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15 Attorneys for Defendant
 16 ABBOTT LABORATORIES, INC.,
 17 d/b/a Abbott Nutrition

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA
 20 EASTERN DISTRICT

21 MICHAEL J. OTTO, individually, and on
 22 behalf of other members of the general
 public similarly situated,

23 Plaintiff,

24 vs.

25 ABBOTT LABORATORIES, INC., a
 26 Delaware Corporation, d/b/a Abbott
 Nutrition,

27 Defendant.
 28

Case No.: 5:12-cv-01411-SVW (DTBx)

CLASS ACTION

**STIPULATION AND ~~[PROPOSED]~~
 PROTECTIVE ORDER**

District Judge: Hon. Stephen V. Wilson
 Magistrate Judge: Hon. David T. Bristow

Action Filed: August 22, 2012
 Trial Date: None Set

Case No. 5:12-cv-01411-SVW (DTBx)

STIPULATION AND [PROPOSED] PROTECTIVE ORDER

1
2 **STIPULATED PROTECTIVE ORDER**

3 WHEREAS it is anticipated that among the documents which may be produced in
4 connection with the potential litigation of this matter will be information that is protected
5 from disclosure by the privacy rights that attach to trade secrets, and/or information
6 otherwise properly regarded by one or more of the parties as private, sensitive,
7 proprietary, financial, and/or confidential;

8 IT IS THEREFORE STIPULATED, AGREED, AND JOINTLY REQUESTED by
9 Plaintiff Michael J. Otto (“Plaintiff”) and Defendant Abbott Laboratories, Inc. d/b/a
10 Abbott Nutrition (“Defendant”) (collectively, the “Parties”), by and through their
11 respective counsel, that a protective order should be entered according to the following
12 terms and provisions:

13 **DEFINITIONS**

14 1. “Matter” means *Michael J. Otto v. Abbott Laboratories, Inc. d/b/a Abbott*
15 *Nutrition*, currently pending in the Central District of California, Case No. 5:12-cv-
16 01411-SVW (DTBx).

17 2. “Confidential Information” means information (i) which is produced to a
18 party to the Matter pursuant to any discovery method allowed under statute, rule, or case
19 law; and (ii) which is designated as Confidential pursuant to Paragraph 6 below.
20 Confidential Information shall not include any information (i) which is in the possession
21 of the Receiving Party (as defined below), provided that the source of the information
22 was not bound by a contractual, legal or fiduciary obligation of confidentiality, or which
23 is publicly known or available prior to its production through discovery in the Matter; or
24 (ii) which the Receiving Party obtains from a source other than the Producing Party (as
25 defined below), provided that the source of the information was not bound by a
26 contractual, legal or fiduciary obligation of confidentiality, or otherwise becomes
27 publicly available, without any violation of this Protective Order by the Receiving Party.
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1 3. “Qualified Person” means any individual who falls into one of the following
2 categories:

3 (a) Attorney of record for a party in the Matter or member, associate,
4 paralegal or employee of the firm where such attorney practices, or an employee of
5 an independent photocopying or microfilming service utilized by such attorney in
6 the Matter;

7 (b) In-house counsel or designated legal personnel for all parties;

8 (c) Any other personnel working in the employment of the Parties or their
9 attorneys of record in the Matter, to the extent disclosure is reasonably necessary in
10 connection with the litigation or settlement of this Matter;

11 (d) Up to three (3) designees from any non-party, including insurers, that
12 may have defense and/or indemnity obligations for claims against the Parties, who
13 shall have signed an undertaking in the form attached as Exhibit 1 before
14 reviewing any documents pursuant to this order;

15 (e) Vendors to whom it is necessary to disclose Protected Material for the
16 purpose of assisting Outside Counsel of record in this action;

17 (f) Any person indicated on the face of the material as having written or
18 received such material during the course of his or her employment or consultancy;

19 (g) Independent testifying or non-testifying experts or trial consultants
20 (*i.e.*, persons with expertise who are not currently employed or performing non-
21 litigation consulting with any competitors of the Parties, and who have no intention
22 or expectation of being employed or performing non-litigation consulting with any
23 competitors of the Parties) retained by such counsel or by the Parties solely as a an
24 independent expert in connection with this proceeding, provided, however, that no
25 information, documents, or things designated as Confidential shall be disclosed to
26 any testifying or non-testifying experts unless and until such persons have first
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1 been supplied with and have read a copy of this Order and have executed an
2 Undertaking in the form annexed hereto;

3 (h) Stenograph reporter involved in any deposition, hearing, trial or other
4 proceeding in this Matter;

5 (i) Officers of this Court and their supporting personnel or officers of any
6 appellate court to which any appeal may be taken or in which review is sought,
7 pursuant to Paragraph 14 below; or

8 (j) Any mediator or settlement officer agreed upon by the Parties.

