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

11 MARTHA A. MONTALVO-ARIRI,) Case No. 5:14-01421 VAP (SPx)
12 Plaintiff,) Honorable Virginia A. Philips
13 v.) Honorable Sheri Pym, Magistrate
14 ETHICON, INC.) **STIPULATED PROTECTIVE ORDER**
15 Defendants.) **[NOTE THE CHANGE MADE BY**
16) **THE COURT TO ¶12(c)]**

17 The undersigned counsel for Defendant Ethicon, Inc. and Plaintiff Martha A.
18 Montalvo-Ariri (collectively, the “Parties” and each, a “Party”) in the above captioned
19 action agree that the Parties and non-parties will be required to produce or disclose in this
20 proceeding certain information and documents that are subject to confidentiality
21 limitations on disclosure under applicable laws and regulations and applicable privacy
22 rights. Such documents, described in more detail below, include information that is a
23 trade secret or other confidential research, development, or commercial information or is
24 of a private or personal nature. Disclosure of such information without reasonable
25 restriction on the use of the information may cause harm, damage, loss, embarrassment,
26 or disadvantage to the Producing Party or nonparty.

27 Accordingly, the Parties desire entry of an order, pursuant to the Federal Rules of
28 Civil Procedure 26(c) and other applicable laws and rules, that will facilitate the prompt

1 resolution of concerns or disputes over confidentiality, that will adequately protect
2 material believed in good faith to be confidential and ensure that protection is afforded
3 only to material so entitled and that will address any inadvertent production of documents
4 or information protected from disclosure by the attorney-client privilege, work-product
5 immunity, or other applicable privilege.

6 Therefore, the Parties hereby STIPULATE, subject to the Court’s approval, and
7 the Court, for good cause shown and after having an opportunity to discuss this
8 Protective Order with the Parties, hereby ORDERS that the following procedures shall be
9 followed in this proceeding to facilitate the orderly and efficient discovery of relevant
10 information while minimizing the potential for unauthorized disclosure or use of
11 confidential or proprietary information and documents.

12 **1. Purpose.** The Parties recognize that preparation for any trial of this action
13 may require the discovery of certain information that a Designating Party, as defined
14 below, reasonably and in good faith believes should be subject to confidential treatment
15 under a protective order. The designation of a document, material, or information
16 (whether written, graphic or electronic) as being subject to the terms and conditions of
17 this Protective Order, is intended solely to facilitate prompt discovery and the preparation
18 for trial of this action.

19 **2. Scope**

20 a. This Protective Order shall govern all hard copy and electronic
21 materials, the information contained therein, and all other information
22 including all copies, excerpts, summaries, or compilations thereof,
23 whether revealed in a document, deposition, other testimony,
24 discovery response, or otherwise, that any party to this proceeding
25 (the “Producing Party” or “Designating Party”) produces to any other
26 party (the “Receiving Party”) and that the Producing Party designates
27 as confidential under this Protective Order.
28

- 1 b. This Protective Order is binding upon all Parties and their counsel in
2 this proceeding , upon all signatories to Exhibit A, and upon (as
3 applicable) their respective corporate parents, subsidiaries, and
4 affiliates, including their successors, and their respective attorneys,
5 principals, experts, consultants, representatives, directors, officers,
6 employees, and others as set forth in this Protective Order— and upon
7 all signatories to Exhibit “A”.
- 8 c. If additional parties are added other than parents, subsidiaries or
9 affiliates of current parties to this litigation, their ability to receive a
10 document protected by this Protective Order will be subject to their
11 being bound, by agreement or Court Order, to this Protective Order.
- 12 d. Third Parties who so elect may avail themselves of, and agree to be
13 bound by, the terms and conditions of this Protective Order and
14 thereby become a Producing Party for purposes of this Protective
15 Order.
- 16 e. The entry of this Protective Order does not preclude any Party from
17 seeking further order of this Court, including modification of this
18 order, or from objecting to discovery that the Party believes to be
19 improper.
- 20 f. Nothing herein shall be construed as an admission or concession by
21 any Party that designated Confidential Material, or any Document or
22 Information derived from Confidential Material, constitutes material,
23 relevant, or admissible evidence in this matter.

24 **3. Good Cause Statement**

25 This Action involves trade secrets or other confidential research, development, or
26 commercial information or information which is of a private or personal nature for which
27 special protection from public disclosure and from use for any purpose other than
28 prosecution of this Action is warranted. To expedite the flow of information, facilitate

1 the prompt resolution of disputes over confidentiality of discovery materials, adequately
2 protect Information the Parties are entitled to keep confidential, ensure that the Parties are
3 permitted reasonable necessary uses of such Information in preparation for and in the
4 conduct of trial, address their handling at the end of the litigation, and serve the ends of
5 justice, a protective order for such information is justified in this matter. The Parties
6 agree not to designate material as confidential without a good faith belief that it has been
7 maintained in a confidential, non-public manner, and there is good cause as to why it
8 should not be part of the public record in this case.

