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REED SMITH LLP
A limited liability partnership formed in the State of Delaware

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LEANKA WINTERS,
Plaintiff,
v.
ELI LILLY AND COMPANY, an Indiana
corporation,
Defendant.

Case No. 5:15-cv-02037-SVW-SP

PROTECTIVE ORDER

**[NOTE CHANGES MADE BY THE
COURT TO ¶¶ 2 AND 18(b)]**

1 WHEREAS, Plaintiff Leanka Winters (“Plaintiff”), and Defendant Eli Lilly and
2 Company (“Lilly”) jointly believe that entry of a protective order pursuant to Federal
3 Rule of Civil Procedure 26(c) should be applied to this matter;

4 WHEREAS, a protective order will expedite the flow of discovery material,
5 facilitate the prompt resolution of disputes over confidentiality, and adequately protect
6 confidential material;

7 NOW, THEREFORE, having found good cause, it is hereby ORDERED
8 THAT:

9 1. The following definitions shall apply to this Stipulation and Protective
10 Order of Confidentiality (“Order”):

11 (a) “Party” shall mean a party to this action, any employee of such
12 party, and any counsel for such party.

13 (b) “Documents” shall mean all “writings,” “recordings,” or
14 “photographic” materials as described and defined in Rule 1001 of the Federal Rules
15 of Evidence, including electronically stored information, whether produced or created
16 by a party or another person, and whether produced pursuant to Federal Rule of Civil
17 Procedure 34, pursuant to a subpoena, by agreement or otherwise. This shall include,
18 but not be restricted to, all interrogatory answers, responses to requests for production
19 or for admission(s), deposition testimony, and deposition exhibits.

20 (c) “Confidential Information” shall mean all documents or portions
21 thereof that the producing party reasonably and in good faith believes is subject to a
22 protective order under Federal Rule of Civil Procedure 26(c)(1).

23 (d) “Copies” shall mean any photocopies, reproductions, duplicates,
24 extracts, summaries, or descriptions of a document and/or Confidential Information.

25 (e) “Producing party” shall mean any party or its counsel or any other
26 person who produced the document(s) at issue.

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1 (f) “Designating party” shall mean any party or its counsel or any
2 other person who has designated the document(s) at issue as confidential pursuant to
3 paragraph 3, below.

4 (g) “Receiving party” shall mean any party or its counsel or any other
5 person to whom Confidential Information is furnished.

6 (h) “Competitor of Lilly” means any current manufacturer, developer,
7 or seller of drugs other than Lilly or any person who, upon reasonable and good faith
8 inquiry, could be determined to be a current employee of any manufacturer or seller of
9 drugs other than Lilly.

10 (i) “Final conclusion of this litigation” shall mean the date fifteen (15)
11 days following:

- 12 (1) the Court’s entry of a stipulated dismissal, or
- 13 (2) the Court’s entry of a voluntary dismissal, or
- 14 (3) the entry of a final, non-appealable order disposing of the
15 case.

16 2. If Plaintiff receives Lilly documents that are not publicly available from
17 any source other than Lilly that, upon reasonable and good faith inquiry, could be
18 determined to be documents authored or created by Lilly, Plaintiff will treat such
19 documents as confidential under the terms of this Protective Order. In the event
20 Plaintiff produces to Lilly pursuant to Rule 34 of the Federal Rules of Civil Procedure
21 any documents falling within this paragraph, Lilly shall have thirty (30) days to
22 designate said documents as confidential pursuant to paragraph 3. If Plaintiff wishes
23 to challenge the confidentiality of such a document, Plaintiff shall notify Lilly in
24 writing and append a copy of the document at issue. Lilly will have thirty (30) days to
25 provide a written response to Plaintiff’s challenge and, if the parties reach an impasse
26 following a good faith effort to resolve the dispute, Plaintiff may bring a motion with
27 the Court at any time thereafter, in compliance with Local Rule 37.