9 **SCOPE**

10 4. The protections conferred by this Order cover not only discovery materials
11 that are designated as “Confidential,” but also any information copied or extracted from
12 materials designated as “Confidential,” as well as all copies, excerpts, summaries, or
13 compilations thereof, including without limitation testimony, conversations, or
14 presentations and submissions by parties or Counsel to the Court, as well as other settings
15 that contain or could reveal Protected Material.

16 **DURATION**

17 5. All obligations and duties arising under this Protective Order shall survive
18 the termination of this action unless the party designating the material as “Confidential”
19 (the “Designating Party”) agrees otherwise in writing or the Court otherwise orders.

20 **AGREEMENT**

21 6. A party (the “Designating Party”) may designate as “Confidential” those
22 materials, whether in written, oral, electronic, graphic, audiovisual or any other form,
23 which that party in good faith believes contain confidential information that is used by it
24 in, or pertaining to, its business, which information is not generally known and which that
25 party would normally not reveal to third parties or, if disclosed, would require such third
26 parties to maintain in confidence.

1 7. Any party who produces Confidential Information (the “Producing Party”)
2 may designate materials produced or exchanged during discovery as “Confidential” by
3 legibly marking the legend “Confidential” on each page of such materials. Any
4 Producing Party or any other party may so designate any materials in the reasonable
5 exercise of such party’s discretion; provided, however, by agreeing to this Protective
6 Order, no party waives the right to challenge any other party’s designation of any
7 document as “Confidential.”

8 8. A party who contests any other party’s designation of any document as
9 “Confidential” (the “Challenging Party”) shall attempt to resolve the dispute with the
10 party making the designation, and if an agreement cannot be reached, may challenge the
11 designation with the Judge presiding over this Matter as provided herein.

12 9. Confidential Information shall be used by a Party who receives the
13 information (the “Receiving Party”) solely for the purposes of discovery, pleadings,
14 motions, briefs, potential settlement, and preparation for the trial or hearing in this Matter
15 and on appeal, if any, and for no other purpose.

16 10. A Receiving Party may disclose Confidential Information only to a
17 Qualified Person, or to a qualified witness at a deposition, unless otherwise agreed to in
18 writing between the party or non-party that produced the Confidential Information and
19 the party wishing to disclose the Confidential Information. If any Party intends to
20 disclose any Confidential Information to a witness at a deposition, and such witness
21 would not otherwise be entitled to access to such Confidential Information under the
22 terms of this Order, counsel for the Disclosing Party shall provide written notice to the
23 Producing Party and/or the Designating Party of the intention to so disclose the source of
24 or the specific document containing the Confidential Information at least two business
25 days prior to such intended disclosure.

26 11. No Receiving Party shall provide or disclose Confidential Information to
27 any person, including a Qualified Person, at any time or in any form or manner unless, in
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1 the good faith judgment of the disclosing person, that person has a present need to hear,
2 know, or review such information in conjunction with the proceedings in this Matter or
3 for the purpose of assisting any attorney of record in the Matter.

4 12. No Receiving Party shall disclose Confidential Information to a person other
5 than a Qualified Person except upon the prior express written consent of the party who
6 has designated the item as Confidential Information.

7 13. Without written permission from the Designating Party or a court order
8 secured after appropriate notice to all interested persons, a Receiving Party may not file
9 in the public record in this action any Confidential Information. All transcripts,
10 depositions, exhibits, and other documents and things filed or received with the Court
11 containing Confidential Information, or any pleading purporting to reproduce or
12 paraphrase such information, shall be filed in compliance with Civil Local Rule 79-5.1, in
13 sealed envelopes or other appropriate sealed containers on which shall be endorsed the
14 caption of the Matter, a description of the contents of such sealed envelope or container,
15 and the legend "Confidential." Any party submitting any Confidential Information to the
16 Court shall request that the Court maintain such Confidential Information under seal;
17 provided, however, that the Designating Party shall bear the burden of defending such
18 designation if challenged.

19 14. Any person making, or causing to be made, copies of any Confidential
20 Information shall make certain that each copy bears the legend "Confidential" on each
21 page. This provision is not intended to modify the manner by which the Court, its officers,
22 and personnel manage records relating to this proceeding.