9 **4. Definitions.** In this Order, the terms set forth below shall have the following
10 meanings:

- 11 a. “Proceeding” or “Action” means the above-entitled proceeding.
- 12 b. “Court” means the Honorable Judge currently assigned to this
13 proceeding or any other judge to which this proceeding may be
14 assigned, including Court staff participating in such proceedings.
- 15 c. “Document” or “Documents” shall have the meaning set out in the
16 Federal Rules of Civil Procedure 34(a) and, for purposes of this order,
17 shall include electronically stored information.
- 18 d. “Testimony” means all depositions, declarations or other pre-trial
19 testimony taken or used in this Proceeding.
- 20 e. “Information” means the content of Documents or Testimony, as well
21 as any matter derived therefrom or based thereon.
- 22 f. “Confidential Material” means any Document (electronic or hard
23 copy), Testimony, or Information that a Designating Party reasonably
24 and in good faith believes to be entitled to confidential treatment
25 under applicable laws and that the Party designates as such in
26 accordance with the provisions of this Order. “Confidential Materials”
27 includes, but is not limited to:
28

- 1 i. A plaintiff's personal identifying information, financial
2 information, medical/insurance information, and, with respect
3 to any Party, any other information believed in good faith by
4 the Designating Party to be subject to protection from
5 disclosure by a natural person's right of privacy under
6 applicable privacy laws or regulations;
- 7 ii. A defendant's or non-party's trade secrets (as defined in the
8 Uniform Trade Secrets Act); documents containing or
9 constituting research and development, marketing or training,
10 confidential business, commercial, or proprietary information,
11 financial information or data, technical information,
12 manufacturing processes, product specifications, engineering
13 information and testing, distribution processes, or sensitive
14 health or medical information; or other proprietary or
15 confidential business information of commercial value and
16 believed in good faith to be subject to protection from
17 disclosure under applicable statutes, laws, or regulations; and
- 18 iii. All material, data, and information obtained, derived, or
19 generated from "Confidential Material," to the extent the same
20 are not publicly available or otherwise subject to the exclusions
21 herein.
- 22 iv. Specifically excluded from the definition of "Confidential
23 Material" are:
- 24 1. Any Documents, Testimony, or Information that have
25 been, or in the future will be, designated as "not
26 confidential" by order of any court;
- 27 2. Any Documents, Testimony, or Information obtained, in
28 the past or in the future, by any person or entity through

1 procedures established under the Freedom of Information
2 Act or other public records request. In the event of a
3 dispute as to whether a Document, Testimony, or
4 Information is available through the Freedom of
5 Information Act or other public records request, the issue
6 will be resolved by Plaintiff’s counsel making an
7 appropriate request for the release of such material from
8 the appropriate governmental agency and the granting of
9 such request by the agency or a court.

- 10 g. The phrase “Confidential Material—Attorney Eyes Only” refers to
11 Confidential Material that the Designating Party believes in good faith
12 to contain highly confidential information the disclosure of which to
13 the Party’s competitors would cause the Designating Party serious
14 competitive and commercial harm. As used in this Order, and unless
15 otherwise specified, “Confidential Material” shall encompass
16 “Confidential Material—Attorney Eyes Only.”
- 17 h. “Designating Party” means the Party or non-party that designates
18 Documents, Testimony, or Information as Confidential Material.
- 19 i. “Disclose,” “Disclosed” or “Disclosure” means to reveal, divulge,
20 give, or make available Documents, Testimony, or any part thereof, or
21 any Information contained therein.
- 22 j. “Third Party” means any natural person, partnership, corporation,
23 association, or other legal entity not named as a Party to this Action,
24 and their employees, directors, officers, attorneys, and agents.

25 **5. Designations of Confidential Material.**

- 26 a. Designation of Documents. A Designating Party may designate
27 Documents as Confidential Material or Confidential Material—
28 Attorney Eyes Only by placing a stamp or marking on the Documents

1 stating the following: **CONFIDENTIAL, SUBJECT TO**
2 **PROTECTIVE ORDER, PRODUCED BY [PARTY NAME] IN**
3 **[NAME OF LITIGATION] or CONFIDENTIAL—ATTORNEY**
4 **EYES ONLY, SUBJECT TO PROTECTIVE ORDER,**
5 **PRODUCED BY [PARTY NAME] IN [NAME OF**
6 **LITIGATION]**. Such markings shall not obscure, alter, or interfere
7 with the legibility of the original document.

8 i. All copies, duplicates, extracts, summaries, or descriptions
9 (hereinafter referred to collectively as “copies”) of Confidential
10 Material shall be marked with the same confidential stamp or
11 marking as contained on the original, unless the original
12 confidential stamp or marking already appears on the copies.

13 b. Designation of Deposition Transcripts.

14 i. During depositions, Confidential Material may be used or
15 marked as exhibits, but shall remain subject to this Order and
16 may not be shown to the witness unless such witness is a
17 Qualified Person as describe below.