1 3. Any party shall have the right to designate any document the party
2 believes in good faith contains Confidential Information in that party’s custody or
3 control and that is not publicly available, or any portion of any document the party
4 believes in good faith contains Confidential Information, as “confidential” pursuant to
5 the following procedures:

6 (a) Subject to paragraph 3(c), below, designation of documents as
7 confidential shall be made:

8 (1) in the case of documents in hardcopy form or in a
9 modifiable electronic format, by affixing the following legend to each page of the
10 document, or portion thereof, that is deemed by the producing party as confidential in
11 such a way so as not to obscure any part of the text or content:

12 **CONFIDENTIAL — SUBJECT TO A PROTECTIVE ORDER**

13 (2) in the case of electronically stored documents (other than
14 documents in a modifiable electronic format), by noting in the metadata or on the
15 image for each document that the document is **CONFIDENTIAL — SUBJECT TO**
16 **A PROTECTIVE ORDER**. The following shall appear on any cover letter referring
17 to electronically stored documents and, to the extent possible, to the device (i.e. disc,
18 hard drive, etc.) on which the documents are electronically stored:

19 **CONFIDENTIAL — SUBJECT TO A PROTECTIVE ORDER**

20 *Leanka Winters v. Eli Lilly and Company*

21 Case No.: 5:15-cv-02047-SVW-SP

22 United States District Court, Central District of California

23 In the event electronically stored documents designated as confidential are
24 produced in a native format, whenever the party to whom such documents are
25 produced reduces such material to hardcopy form, that party shall designate the
26 hardcopy documents with the legend as provided in paragraph 3(a)(1), above.

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1 (b) Subject to paragraph 3(d), below, designation of documents as
2 confidential will be made before or at the time of production or disclosure.

3 (c) To the extent that any party has heretofore designated certain
4 documents as confidential, it will not be required to re-designate the same with the full
5 legend set out in paragraph 3(a), above.

6 (d) The inadvertent failure to designate a document or any portion
7 thereof as confidential does not alter or waive the protected and confidential nature of
8 the document or portion thereof and does not remove it from the scope of this Order.
9 The party discovering such inadvertent failure to designate a document or portion
10 thereof as confidential shall, within fifteen (15) days of such discovery, notify counsel
11 for the receiving party in writing that the document or a specified portion thereof is to
12 be designated as confidential under the terms of this Order.

13 (e) Interrogatory answers; responses to requests for admission;
14 responses to requests for production; deposition transcripts and exhibits; and
15 pleadings, motions, affidavits, briefs, or other papers filed with the Court that include
16 quotes of, summaries of or copies of documents entitled to protection may be
17 accorded status as Confidential Information but, to the extent feasible, shall be
18 prepared in such a manner that the Confidential Information is bound separately from
19 the portions of the document not entitled to protection.

20 4. The party designating information, documents, materials, or items as
21 Confidential Information bears the burden of establishing confidentiality. If a party in
22 good faith disagrees with a confidential designation:

23 (a) The party seeking to challenge any confidential designation will
24 inform counsel for the designating party in writing of said disagreement.

25 (b) Upon the designating party's receipt of written notification that
26 there is a disagreement on a confidentiality designation, the producing party will have
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1 thirty (30) days to provide a written response. The parties will confer in an effort to
2 resolve the dispute without Court intervention.

3 (c) If, after conferring, the parties cannot resolve the dispute despite
4 good-faith efforts to do so, any party may move for a determination by the Court as to
5 the appropriateness of the confidential designation. The proponent of confidentiality
6 must show by a preponderance of the evidence that there is good cause for the
7 document or portion thereof to have such protection.

8 (d) Each document or portion thereof designated as confidential shall
9 retain that designation and shall remain subject to the terms of this Order until such
10 time, if ever, that the Court renders a decision that a particular document or portion
11 thereof is not subject to this Order and any and all proceedings or interlocutory
12 appeals challenging such decision have been concluded.

13 5. The producing party may redact the following information:

14 (a) names, addresses, Social Security numbers, tax identification
15 numbers, email addresses, telephone numbers, and any other information that would
16 identify patients (other than Plaintiff);

17 (b) names, addresses, Social Security numbers, tax identification
18 numbers, email addresses, telephone numbers and any other personal identifying
19 information of health care providers, including, but not limited to, individuals,
20 organizations, or facilities that furnish, bill, or are paid for healthcare services or
21 supplies;

22 (c) names, addresses, Social Security numbers, tax identification
23 numbers, email addresses, telephone numbers, and any other personal identifying
24 information (not to include race, age, or gender) of individuals enrolled as subjects in
25 clinical studies or identified in adverse event reports;

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1 (d) street addresses, Social Security numbers, tax identification
2 numbers, dates of birth, home telephone numbers, and cellular telephone numbers of
3 employees;

4 (e) names, addresses, Social Security numbers, tax identification
5 numbers, email addresses, telephone numbers, and other personal identifying
6 information of any clinical investigator involved in the reporting of an adverse event;

7 (f) personal information not the specific focus of the request;

8 (g) information necessary to comply with privacy rights that are
9 guaranteed by the California Constitution, the United States Constitution, the Code of
10 Federal Regulations, the Health Insurance Portability and Accountability Act of 1996,
11 and other applicable laws and regulations. *See, e.g.*, 21 C.F.R. §§ 20.111, 20.63, and
12 314.80; 45 C.F.R. §§ 160 and 164; and

13 (h) materials that contain information protected from disclosure by the
14 attorney-client privilege or the work product doctrine, which shall be identified in a
15 privilege log that shall be provided to the receiving party within ninety (90) days of
16 production.