23 15. Each party shall, at the election of the Receiving Party, either destroy or
24 return all Confidential Information, including any copies thereof, to the Producing Party,
25 and shall confirm in writing that all the Confidential Information, including copies
26 thereof in the Receiving Party's possession, custody or control, has been returned or
27 destroyed within thirty (30) days after the first of any of the following: the case being
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1 resolved by final judgment, appeal, settlement, or some combination thereof, or
2 otherwise.

3 16. Neither of the Parties, no Qualified Person, nor any other entity, other than
4 the Designating Party, shall retain copies of the Confidential Information, including any
5 copies thereof, or referenced thereto, after the time specified in Paragraph 15 herein. Any
6 exceptions to this Paragraph shall be in writing by a duly authorized representative of the
7 Designating Party. Notwithstanding the terms of Paragraphs 12 and 13 hereof, the
8 Parties to this Matter may retain, and not return, one complete copy of the pleadings as
9 actually filed with the Court. No provision in this Paragraph is intended to modify the
10 manner by which the Court, its officers, and personnel manage records relating to this
11 proceeding.

12 17. The inadvertent or unintentional failure to designate any discovery material
13 as “Confidential” pursuant to Paragraph 6 shall not be deemed a waiver in whole or in
14 part of a Designating Party’s claim of confidentiality. Any discovery material produced
15 by a Party or non-party that should have been designated “Confidential” but is
16 inadvertently produced without such designation may subsequently be designated as
17 “Confidential.” Any party that seeks to so designate discovery material already produced
18 must, within thirty days after discovering the inadvertent production, provide, at its own
19 expense, substitute discovery material bearing the “Confidential” designation. Upon
20 receipt of the substituted discovery material, each Receiving Party must return or destroy
21 all copies of the undesignated Discovery Material.

22 18. The inadvertent or unintentional disclosure by the Producing Party of
23 Confidential Information, regardless of whether the information was so designated at the
24 time of disclosure, shall not be deemed a waiver in whole or in part of a Designating
25 Party’s claim of confidentiality, either as to the specific information disclosed or as to
26 any other information relating thereto on the same or related subject matter. The
27 Producing Party may recall any such inadvertently or unintentionally disclosed
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1 Confidential Information by giving written notice to all parties, as soon as reasonably
2 possible after the Producing Party becomes aware of the inadvertent or unintentional
3 disclosures. Upon receipt of the notice that the Confidential Information was
4 inadvertently disclosed and is being recalled by the Producing Party, the Receiving Party
5 must return or destroy (at the Receiving party's election) all copies of the inadvertently
6 disclosed material.

7 19. The inadvertent or unintentional disclosure by the Producing Party of
8 documents or information subject to the attorney-client privilege, work product immunity
9 or any other applicable privilege shall not constitute a waiver of, nor a prejudice to, any
10 claim that such or related material is Protected Information, privileged, or protected by
11 the work product immunity or any other applicable privilege, provided that the Producing
12 Party notifies the Receiving Party in writing within ten business days after discovery of
13 such inadvertent production or disclosure. Such inadvertently produced or disclosed
14 documents or information, including all copies thereof, shall be returned to the Producing
15 Party or destroyed (at the Receiving Party's election) immediately upon request, and the
16 Receiving Party shall immediately destroy any notes or other writing or recordings that
17 summarize, reflect, or discuss the content of such privileged or Protected Information. No
18 use shall be made of such documents or information during deposition or at trial, nor
19 shall such documents or information be provided to anyone who did not already have
20 access to them prior to the request by the Producing Party that they be returned. In the
21 case of an inadvertently produced or disclosed document, the Producing Party shall
22 include the Discovery material in a privilege log identifying such inadvertently produced
23 or disclosed document. The Receiving Party may move the Court for an Order
24 compelling production of any inadvertently produced or disclosed document or
25 information, but the motion shall not assert as a ground for production the fact of the
26 inadvertent production or disclosure, nor shall the motion disclose or otherwise use the
27 content of the inadvertently produced document or information (beyond any information
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1 appearing on the above-referenced privilege log) in any way in connection with any such
2 motion.