18 ii. If deposition Testimony or exhibits contain or refer to
19 Confidential Material, or if they contain or refer to Documents,
20 Testimony, or Information to be designated as Confidential
21 Material, the Designating Party, by and through counsel, shall
22 either

- 23 1. On the record at the deposition, designate the Testimony
24 or exhibit(s) as Confidential Material or, as applicable,
25 identify already-designated Confidential Material, or
26 2. No later than thirty (30) days after receiving a copy of the
27 deposition transcript, inform the deposing counsel and
28 counsel for other Parties that the Testimony or exhibit(s)
constitute Confidential Material; during the thirty-day
period, the entire deposition testimony, transcript, and

exhibits shall be treated as Confidential Material under this Order.

- iii. When a Party designates testimony as Confidential Material during the deposition, counsel for that Party may exclude from the deposition all persons who are not Qualified Persons under this Order.
- iv. When portions of a deposition transcript or its exhibits are designated for protection, the transcript or exhibit pages containing Confidential Material shall be separately bound by the court reporter, who must affix to the top of each page the legend “**CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER IN [NAME OF LITIGATION]**” or **CONFIDENTIAL—ATTORNEY EYES ONLY, SUBJECT TO PROTECTIVE ORDER IN [NAME OF LITIGATION]**.
- c. Written Pleadings, Motion Papers, and Discovery Materials. A party may designate as Confidential Material portions of interrogatories and interrogatory answers, responses to requests for admissions and the requests themselves, requests for production of documents and things and responses to such requests, pleadings, motions, affidavits, and briefs that quote, summarize, or contain Confidential Material. To the extent feasible, such Confidential Material shall be prepared in such a manner that it is bound separately from material not entitled to protection.
- d. Designation of Other Confidential Material. With respect to Confidential Material produced in some form other than as described above, including, without limitation, compact discs or DVDs or other tangible items, the Designating Party must affix in a prominent place

1 on the exterior of the container or containers in which the Information
2 or item is stored the legend “**CONFIDENTIAL, SUBJECT TO**
3 **PROTECTIVE ORDER, PRODUCED BY [PARTY NAME] IN**
4 **[NAME OF LITIGATION]” or CONFIDENTIAL—ATTORNEY**
5 **EYES ONLY, PRODUCED BY [PARTY NAME] IN [NAME OF**
6 **LITIGATION]**. If only portions of the Information or item warrant
7 protection, the Designating Party, to the extent practicable, shall
8 identify the portions that constitute “Confidential Materials.”

9 e. With respect to Documents or Information produced or disclosed by a
10 non-party, either the non-party or a Party may designate the
11 Documents or Information as Confidential Material pursuant to this
12 Order. A Party so designating material produced by a non-Party shall
13 notify all other Parties within 30 days of receipt of such Document or
14 Information that the same or portions thereof constitute or contain
15 Confidential Material. Until the expiration of 30 days, such Document
16 or Information produced or disclosed by any such non-party shall be
17 treated as Confidential Material under this Order.

18 6. **Required Treatment of Confidential Material.**

- 19 a. Except as specifically provided in this Order, counsel shall keep all
20 Confidential Material disclosed or produced to them within their
21 exclusive possession and control, shall take all necessary and prudent
22 measures to maintain the confidentiality of such materials and
23 information, and shall not permit unauthorized dissemination of such
24 materials to anyone.
- 25 b. Confidential Material shall not be disclosed in any way to anyone for
26 any purpose other than as required for the preparation of trial in this
27 action or other related actions as defined in Paragraph 10, below.
28

- 1 i. Nothing in this Order shall preclude a Party from introducing
2 into evidence at trial or evidentiary hearing any Confidential
3 Material that is admissible under applicable law. The Parties
4 shall meet and confer regarding the procedures for use of
5 Confidential Material at trial or any evidentiary hearing and
6 shall move the Court for entry of an appropriate order. At trial
7 or evidentiary hearings, the Court may take such other measures
8 or enter separate orders, as the Court deems appropriate or upon
9 request by any Party, to protect the claimed Confidential
10 Material sought to be introduced or admitted.
- 11 c. Access to and disclosure of Confidential Material shall be limited to
12 those persons designated as Qualified Persons, below. Any Qualified
13 Person who examines any Confidential Material shall not disseminate
14 orally, or by any other means, any protected information other than as
15 permitted by this Order.
- 16 d. Confidential Material shall not be used for any business, competitive
17 or other non-litigation purpose without the express written consent of
18 counsel for the Designating Party or by order of the Court.
- 19 i. Nothing in this Protective Order shall limit any Designating
20 Party's use of its own documents or shall prevent any
21 Designating Party from disclosing its own Confidential
22 Material to any person for any purpose.
- 23 ii. Nothing herein shall prevent Plaintiff from viewing or receiving
24 and retaining copies of her own medical records and from
25 disclosing such medical records to, and sharing them with, her
26 physicians.
- 27 iii. Nothing herein shall prevent Defendant from viewing or
28 retaining copies of medical records of Plaintiff that are in its

1 possession or control or from disclosing such records to other
2 Qualified Persons, regardless of whether or not the documents
3 have been designated as Confidential Material.

