

1 SEYFARTH SHAW LLP
 Timothy L. Hix (SBN 184372)
 2 thix@seyfarth.com
 Ashley N. Arnett (SBN 305162)
 3 aarnett@seyfarth.com
 601 South Figueroa Street, Suite 3300
 4 Los Angeles, California 90017-5793
 Telephone: (213) 270-9600
 5 Facsimile: (213) 270-9601

6 Attorneys for Defendant
 ALCON VISION, LLC
 7 (f/k/a ALCON LABORATORIES, INC.)

8
 9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

12 JILLIAN CLARKE, an individual,
 13 Plaintiff,
 14 v.
 15 ALCON VISION, LLC, et al.,
 16 Defendant.

Case No. 2:19-cv-07644 ODW (ASx)
 Hon. Otis D. Wright, II
PROTECTIVE ORDER
 Date Action Filed: August 5,
 2019 Trial Date: None Set

17
 18
 19 **1. A. PURPOSES AND LIMITATIONS**

20 Discovery in this action is likely to involve production of confidential, proprietary,
 21 or private information for which special protection from public disclosure and from use
 22 for any purpose other than prosecuting this litigation may be warranted. Accordingly,
 23 the parties hereby stipulate to and petition the Court to enter the following Stipulated
 24 Protective Order. The parties acknowledge that this Order does not confer blanket
 25 protections on all disclosures or responses to discovery and that the protection it affords
 26 from public disclosure and use extends only to the limited information or items that are
 27 entitled to confidential treatment under the applicable legal principles. The parties
 28 further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective

1 Order does not entitle them to file confidential information under seal; Civil Local Rule
2 79-5 sets forth the procedures that must be followed and the standards that will be applied
3 when a party seeks permission from the court to file material under seal.
4

5 **B. GOOD CAUSE STATEMENT**

6 This action involves employee compensation information and other
7 valuable commercial, financial, technical, and/or proprietary information for which
8 special protection from public disclosure and from use for any purpose other than
9 prosecution of this action is warranted. Such confidential and proprietary materials
10 and information consist of, among other things, confidential business or financial
11 information, information regarding confidential business practices, or other confidential
12 research, development, or commercial information (including information implicating
13 privacy rights of third parties), information otherwise generally unavailable to the public,
14 or which may be privileged or otherwise protected from disclosure under state or
15 federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the
16 flow of information, to facilitate the prompt resolution of disputes over confidentiality
17 of discovery materials, to adequately protect information the parties are entitled to keep
18 confidential, to ensure that the parties are permitted reasonable necessary uses of such
19 material in preparation for and in the conduct of trial, to address their handling at the end
20 of the litigation, and serve the ends of justice, a protective order for such information is
21 justified in this matter. It is the intent of the parties that information will not
22 bedesignated as confidential for tactical reasons and that nothing be so designated
23 without a good faith belief that it has been maintained in a confidential, non-public
24 manner, and there is good cause why it should not be part of the public record of this
25 case.

26 ///

27 ///

28 ///

1 **2. DEFINITIONS**

2 2.1. Action: Jillian Clarke v. Alcon Vision, LLC, United States District Court for
3 the Central District of California, Case No. 2:19-cv-07644-ODW (ASx)

4 2.2. Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.3. “CONFIDENTIAL” Information or Items: information (regardless of how it is
7 generated, stored or maintained) or tangible things that qualify for protection under
8 [Federal Rule of Civil Procedure 26\(c\)](#), and as specified above in the Good Cause
9 Statement.

10 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
11 support staff).

12 2.5. Designating Party: a Party or Non-Party that designates information or items
13 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

18 2.7. Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
20 expert witness or as a consultant in this Action.

21 2.8. House Counsel: attorneys who are employees of a party to this Action. House
22 Counsel does not include Outside Counsel of Record or any other outside counsel.

23 2.9. Non-Party: any natural person, partnership, corporation, association, or
24 other legal entity not named as a Party to this action.

25 2.10. Outside Counsel of Record: attorneys who are not employees of a party to
26 this Action but are retained to represent or advise a party to this Action and have
27 appeared in this Action on behalf of that party or are affiliated with a law firm which has
28 appeared on behalf of that party, and includes support staff.

1 2.11. Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this Action.

6 2.13. Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
9 their employees and subcontractors.

10 2.14. Protected Material: any Disclosure or Discovery Material that is designated
11 as “CONFIDENTIAL.”

12 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 15 **3. SCOPE**

16 The protections conferred by this Stipulation and Order cover not only Protected
17 Material (as defined above), but also (1) any information copied or extracted from
18 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
19 Material; and (3) any testimony, conversations, or presentations by Parties or their
20 Counsel that might reveal Protected Material. Any use of Protected Material at trial shall
21 be governed by the orders of the trial judge. This Order does not govern the use of
22 Protected Material at trial.