3 20. Any party or non-party may challenge a designation of confidentiality at any
4 time. Unless a prompt challenge to a Designating Party's confidentiality designation is
5 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or
6 a significant disruption or delay of the litigation, a party does not waive its right to
7 challenge a confidentiality designation by electing not to mount a challenge promptly
8 after the original designation is disclosed. The Challenging Party shall initiate the dispute
9 resolution process by providing written notice of each designation it is challenging and
10 describing the basis for each challenge. Additionally, the written notice shall request that
11 the Parties confer in good faith to attempt to eliminate the need for motion practice, or at
12 least, eliminate as many disputes as possible. To avoid ambiguity as to whether a
13 challenge has been made, the written notice must recite that the challenge to
14 confidentiality is being made in accordance with this specific paragraph of the Protective
15 Order.

16 Consistent with Central District of California Local Rule, Civ. L.R. 37-1, the
17 Parties shall attempt to resolve each challenge in good faith and must begin the process
18 by conferring directly (in voice to voice dialogue; other forms of communication are not
19 sufficient) within ten days of the date of service of notice. In conferring, the Challenging
20 Party must explain the basis for its belief that the confidentiality designation was not
21 proper and must give the Designating Party an opportunity to review the designated
22 material, to reconsider the circumstances, and, if no change in designation is offered, to
23 explain the basis for the chosen designation. A Challenging Party may proceed to the
24 next stage of the challenge process only if it has engaged in this meet and confer process
25 first or establishes that the Designating Party is unwilling to participate in the meet and
26 confer (as discussed in Civ. L.R. 37-2.4).

1 If the Parties cannot resolve a challenge without court intervention, consistent with
2 Central District of California Local Rule, Civ. L.R. 37-2, the Parties shall formulate a
3 written stipulation, which, in one document, signed by both counsel, identifies all
4 disputes, and for each issue, sets forth the Parties' respective contentions and points and
5 authorities in support thereof. The Challenging Party must personally deliver, email or
6 fax to the Designating Party's counsel the Challenging Party's portion of the stipulation,
7 together with all declarations and exhibits within twenty-one days of the Parties agreeing
8 that the meet and confer process will not resolve their dispute and in accordance with
9 Civil Local Rules 7 and 79-5.1, if applicable. Within seven days of receiving the
10 Challenging Party's portion of the stipulation, the Designating Party shall personally
11 deliver, email, or fax to the Challenging Party's counsel the Designating Party's portion
12 of the stipulation, together with all declarations and exhibits. Failure by the Challenging
13 Party to personally deliver, email or fax to the Designating Party's counsel the
14 Challenging Party's portion of the stipulation within twenty-one days shall automatically
15 waive their challenge to the confidentiality designation. Consistent with Central District
16 of California Local Rule, Civ. L.R. 37-2.3, the Parties may file a supplemental
17 memorandum of law not later than fourteen days prior to the hearing date. For the
18 avoidance of doubt, this Paragraph is intended to implement, and not substantively
19 modify L.R. 37-1 and L.R. 37-2 (including the Joint Stipulation requirement).

20 Frivolous challenges, and those made for an improper purpose (e.g., to harass or
21 impose unnecessary expenses and burdens on other parties) may expose the Challenging
22 Party to sanctions. All parties shall continue to afford the material in question the level
23 of protection to which it is entitled under the Producing Party's designation until the court
24 rules on the challenge.

25 21. If a party is served with a subpoena or a court order issued in other litigation
26 that compels disclosure of any information or items designated in this action as
27 "CONFIDENTIAL," that party must:
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1 (a) Promptly notify in writing the Designating Party. Such notification
2 shall include a copy of the subpoena or court order; (b) promptly notify in writing
3 the party who caused the subpoena or order to issue in the other litigation that
4 some or all of the material covered by the subpoena or order is subject to this
5 Protective Order. Such notification shall include a copy of this Stipulated
6 Protective Order; and (c) cooperate with respect to all reasonable procedures
7 sought to be pursued by the Designating Party whose Confidential Information
8 may be affected.

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

17 22. The terms of this Order are applicable to information produced by a Non-
18 Party in this action and designated as “Confidential.” Such information produced by non-
19 parties in connection with this litigation is protected by the remedies and relief provided
20 by this Order. Nothing in these provisions should be construed as prohibiting a non-party
21 from seeking additional protections. In the event that a party is required, by a valid
22 discovery request, to produce a non-party’s confidential information in its possession,
23 and the party is subject to an agreement with the non-party not to produce the non-party’s
24 confidential information, then the Producing Party shall:

25 (a) Promptly notify in writing the Requesting Party and the non-party that
26 some or all of the information requested is subject to a confidentiality agreement
27 with a non-party;
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1 (b) Promptly provide the non-party with a copy of the Stipulated
2 Protective Order in this litigation, the relevant discovery request(s), and a
3 reasonably specific description of the information requested; and

4 (c) Make the information requested available for inspection by the non-
5 party. If the non-party fails to object or seek a protective order from this court
6 within 14 days of receiving the notice and accompanying information, the
7 Producing Party may produce the non-party's confidential information responsive
8 to the discovery request. If the non-party timely seeks a protective order, the
9 Producing Party shall not produce any information in its possession or control that
10 is subject to the confidentiality agreement with the non-party before a
11 determination by the court.¹ Absent a court order to the contrary, the non-party
12 shall bear the burden and expense of seeking protection in this court of its
13 Confidential Information.