4 iv. Disclosures described in the above sub-paragraphs shall not
5 affect any confidential designation made pursuant to the terms
6 of this Protective Order so long as the disclosure is made in a
7 manner that is reasonably calculated to maintain the
8 confidentiality of the designated Information, Testimony,
9 and/or Document.

10 e. To avoid security risks inherent in certain current technologies and to
11 facilitate compliance with the terms of this Order, and unless
12 otherwise ordered or agreed upon in writing by the Designating Party
13 whose Confidential Material is at issue, all Qualified Persons with
14 access to Confidential Material shall comply with the following:

15 i. They shall use secure means to store and transmit Confidential
16 Material.

17 ii. Qualified Persons shall be prohibited from storing or
18 transmitting any Confidential Material in or via any online or
19 web-based storage location or service managed or maintained
20 by any third-party service provider, including any provider of
21 so-called “cloud computing” services, other than a reputable
22 litigation support service provider with a secure domestic
23 document hosting facility that uses encrypted web-enabled
24 software that allows for the secure and protected sharing and
25 collaboration of said Protected Material among Qualified
26 Persons and that does not employ so-called “cloud computing”
27 services.
28

1 iii. Notwithstanding the foregoing provision, Qualified Persons, as
2 defined in the following paragraph, shall not be prohibited from
3 transmitting Confidential Material to any other Qualified
4 Person through electronic mail, as attachments to an electronic
5 mail in the form of separate PDF files or zip files, through tools
6 provided by a reputable litigation support service as described
7 herein, or via FTP file transfer, as long as the person
8 transmitting the Protected Material takes reasonable steps to
9 protect the confidentiality of the Confidential Material.

10 7. **Qualified Persons With respect to Confidential Material.** Confidential
11 Material (as distinct from Confidential Material—Attorney Eyes Only, covered in
12 Paragraph 7 below) may be disclosed only to the following persons (referred to as
13 “Qualified Persons” throughout this Order):

- 14 a. When produced by any defendant in the action: Parties that are
15 Qualified Persons are all other defendants, their inside and outside
16 counsel and insurers, as applicable, the defendants’ employees
17 (including partners, directors, and officers), and the Plaintiff and her
18 attorneys in the action;
- 19 b. When produced by Plaintiff: all defendants (including partners,
20 directors, officers, and employees of defendants) and their inside and
21 outside counsel and insurers;
- 22 c. With respect to Qualified Persons encompassed by the preceding two
23 paragraphs (a) and (b), such persons include the attorneys’ employees
24 and agents (*e.g.*, outside copy services, organizations involved in
25 organizing, filing, coding, converting, storing, or retrieving data or
26 designing programs for handling data connected with this action,
27 including the performance of such duties in relation to a computerized
28 litigation support system, and stenographers);

- 1 d. Experts, consultants and case-specific medical professionals
2 (“Consultants”) whose assistance is necessary to assist counsel in the
3 preparation of this Proceeding, whether or not the Consultant is
4 designated as an expert and retained to testify, with the following
5 qualifications:
- 6 i. Disclosure shall not be made to any consultant who, as
7 described in Paragraph 9, is employed by or a consultant to a
8 competitor of the Designating Party;
- 9 ii. Disclosure shall not be made to any consultant if counsel for the
10 Party retaining that consultant has actual knowledge that the
11 consultant has been found to have violated the terms of a
12 protective order in any litigation or legal proceeding; and
- 13 iii. Any expert or medical professional to whom disclosure of
14 Confidential Material is authorized must be informed of this
15 Protective Order and must sign a copy of the Non-Disclosure
16 Agreement attached hereto as Exhibit “A.”
- 17 e. A deponent or a witness at a deposition or pre-trial hearing, provided
18 there is a reasonable basis to believe that the witness will give relevant
19 testimony regarding the Confidential Material or that disclosure of
20 Confidential Material is necessary to prepare the witness for the
21 testimony.
- 22 i. If a Party wishes to disclose Confidential Material to such a
23 deponent or witness before or during a deposition or pre-trial
24 hearing, the deponent or witness must be informed of this
25 Protective Order and either sign a copy of the Non-Disclosure
26 Agreement attached hereto as Exhibit “A,” or consent under
27 oath on the record to abide by its provisions.
28

1 ii. The Parties agree that this provision does not preclude the
2 Designating Party from objecting to or moving to preclude
3 disclosure to any deponent or witness, or to seek amendment of
4 this provision in the future, if it believes it has a good faith
5 basis for such objection or motion;

6 f. A person identified in the Confidential Material as an author, source,
7 addressee, or recipient of the communication, or who already has a
8 copy of the Confidential Material;

9 g. Any mediators or arbitrators selected to assist in resolution of this
10 matter, and their personnel who are actively engaged in assisting
11 them;

12 h. The Court or any Court personnel, including any court reporters; and

13 i. Any person mutually agreed upon among the Parties, provided that
14 such person has been informed of this Protective Order and has signed
15 a copy of the Non-Disclosure Agreement attached hereto as Exhibit
16 “A.”