17 6. Redaction of material pursuant to paragraph 5 is subject to the following:

18 (a) The redacting party shall, upon written or oral request, identify the
19 nature of the information redacted in a specific document with sufficient detail to
20 allow the requesting party to determine whether a challenge to the redacted
21 information may be appropriate.

22 (b) If the requesting party has a good-faith basis for challenging the
23 redaction, that party shall promptly inform counsel for the redacting party in writing
24 of said challenge.

25 (c) If, after conferring, the parties cannot resolve the dispute despite
26 good-faith efforts to do so, the party challenging the redaction may move the Court for
27 a ruling on the issue of whether certain information is entitled to redaction. The party
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1 that has redacted the information must show by a preponderance of the evidence that
2 the redacted document or portion thereof is redacted pursuant to the relevant terms of
3 paragraph 5, above, or is otherwise valid under applicable law. If the Court finds that
4 said information should remain redacted, said information shall remain redacted and
5 may not be used as evidence by either party at trial or at a hearing or be relied upon by
6 either party's experts. If the Court finds that said information should not remain
7 redacted, the redacting party shall provide an unredacted version of the document
8 within fifteen (15) days of the Court's decision or, if the redacting party challenges
9 such a decision, within fifteen (15) days of the conclusion of any and all proceedings
10 or interlocutory appeals challenging the decision.

11 7. Counsel of record for the party receiving Confidential Information shall
12 use reasonable efforts to limit the disclosure of Confidential Information, including
13 any copies thereof, to the minimum number of persons necessary to conduct this
14 litigation. All copies of Confidential Information shall immediately be affixed with
15 the confidentiality legend pursuant to the provisions of paragraph 3(a), above, if the
16 legend does not already appear on the copy. All such copies shall be afforded the full
17 protection of this Order.

18 8. Except as otherwise provided herein, or with the prior written consent of
19 the party or other person originally designating a document as confidential,
20 Confidential Information may be disclosed to the following persons:

21 (a) the Court, the Court's clerk(s), staff, employees, any Court-
22 appointed Special or Discovery Master, any Court-appointed mediator, any mediator
23 agreed to by the parties, and any court reporter or videographer transcribing or
24 recording testimony, whether at a deposition, hearing, or trial;

25 (b) any named party;

26 (c) any attorney appearing as of record and any employee, agent, or
27 representative of said attorney;

1 (d) any person designated by the Court, in the interest of justice, upon
2 such terms as the Court may deem proper;

3 (e) any physician, nurse practitioner, medical professional, or other
4 healthcare provider, and any employee or agent thereof, who prescribed Cymbalta for
5 Plaintiff Leanka Winters or who provided care or treatment to Plaintiff Leanka
6 Winters during or following her cessation of Cymbalta. For the sake of clarity, the
7 procedures set forth in Paragraph 9, below, which govern disclosure of Confidential
8 Information to parties listed in Paragraph 8(f), shall not apply to the healthcare
9 providers identified in this paragraph;

10 (f) Subject to the provisions of Paragraph 9, below, any of the
11 following:

- 12 (1) any non-party witness appearing to testify at a deposition;
- 13 (2) any person with prior knowledge of the Confidential
14 Information;
- 15 (3) any consultant or expert retained for the purpose of assisting
16 counsel in the lawsuit;
- 17 (4) any employee or third-party contractor of counsel involved
18 in organizing, filing, coding, converting, storing, or
19 retrieving data or in designing programs for handling
20 documents or data connected with these actions, including
21 the performance of such duties in relation to a computerized
22 litigation support system; and
- 23 (5) any employee or third-party contractor of counsel involved
24 in trial preparation.

