day, a right to have up to 14 days from receipt of the transcript of the
13 deposition or proceeding to make its designation.

14 **3.2.1.** A party or non-party that makes original documents or materials
15 available for inspection need not designate them for protection until after the
16 inspecting party has identified which material it would like copied and
17 produced. During the inspection and before the designation, all material shall
18 be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.
19 After the inspecting party has identified the documents it wants copied and
20 produced, the producing party must designate the documents, or portions
21 thereof, that qualify for protection under this Order.

22 **3.2.2.** Parties shall give advance notice if they expect a deposition or
23 other proceeding to include designated material so that the other parties can
24 ensure that only authorized individuals are present at those proceedings when
25 such material is disclosed or used. The use of a document as an exhibit at a
26 deposition shall not in any way affect its designation. Transcripts containing
27 designated material shall have a legend on the title page noting the presence
28 of designated material, and the title page shall be followed by a list of all

1 pages (including line numbers as appropriate) that have been designated, and
2 the level of protection being asserted. The designator shall inform the court
3 reporter of these requirements. Any transcript that is prepared before the
4 expiration of the 14-day period for designation shall be treated during that
5 period as if it had been designated HIGHLY CONFIDENTIAL –
6 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of
7 the 14-day period, the transcript shall be treated only as actually designated

8 **3.3. Inadvertent Failures to Designate.** An inadvertent failure to
9 designate does not, standing alone, waive protection under this Order. Upon timely
10 assertion or correction of a designation, all recipients must make reasonable efforts
11 to ensure that the material is treated according to this Order

12 **4. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 All challenges to confidentiality designations shall proceed under L.R. 37-1
14 through L.R. 37-4.

15 **5. ACCESS TO DESIGNATED MATERIAL**

16 **5.1. Basic Principles.** A receiving party may use designated material only
17 for this litigation. Designated material may be disclosed only to the categories of
18 persons and under the conditions described in this Order.

19 **5.2. Disclosure of CONFIDENTIAL Material Without Further**
20 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
21 designator, a receiving party may disclose any material designated
22 CONFIDENTIAL only to:

23 **5.2.1.** The receiving party's outside counsel of record in this action and
24 employees of outside counsel of record to whom disclosure is reasonably
25 necessary;

26 **5.2.2.** The officers, directors, and employees of the receiving party to
27 whom disclosure is reasonably necessary, and who have signed the
28 Agreement to Be Bound (Exhibit A);

1 **5.2.3.** Experts retained by the receiving party’s outside counsel of
2 record to whom disclosure is reasonably necessary, and who have signed the
3 Agreement to Be Bound (Exhibit A);

4 **5.2.4.** The Court and its personnel;

5 **5.2.5.** Outside court reporters and their staff, professional jury or trial
6 consultants, and professional vendors to whom disclosure is reasonably
7 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

8 **5.2.6.** During their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the Agreement to Be
10 Bound (Exhibit A); and

11 **5.2.7.** The author or recipient of a document containing the material, or
12 a custodian or other person who otherwise possessed or knew the information.

13 **5.3. Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
14 **ONLY Material Without Further Approval.** Unless permitted in writing by the
15 designator, a receiving party may disclose material designated HIGHLY
16 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

17 **5.3.1.** The receiving party’s outside counsel of record in this action and
18 employees of outside counsel of record to whom it is reasonably necessary to
19 disclose the information;

20 **5.3.2.** The Court and its personnel;

21 **5.3.3.** Outside court reporters and their staff, professional jury or trial
22 consultants, and professional vendors to whom disclosure is reasonably
23 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

24 **5.3.4.** The author or recipient of a document containing the material, or
25 a custodian or other person who otherwise possessed or knew the information.

26 **5.3.5.** Experts retained by the receiving party’s outside counsel of
27 record to whom disclosure is reasonably necessary, and who have signed the
28 Agreement to Be Bound (Exhibit A)

1 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 **6.1. Subpoenas and Court Orders.** This Order in no way excuses non-
4 compliance with a lawful subpoena or court order. The purpose of the duties
5 described in this section is to alert the interested parties to the existence of this
6 Order and to give the designator an opportunity to protect its confidentiality interests
7 in the court where the subpoena or order issued.

8 **6.2. Notification Requirement.** If a party is served with a subpoena or a
9 court order issued in other litigation that compels disclosure of any information or
10 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –
11 ATTORNEY EYES ONLY, that party must:

12 **6.2.1.** Notify the designator in writing within five (5) business days of
13 service of a subpoena or court order. Such notification shall include a copy of
14 the subpoena or court order unless prohibited by law;

15 **6.2.2.** Promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by
17 the subpoena or order is subject to this Order. Such notification shall include
18 a copy of this Order; and

19 **6.2.3.** Cooperate, at designator's expense, with all reasonable
20 procedures sought by the designator whose material may be affected.

21 **6.3. Wait For Resolution of Protective Order.** If the designator timely
22 seeks a protective order, the party served with the subpoena or court order shall not
23 produce any information designated in this action as CONFIDENTIAL, HIGHLY
24 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the court
25 where the subpoena or order issued, unless the party has obtained the designator's
26 permission. The designator shall bear the burden and expense of seeking protection
27 of its confidential material in that court.
28

1 **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 designated material to any person or in any circumstance not authorized under this
4 Order, it must immediately (1) notify in writing the designator of the unauthorized
5 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
6 designated material, (3) inform the person or persons to whom unauthorized
7 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
8 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

9 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a producing party gives notice that certain inadvertently produced
12 material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

14 **9. FILING UNDER SEAL**

15 Without written permission from the designator or a Court order, a party may
16 not file in the public record in this action any designated material. A party seeking
17 to file under seal any designated material must comply with L.R. 79-5. Filings may
18 be made under seal only pursuant to a court order authorizing the sealing of the
19 specific material at issue. Because a party other than the designator will often be
20 seeking to file designated material, cooperation between the parties in preparing,
21 and in reducing the number and extent of, requests for under seal filing is essential.
22 If a *receiving party's* request to file designated material under seal pursuant to L.R.
23 79-5 is denied by the Court, then the receiving party *may file the material in the*
24 *public record* unless (1) *the designator* seeks reconsideration within four (4)
25 business days of the denial, or (2) as otherwise instructed by the Court.

26 **10. FINAL DISPOSITION**

27 Within 90 days after the final disposition of this action, each party shall return
28 all designated material to the designator or destroy such material, including all

EXHIBIT A
AGREEMENT TO BE BOUND

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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
Protective Order that was issued by the United States District Court for the Central
District of California on _____ [date] in the case of *Millennium Biomedical, Inc.*
v. Z Optics, Inc. Case No. 19-cv-05311-SVW-JPRx. I agree to comply with and to
be bound by all the terms of this Protective Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
for contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Protective Order to any person or entity
except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing this 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 Order.

Date: _____
City and State where sworn and signed: _____

Printed name: _____

Signature: _____