17 8. **Qualified Persons With respect to Confidential Material—Attorney**

18 **Eyes Only.**

19 Confidential Material—Attorney Eyes Only may be disclosed only to the
20 following Qualified Persons:

21 a. Attorneys of record in this action, and their paralegals or their other
22 employees or agents (including litigation-support services) who
23 require access to Confidential Material—Attorney Eyes Only for the
24 purpose of litigation of this action;

25 b. Plaintiff, provided that her counsel believes in good faith that
26 disclosure is necessary to the prosecution of the action;

27 c. Experts who are Qualified Persons described in Paragraph 6.d and its
28 sub-paragraphs above;

- 1 d. A person identified in the Confidential Material—Attorney Eyes Only
2 as an author, source, addressee, or recipient of the communication, or
3 who already has a copy of the Confidential Material;
4 e. Any mediators or arbitrators selected to assist in resolution of this
5 matter, and their personnel who are actively engaged in assisting
6 them;
7 f. The Court or any Court personnel, including any court reporters; and
8 g. Any person mutually agreed upon among the Parties, provided that
9 such person has been informed of this Protective Order and has signed
10 a copy of the Non-Disclosure Agreement attached hereto as Exhibit
11 “A.”

12 9. **Further Requirements With Respect to Qualified Persons.**

- 13 a. Before being given access to any Confidential Material, each
14 Qualified Person, other than the Court, the employees and staff of the
15 Court, counsel of record, and the direct employees of counsel of
16 record, and other than as set forth above with respect to those
17 witnesses to whom Confidential Material is disclosed or shown at a
18 deposition or pre-trial hearing as set forth in Paragraph 6(e), shall be
19 advised of the terms of this Order, shall be given a copy of this Order,
20 shall agree in writing to be bound by the terms of this Order by
21 signing a copy of the Non-Disclosure Agreement attached hereto as
22 Exhibit “A,” and shall consent to the exercise of personal jurisdiction
23 by this Court in any proceeding(s) to determine if the signatory
24 violated this Order. Counsel for each Party shall maintain a list of all
25 Qualified Persons to whom they or their client(s) have provided any
26 Confidential Material, which list shall be available for inspection by
27 the Court.
28

- 1 b. The witness who is a Qualified Person pursuant to Paragraph 6(e) but
2 who has not signed a copy of the Non-Disclosure Agreement attached
3 hereto as Exhibit “A” may be shown Confidential Material during his
4 or her testimony, but shall not be given a copy of the Confidential
5 Material to keep. Before reviewing his or her transcribed testimony
6 containing the Confidential Material for purposes of completing the
7 errata sheet, such witness shall sign a copy of the Non-Disclosure
8 Agreement attached hereto as Exhibit “A” and shall consent to the
9 exercise of personal jurisdiction by this Court in any proceeding(s) to
10 determine if the signatory violated this Order.
- 11 c. Any Confidential Material distributed or disclosed to a Qualified
12 Person who is a signatory of Exhibit “A” shall be returned to the
13 Party’s counsel who provided it to the Qualified Person or shall be
14 destroyed at the completion of the Qualified Person’s consultation or
15 representation in this case. Upon the request of the Designating Party
16 or the Court, each such Qualified Person shall execute an affidavit
17 stating that all such Confidential Material and copies thereof have
18 been returned or destroyed as required.
- 19 d. The Court shall retain jurisdiction over any person or organization
20 authorized, as set forth above, to receive Confidential Material as
21 necessary to enforce the provisions of this Order.

22 10. **Non-Disclosure to Competitors.** Notwithstanding the foregoing, without
23 express written consent or court order, in no event shall any disclosure of a defendant’s
24 Confidential Material or Confidential Material—Attorney Eyes Only be made to any
25 known Competitor of that defendant or to any person who, upon reasonable and good
26 faith inquiry, could be determined to be a current employee thereof or consultant doing
27 research for a competitor of a designating defendant irrespective of whether such
28 consultant or person is retained as an expert in this action. A “Competitor,” in the context

1 of this Proceeding, shall mean any manufacturer of, or manufacturer involved in the sale
2 of medical devices or current employee of such entity.

- 3 a. In the case of an expert or consultant, the expert or consultant is best
4 suited to know whether he or she is a Competitor of a defendant, or if
5 he or she is a current employee of or consultant doing research for a
6 Competitor of the designating defendant. Thus, Plaintiff will be
7 required by the Protective Order to make a full inquiry of the expert or
8 consultant and to obtain a declaration from him or her on these topics
9 before any information is shared with the expert or consultant.
- 10 b. To this end, the expert or consultant shall provide written certification
11 whether he or she is a Competitor of a defendant, whether he or she is
12 currently employed by a Competitor, and whether he or she is
13 contracted with a Competitor and doing research for such Competitor.
- 14 c. Plaintiff shall not disclose a defendant's Confidential Material to any
15 expert or consultant who certifies that he or she is a Competitor of a
16 defendant, is currently employed by a Competitor, or is contracted
17 with a Competitor and doing research for such Competitor.
- 18 d. Plaintiffs shall maintain each respective expert's or consultant's
19 certification under this paragraph for the duration of the litigation so
20 they may be submitted to the Court for *in camera* review in the event
21 of a dispute between the parties.