25 9. Before disclosing Confidential Information to any person listed in
26 paragraph 8.f., above, the receiving party shall:
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1 (a) ensure that the individual to whom disclosure is to be made has
2 been provided a copy of this Order and executed the Confidentiality Agreement
3 attached hereto as Exhibit A, thereby agreeing to be bound by the terms of this Order
4 concerning receipt and disclosure of Confidential Information; and

5 (b) prepare a log providing the name, address, place of employment,
6 and employment capacity of each such person to whom disclosure of Confidential
7 Information is made, together with a copy of the Confidentiality Agreement executed
8 by that person. The receiving party shall maintain said log and the signed copies of the
9 Confidential Agreement for five (5) years following the final conclusion of this
10 litigation. The contents of said log shall be privileged and shall not be subject to
11 disclosure absent an order by the Court.

12 10. Subject to the provisions of paragraphs 8 and 9, above, no disclosure of
13 Confidential Information shall be made to any Competitor of Lilly. In the event any
14 disclosure of Confidential Information to a Competitor of Lilly is anticipated, the
15 disclosing party shall provide written notice no fewer than fifteen (15) days prior to
16 any disclosure identifying the Competitor of Lilly to whom Confidential Information
17 will be disclosed and specifying the Bates number of the Confidential Information to
18 be disclosed. Lilly shall have fifteen (15) days within which to object in writing to
19 any proposed disclosure pursuant to this Paragraph.

20 11. Persons obtaining access to Confidential Information under this Order
21 shall use the information for preparation and trial (including appeals and retrials)
22 related to Cymbalta discontinuation litigation, and, to the extent it is used in related
23 actions, subject to the protective orders in those related actions. Persons obtaining
24 access to Confidential Information shall not use such information for any other
25 purpose, including, but not limited to, business, governmental, commercial, or
26 administrative or unrelated judicial proceedings.

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1 12. Any party or person to whom Confidential Information has been
2 furnished who receives from any non-party (including natural persons, corporations,
3 partnerships, firms, governmental agencies, departments or bodies, boards, or
4 associations) a subpoena or other process that seeks production or disclosure of such
5 Confidential Information shall promptly, and in any case by the close of the next
6 business day, give telephonic notice or written notice by overnight delivery, email, or
7 facsimile to counsel for the designating party. Both the telephonic notice and/or the
8 written notice shall identify the documents sought and the return date of the subpoena
9 or other process, and the written notice shall also include a copy of the subpoena or
10 other process. The party or person receiving the subpoena shall also inform the
11 person seeking the Confidential Information that such information is subject to this
12 Order. No production or other disclosure of such information pursuant to the
13 subpoena or other process shall occur before ten (10) days following the date on
14 which notice is given, or the return date of the subpoena, whichever is earlier.

15 13. The parties shall maintain privilege logs pursuant to Federal Rule of Civil
16 Procedure 26(b)(5). A privilege log shall be provided within ninety (90) days after
17 each production of documents by a party except that a receiving party shall be
18 permitted to request from the producing party that a privilege log for a particular
19 production be provided within a shorter time period if the receiving party has a good
20 faith basis for such a request in connection with a scheduled deposition.

21 (a) No party is required to list on a privilege log any communications
22 regarding the claims and defenses in these proceedings exclusively between a party
23 and its in-house counsel, outside counsel, an agent of outside counsel other than the
24 party, any non-testifying experts, and, with respect to information protected by Fed. R.
25 Civ. P. 26(b)(4), testifying experts.

26 (b) No party is required to list on a privilege log any privileged
27 materials or work product created after November 1, 2012, by its in-house counsel,
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1 outside counsel, an agent of outside counsel other than the party, any non-testifying
2 experts, and, with respect to information protected by Fed. R. Civ. P. 26(b)(4),
3 testifying experts.

4 (c) If a producing party identifies portions of discoverable information
5 that are privileged and redacts such portions of the discoverable information on that
6 basis, the producing party does not need to log the fact of redaction so long as, for e-
7 mails, the bibliographic information (i.e., to, from, cc, bcc, date/time) is not redacted;
8 and, for non-email documents, the redaction is noted on the face of the document.
9 The following terms will be used to signify the reasons for any redactions:
10 Confidential Employee Information (“CEI”), Confidential Investigator Personal
11 Information (“CII”), Confidential Patient Information (“CPI”), AC Privilege, WP
12 Privilege, and AC/WP Privilege.

13 (d) A party’s privilege log only needs to provide objective metadata
14 (to the extent it is reasonably available and does not reflect privileged or protected
15 information) and an indication of the privilege or protection being asserted.