23 24 **4. DURATION**

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
27 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
28 of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and

1 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
2 remands, trials, or reviews of this Action, including the time limits for filing any motions
3 or applications for extension of time pursuant to applicable law.
4

5 **5. DESIGNATED PROTECTED MATERIAL**

6 5.1. Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under this
8 Order must take care to limit any such designation to specific material that qualifies
9 under the appropriate standards. The Designating Party must designate for protection only
10 those parts of material, documents, items, or oral or written communications that qualify
11 so that other portions of the material, documents, items, or communications for which
12 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

20 5.2. Manner and Timing of Designations. Except as otherwise provided in this
21 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
22 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
23 must be clearly so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

- 25 (a) for information in documentary form (e.g., paper or electronic documents,
26 But excluding transcripts of depositions or other pretrial or trial
27 proceedings), that the Producing Party affix at a minimum, the legend
28 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each

1 page that contains protected material. If only a portion or portions of the
2 material on a page qualifies for protection, the Producing Party also must
3 clearly identify the protected portion(s) (e.g., by making appropriate markings in
4 the margins).

5 A Party or Non-Party that makes original documents available for inspection need
6 not designate them for protection until after the inspecting Party has indicated which
7 documents it would like copied and produced. During the inspection and before the
8 designation, all of the material made available for inspection shall be deemed
9 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
10 copied and produced, the Producing Party must determine which documents, or portions
11 thereof, qualify for protection under this Order. Then, before producing the specified
12 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
13 that contains Protected Material. If only a portion or portions of the material on a page
14 qualifies for protection, the Producing Party also must clearly identify the protected
15 portion(s) (e.g., by making appropriate markings in the margins).

16 (b) for testimony given in depositions that the Designating Party identify the
17 Disclosure or Discovery Material on the record, before the close of the deposition all
18 protected testimony.

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

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
25 designate qualified information or items does not, standing alone, waive the Designating
26 Party’s right to secure protection under this Order for such material. Upon timely
27 correction of a designation, the Receiving Party must make reasonable efforts to assure
28 that the material is treated in accordance with the provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time that is consistent with the Court’s Scheduling Order.

4 6.2. Meet and Confer. The Challenging Party shall initiate the informal dispute
5 resolution process set forth in the Court's Procedures and Schedules. see
6 <http://www.cacd.uscourts.gov/honorable-alka-sagar>

7 6.3. The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
9 harass or impose unnecessary expenses and burdens on other parties) may expose the
10 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
11 the confidentiality designation, all parties shall continue to afford the material in question
12 the level of protection to which it is entitled under the Producing Party’s designation until
13 the Court rules on the challenge.

14
15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1. Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this Action
18 only for prosecuting, defending, or attempting to settle this Action. Such Protected
19 Material may be disclosed only to the categories of persons and under the conditions
20 described in this Order. When the Action has been terminated, a Receiving Party must
21 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

25 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
26 ordered by the court or permitted in writing by the Designating Party, a Receiving
27 Party may disclose any information or item designated “CONFIDENTIAL” only to:

28 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well

1 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
2 disclose the information for this Action;

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

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

8 (d) the court and its personnel;

9 (e) court reporters and their staff;

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

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

15 (h) during their depositions, witnesses, and attorneys for witnesses, in the
16 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
17 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not
18 be permitted to keep any confidential information unless they sign the “Acknowledgment
19 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
20 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
21 depositions that reveal Protected Material may be separately bound by the court reporter
22 and may not be disclosed to anyone except as permitted under this Stipulated Protective
23 Order; and

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

26 ///

27 ///

28 ///

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

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

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

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

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

14 If the Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action as
16 “CONFIDENTIAL” before a determination by the court from which the subpoena or
17 order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that court of
19 its confidential material and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
21 from another court.
22

23 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
24 **IN THIS LITIGATION**

25 (a) The terms of this Order are applicable to information produced by a Non-Party
26 in this Action and designated as “CONFIDENTIAL.” Such information produced by
27 Non-Parties in connection with this litigation is protected by the remedies and relief
28 provided by this Order. Nothing in these provisions should be construed as prohibiting a

1 Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to produce a
3 Non-Party's confidential information in its possession, and the Party is subject to an
4 agreement with the Non-Party not to produce the Non-Party's confidential information,
5 then the Party shall:

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

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

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

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

22
23 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
27 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
28 all unauthorized copies of the Protected Material, (c) inform the person or persons to

1 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
2 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
3 that is attached hereto as Exhibit A.

4
5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of
9 the Receiving Parties are those set forth in [Federal Rule of Civil Procedure 26\(b\)\(5\)\(B\)](#).
10 This provision is not intended to modify whatever procedure may be established in an e-
11 discovery order that provides for production without prior privilege review. Pursuant to
12 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
13 effect of disclosure of a communication or information covered by the attorney-client
14 privilege or work product protection, the parties may incorporate their agreement in the
15 stipulated protective order submitted to the court.

16
17 **12. MISCELLANEOUS**

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

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

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

1 court, then the Receiving Party may file the information in the public record unless
2 otherwise instructed by the court.

3
4 **13. FINAL DISPOSITION**

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

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

ATTESTATION REGARDING SIGNATURES

I, Ashley N. Arnett, attest, pursuant to L.R. 5-4.3.4(a)(2)(i), that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: September 10, 2020

SEYFARTH SHAW LLP

By: /s/ Ashley N. Arnett

Timothy L. Hix
Ashley N. Arnett
Attorneys for Defendant
ALCON VISION, LLC (f/k/a ALCON
LABORATORIES, INC.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
Jillian Clarke v. Alcon Vision, LLC, Case No. 2:19-cv-07644-ODW (ASx). 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 the purpose of 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: _____