22 **11. Challenges to Designations.**

- 23 a. The Designating Party bears the burden of establishing
24 confidentiality.
- 25 b. Nothing in this Order shall constitute a waiver of any Party's right to
26 object to the designation or non-designation of Documents,
27 Testimony, or Information as Confidential Material.
28

- 1 c. If a Party contends that any Document, Testimony, or Information has
2 been erroneously or improperly designated as Confidential Material,
3 or has been improperly redacted, the material at issue shall be treated
4 as confidential under the terms of this Order until
- 5 i. the Parties reach a written agreement or
6 ii. this Court issues an order determining that the material is not
7 confidential and shall not be given confidential treatment.
- 8 d. In the event that counsel for a Party receiving Confidential Material in
9 discovery objects to such designation, said counsel shall advise
10 counsel for the Designating Party, in writing, of such objections, the
11 specific Confidential Material (identified by Bates number, if
12 possible) to which each objection pertains, and the specific reasons
13 and support for such objections (the “Designation Objections”).
- 14 e. Counsel for the Designating Party shall have 30 days from receipt of
15 the written Designation Objections to respond in writing as to whether
16 the designations will be maintained or withdrawn.
- 17 f. If Designating Party does not de-designate the challenged
18 Confidential Material at issue, the parties shall meet and confer in
19 good faith, pursuant to Local Rule 37-1, to discuss the Designation
20 Objections and attempt to resolve the dispute.
- 21 g. If, after meeting and conferring in good faith, the Parties are unable to
22 resolve the dispute regarding the Designation Objections, the Party
23 challenging the designations may file a motion with the Court seeking
24 an order to de-designate (*i.e.*, to rule to be not confidential) the
25 Confidential Material subject to the Designation Objections (the
26 “Designation Motion”). The Designation Motion must comply with
27 Local Rules 37-1 and 37-2, including the joint stipulation
28 requirement.

- 1 i. Pending a resolution of the Designation Motion by the Court,
2 the Designating Party is presumed to have designated the Confidential
3 Material in good faith, and any and all existing designations
4 challenged in such Motion shall remain in place.
- 5 ii. The Designating Party shall have the burden of establishing the
6 applicability of its “confidential” designation.

7 12. **Use of Confidential Material in Court Prior to Trial.** The Parties will use
8 the following procedure, absent further Court Order, for disclosing Confidential Material
9 to the Court prior to trial.

- 10 a. Confidential Material is not to be filed with the Court except when
11 required in connection with motions or other matters pending before
12 the Court.
- 13 b. The Party seeking to file Confidential Material or a document
14 reflecting or including Confidential Material in support of a motion or
15 other proceeding pending before the Court may first notify the
16 Designating Party of its intent and seek agreement to de-designate
17 such material.
- 18 c. Absent any such agreement, if Confidential Material or a document
19 reflecting or including Confidential Material is submitted to or
20 otherwise disclosed to the Court in connection with a motion or other
21 proceeding pending before the Court, such Confidential Material shall
22 be submitted to the Court for filing under seal consistent with Local
23 Rule 79-5 or any other sealing requirements of the Court.

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1 13. **Redactions**

2 a. To protect against unauthorized disclosure of Confidential Discovery
3 Material, and to comply with all applicable state and federal laws and
4 regulations, the Producing Party may redact from produced documents,
5 materials and other things, the following items, or any other item(s)
6 protected from disclosure by statute or decisional authority or agreed upon
7 by the parties or ordered by the Court:

8
9 i. The names, street addresses, Social Security numbers, tax
10 identification numbers, and other personal identifying information of
11 patients, health care providers, and individuals in clinical studies or
12 adverse event reports. Other general identifying information,
13 however, such as patient or health provider numbers, shall not be
14 redacted unless required by state or federal law.

15 ii. The Social Security numbers, tax identification numbers and other
16 personal identifying information of employees in any records.

17
18 b. Defendant reserves the right to redact information that is nonresponsive
19 (including but not limited to proprietary financial material and products
20 unrelated to this litigation).

21 c. Pursuant to 21 C.F.R. §§ 314.430(e) & (f) and 20.63(f), the names of any
22 person or persons reporting adverse experiences of patients and the names of
23 any patients that are not redacted shall be treated as Confidential, regardless
24 of whether the document containing such names is designated as
25 Confidential Material.

26
27 Notwithstanding any of the foregoing provisions, nothing contained herein
28 shall be construed as a waiver of a party's ability to challenge such redactions pursuant to

1 the procedures set forth in Section 11 herein. The burden as to the propriety of any
2 redaction remains on the Designating Party at all times.