14 23. If a Receiving Party learns that, by inadvertence or otherwise, it has
15 disclosed Confidential Information to any person or in any circumstance not authorized
16 under this Stipulated Protective Order, the Receiving Party must immediately (a) notify
17 in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
18 retrieve all unauthorized copies of the Confidential Information, (c) inform the person or
19 persons to whom unauthorized disclosures were made of all the terms of this Order, and
20 (d) request such person or persons to execute the attached Exhibit 1.

21 24. The parties agree that they shall be bound by this Stipulation upon signing
22 by counsel and shall protect any and all Confidential Information as provided herein even
23 if this Stipulation is not approved by the Court. In the event that the Court denies
24 approval of this Stipulation as submitted, any party receiving Confidential Information
25 shall within thirty days, at the election of the Receiving Party, either destroy or return all
26

27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party
28 and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Confidential Information to the Producing Party as provided in Paragraph 16 herein and
2 shall confirm in writing that the materials that have been returned or destroyed constitute
3 all the Confidential Information, including copies thereof, in that party's possession,
4 custody or control.

5 25. Any Party named, served and appearing in this action after the date this
6 Order is entered shall be bound by its terms, effective once the Order has been served
7 upon such Party, unless the Court orders otherwise on good cause shown. Any Party who
8 causes another Party to be added to this action after the entry of this Order shall serve that
9 new Party with a copy of this Order and any subsequent amendments to it at the time it
10 serves its pleading and summons.

11
12 IT IS SO STIPULATED.

13
14 Dated: September 6, 2013

BARON & BUDD, P.C.

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16 By: /s/ Mark Pifko
Mark Pifko

17
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19 Mark Pifko (SBN 228412)
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27 Attorneys for Plaintiff
28 MICHAEL J. OTTO, individually, and on
behalf of other members of the public
similarly situated

1 Dated: September 6, 2013

KIRKLAND & ELLIS LLP

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3 By: /s/ Jonathan D. Brightbill
Jonathan D. Brightbill

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16 Attorneys for Defendant
17 ABBOTT LABORATORIES, INC., a Delaware
18 Corporation, d/b/a Abbott Nutrition

19 Local Rule 5-4.3.4 Attestation

20 I attest that Defendant's counsel Jonathan D. Brightbill concurs in this filing's
21 content and has authorized the filing.

22 DATED: September 6, 2013

BARON & BUDD, P.C.

23
24 By: /s/ Mark Pifko
Mark Pifko

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ORDER

The parties having stipulated to the foregoing and good cause appearing, IT IS SO ORDERED.



Dated: September 9, 2013

Honorable David T. Bristow
United States Magistrate Judge

1 **EXHIBIT 1**

2 *Michael J. Otto v. Abbott Laboratories, Inc.*

3 **Central District of California**

4 **Case No. 5:12-cv-01411-SVW-DTB**

5 **UNDERTAKING TO ABIDE BY PROTECTIVE ORDER**

6
7 I, _____ declare that my address is
8 _____ . My
9 current employer is _____ and my occupation is _____ .

10 1. I have received a copy of the Stipulated Protective Order in the above-captioned
11 action. I have carefully read and understand the provisions of the Stipulated Protective
12 Order.

13 2. I will comply with all of the provisions of the Stipulated Protective Order. I will
14 hold in confidence, will not disclose to anyone not qualified under the Stipulated
15 Protective Order, and will use only for purposes of this action any CONFIDENTIAL
16 INFORMATION that is disclosed to me.

17 3. Promptly upon termination of this action, I will return any CONFIDENTIAL
18 materials that may come into my possession to the outside attorneys representing my
19 employer or the attorneys who furnished those documents to me.

20 4. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of
21 the Stipulated Protective Order in this action.

22 I declare under penalty of perjury that the foregoing is true and correct.

23
24 Dated: _____ Signature: _____

25 Print Name: _____