3 14. **Subpoena by Other Courts or by Agencies.**

- 4 a. If another court or an administrative agency requests, subpoenas, or
5 orders the disclosure of Confidential Material from a Party that has
6 obtained such material under the terms of this Order, the Party so
7 requested, subpoenaed, or ordered shall notify the Designating Party
8 by electronic mail transmission, express mail, or overnight delivery to
9 counsel of record for the Designating Party not later than ten (10) days
10 prior to producing or disclosing any Confidential Material, and shall
11 furnish such counsel with a copy of the requests, subpoena, or order.
12 The recipient of the Subpoena shall not disclose any Confidential
13 Material pursuant to the Subpoena prior to the date specified for
14 production on the Subpoena.
- 15 b. Upon receipt of this notice, the Designating Party may, in its sole
16 discretion and at its own cost, move to quash or limit the request,
17 subpoena, or order, otherwise oppose the disclosure of the
18 Confidential Material, or seek to obtain confidential treatment of such
19 Confidential Material, to the fullest extent available under law, by the
20 person or entity issuing the request, subpoena, or order. The Party
21 who received the request, subpoena, or order shall not oppose or
22 otherwise interfere with the Designating Party's effort to quash or
23 limit the request, subpoena, or order.

24 15. **Disposition of Confidential Material.**

- 25 a. Upon the request of any Party after the final conclusion of this action
26 (including without limitation any appeals and after the time for filing
27 all appellate proceedings has passed), each Party so requested shall
28 return all Confidential Material to counsel for the Party that produced

1 it, shall destroy it, or otherwise shall comply with an applicable order
2 of the Court, subject to the exception described herein.

- 3 b. The return or destruction of Confidential Material under this
4 paragraph shall include, without limitation, all copies, and duplicates
5 thereof.
- 6 c. The Parties shall certify, within 60 days of receipt of a written request
7 for certification, that all Confidential Material required to be returned
8 or destroyed have been so returned or destroyed.
- 9 d. As an exception to the above requirements, and unless otherwise
10 ordered by the Court, counsel may retain: (a) copies of pleadings or
11 other papers that have been filed with the Court and that are
12 Confidential Material or that reflect, reference, or contain Confidential
13 Material; (b) their work product; and (c) official transcripts and
14 exhibits thereto. The terms and provisions of this Order shall continue
15 to apply to any such materials retained by counsel.

16 **16. Order Survives Termination of Action.** After the termination of this action
17 by entry of a final judgment or order of dismissal, the provisions of this
18 Order shall continue to be binding. This Order is, and shall be deemed to be,
19 an enforceable agreement between the Parties, their agents, and their
20 attorneys. The Parties agree that the terms of this Order shall be interpreted
21 and enforced by this Court.

22 **17. No Waiver of Any Privilege Upon Inadvertent Production**

- 23 a. The Parties have agreed that, in discovery in this lawsuit, they do not
24 intend to disclose information subject to a claim of attorney-client
25 privilege or attorney work product protection.
- 26 i. This Order does not effect or constitute a waiver of any Party's
27 right to withhold or redact information protected from
28 disclosure by the attorney-client privilege, physician-patient

1 privilege, work product doctrine, or any other applicable
2 privilege, protection, law, or regulation.

3 ii. Pursuant to Federal Rule of Evidence 502(d) and Federal Rule
4 of Civil Procedure 26(b)(5)(B), if a Party (the “Disclosing
5 Party”) inadvertently discloses such privileged or work product
6 information (“Inadvertently Disclosed Information”), such
7 disclosure shall not constitute or be deemed a waiver or
8 forfeiture in whole or in part of any claim of attorney-client
9 privilege or work product immunity that the Disclosing Party
10 would otherwise be entitled to assert with respect to the
11 Inadvertently Disclosed Information and its subject matter. As
12 set forth below, such Inadvertently Disclosed material shall be
13 returned to the Producing Party or destroyed upon request.

14 iii. In accordance with the requirements of applicable law or rules
15 of procedure, and unless otherwise agreed by the Parties, with
16 each production of documents the Producing Party shall
17 provide a privilege log within sixty (60) days that identifies any
18 information or document withheld on the basis of privilege,
19 except for work-product prepared by or at the direction of
20 counsel after the institution of this action for purposes of the
21 litigation and privileged communications with counsel after the
22 institution of this action.

23 b. Any party receiving materials that, on their face, appear to be covered
24 by a privilege, shall not copy, distribute, or otherwise use in any
25 manner such materials and shall provide prompt notice of the
26 disclosure to the Producing Party to afford the Producing Party the
27 opportunity to request return of the materials, in accordance with the
28 terms of this paragraph.

- 1 c. If a Disclosing Party notifies the Receiving Party of Inadvertently
2 Disclosed Information, the Receiving Party shall, within ten (10) court
3 days: (i) return or destroy all copies of such information (including all
4 notes or other work product of the Receiving Party reflecting the
5 contents of the Inadvertently Disclosed Information) within their
6 possession, custody, or control—including all copies in the possession
7 of experts, consultants, or others to whom the Inadvertently Disclosed
8 Information was provided—and (ii) provide a certification of counsel
9 that all such Inadvertently Disclosed Information has been returned or
10 destroyed. From the moment a Disclosing Party provides notice of
11 inadvertent production, a Receiving Party shall not copy, distribute, or
12 otherwise use in any manner the disputed documents or information,
13 and shall instruct all persons to whom the Receiving Party has
14 disseminated a copy of the documents or information that the
15 documents or information are subject to this Order and may not be
16 copied, distributed, or otherwise used pending a motion and further
17 notice from the Court.
- 18 d. The Receiving Party may move the Court for an Order compelling
19 production of the Inadvertently Disclosed Information. Such motion
20 shall be filed or lodged conditionally under seal and shall not assert as
21 a ground for entering such an Order the fact or circumstances of the
22 inadvertent production. On any such motion, the Disclosing Party
23 shall retain the burden of establishing its privilege or work product
24 claims. Nothing in this paragraph shall limit the right of any Party to
25 petition the Court for an *in camera* review of the Inadvertently
26 Disclosed Information.
- 27
28

1 18. **Inadvertent Production or Disclosure of Confidential Material.**

- 2 a. Inadvertent or unintentional disclosure, without the required
3 confidentiality designation, of any Document, Testimony, or
4 Information that the Disclosing Party intended to designate as
5 Confidential Material (“inadvertent production”) shall not be deemed
6 a waiver in whole or in part of the producing Party’s claim of
7 confidentiality, either as to specific documents and information
8 disclosed or as to the same or related subject matter.
- 9 b. In the event that a Designating Party makes such an inadvertent
10 production, that Party shall contact the receiving Party within 30 days
11 of the discovery of the inadvertent production, or as promptly as
12 reasonably possible thereafter, and inform the receiving Party or
13 Parties in writing of the inadvertent production and the specific
14 material at issue.
- 15 c. Upon receipt of such notice, the receiving Party or Parties shall treat
16 the material identified in the notice as confidential until (i) the Parties
17 agree to non-confidential treatment of the subject material, or (ii) the
18 Court, on motion of any Party, issues an order addressing the
19 appropriate treatment of the subject material.
- 20 d. Within ten (10) court days of receiving notice of the inadvertently
21 disclosed Confidential Material, the receiving Party shall return or
22 destroy all copies of such Confidential Material and provide a
23 certification of counsel that all such Confidential Material has been
24 returned or destroyed. Each receiving Party shall notify every person
25 or organization that received copies of or access to the material
26 identified in the notice that such material contains Confidential
27 Material.
- 28

1 e. As promptly as reasonably possible thereafter, the Disclosing Party
2 shall re-produce the Confidential Material with the required legend.
3

4 DATED: September 18, 2015

Tucker Ellis LLP

5
6
7 By: /s/ Mollie F. Benedict

Mollie F. Benedict
Monee Takla Hanna
Attorneys for Defendant
Ethicon, Inc.

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9
10 DATED: September 18, 2015

Welebir Tierney & Weck, PLC

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12
13 By: /s/ Douglas F. Welebir

Douglas F. Welebir
Attorneys for Plaintiff Martha A.
Montalvo-Ariri

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15 **IT IS SO ORDERED.**

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17 Dated: September 22, 2015



18 Honorable Sheri Pym
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARTHA A. MONTALVO-ARIRI,

Plaintiff,

v.

ETHICON, INC.

Defendants.

) Case No. 5:14-01421 VAP (SPx)

) **ENDORSEMENT OF PROTECTIVE**

) **ORDER**

) Complaint Filed: July 11, 2014

EXHIBIT A

ENDORSEMENT OF PROTECTIVE ORDER

I hereby attest to my understanding that information or documents designated as Confidential Discovery Material are provided to me subject to the Protective Order dated _____, 2015 (the “Order”), in the above-captioned litigation (“Litigation”); that I have been given a copy of and have read the Order; and, that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Confidential Discovery Material pursuant to the Order.

1 I further agree that I shall not disclose to others, except in accord with the Order,
2 any Confidential Discovery Material, in any form whatsoever, and that such Confidential
3 Discovery Material may be used only for the purposes authorized by the Order.

4 I further agree to return all copies of any Confidential Discovery Material or any
5 document or thing containing Confidential Discovery Material I have received to counsel
6 who provided them to me, or to destroy such materials, upon completion of the purpose
7 for which they were provided and no later than the conclusion of this Litigation.

8 I further agree and attest to my understanding that my obligation to honor the
9 confidentiality of such Confidential Discovery Material will continue even after this
10 Litigation concludes.

11 I further agree and attest to my understanding that, if I fail to abide by the terms of
12 the Order, I may be subject to sanctions, including contempt of court, for such failure. I
13 agree to be subject to the jurisdiction of the United States District Court, Central District
14 of California, for the purposes of any proceedings relating to enforcement of the Order. I
15 further agree to be bound by and to comply with the terms of the Order as soon as I sign
16 this Agreement, regardless of whether the Order has been entered by the Court.
17

18
19 Date: _____

20 By: _____

21 _____
22 Signature

23 _____
24 Printed Name
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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2015, a copy of the foregoing **STIPULATED PROTECTIVE ORDER** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

s/Monee Takla Hanna
Monee Takla Hanna

Attorneys for Defendant Ethicon, Inc.