16 (e) If a party receiving a privilege log has a good-faith basis for
17 challenging a producing party’s privilege determination, the receiving party shall
18 inform counsel for the producing party in writing. The producing party will have
19 thirty (30) days to provide a written response.

20 (f) If, after conferring, the parties cannot resolve the dispute despite
21 good-faith efforts to do so, the party challenging a privilege determination may move
22 the Court for a ruling on the issue of privilege. The producing party must show by a
23 preponderance of the evidence that the withheld document or portion thereof is
24 privileged, as set forth in paragraph 6.c.

25 14. Inadvertent production of documents subject to work-product immunity,
26 the attorney-client privilege, or other legal privilege protecting information from
27 discovery shall not constitute a waiver of the immunity or privilege. With respect to
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1 such inadvertently produced documents, the following procedures shall apply, and the
2 parties agree that such procedures constitute reasonable and prompt steps to prevent
3 disclosure and to rectify the error of disclosure, pursuant to the Federal Rules of Civil

4 Procedure:

5 (a) The party discovering the inadvertent production will contact the
6 opposing party to apprise that party of such production promptly.

7 (b) If no dispute exists as to the protected nature of the inadvertently
8 produced documents, any party in possession of inadvertently produced documents
9 (“party in possession”) shall, within fifteen (15) days of receiving the notice of
10 inadvertent production, destroy the inadvertently produced documents along with any
11 copies and notes or other work product reflecting the contents of such documents,
12 including the deletion of all inadvertently produced documents from any litigation-
13 support or other database. The party in possession of the inadvertently produced
14 documents shall certify the destruction and deliver the certification to the producing
15 party within the fifteen (15)-day period. In the event that only portions of the
16 inadvertently produced documents contain privileged subject matter, the producing
17 party shall substitute redacted versions of the documents within ten (10) days of the
18 certification of destruction of the inadvertently produced documents.

19 (c) If the party in possession believes that the documents are not
20 subject to the protections of work-product immunity, attorney-client privilege, or other
21 legal privilege protecting information from discovery, the party in possession shall,
22 within fifteen (15) days of sending or receiving the notice of inadvertent production,
23 object to the producing party’s claim of protection by notifying the producing party of
24 the objection in writing and specifically identifying the produced documents to which
25 the objection applies. Upon the producing party’s receipt of written notification, the
26 parties will confer in an effort to resolve the dispute without Court intervention. If the
27 parties cannot resolve the dispute, any party can, within fifteen (15) days of reaching

1 an impasse, contact the Court to seek an in camera review of the documents in
2 question. The proponent of the privilege and/or immunity has the burden of proving
3 by a preponderance of the evidence that the inadvertently produced documents are
4 entitled to protection. If the Court determines that the inadvertently produced
5 documents are entitled to work-product immunity, attorney-client privilege, or other
6 legal privilege protecting information from discovery, the party in possession shall,
7 within fifteen (15) days of the Court’s decision, comply with the provisions of
8 paragraph 14(b), above.

9 (d) Upon receipt of notice of inadvertent production pursuant to
10 paragraph 14(a), above, and until the parties have resolved the issue pursuant to
11 paragraph 14(b) or (c), no use shall be made of inadvertently produced documents
12 during depositions or at trial, nor shall they be disclosed to anyone who did not
13 previously have access to them.

14 (e) The Parties agree that employing electronic keyword searching to
15 identify and prevent disclosure of privileged material constitutes “reasonable steps to
16 prevent disclosure” under Federal Rule of Evidence 502(b)(2). Pursuant to Federal
17 Rule of Evidence 502(d) and (e), the production of any discovery material by any
18 party, whether inadvertent or not, shall be without prejudice to any subsequent claim
19 by the producing party that such discovery material is privileged or attorney-work
20 product, and shall not be deemed a waiver of any such privilege or protection in either
21 the litigation pending before the court, or any other federal or state proceeding.

22 15. Failure to assert work-product immunity, the attorney-client privilege,
23 and/or other legal privilege protecting information from discovery in this lawsuit as to
24 one document shall not be deemed to constitute a waiver, in whole or in part, of any
25 work product immunity and/or privilege protection as to any other document, even if
26 the documents involve the same or similar subject matter.

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1 16. A deponent may be shown and examined about Confidential Information
2 during a deposition subject to the terms of paragraphs 8 and 9, above. Deponents
3 shall not retain or copy portions of the transcript of their depositions that contain
4 Confidential Information not provided by them or their counsel. While a deponent is
5 being examined about any Confidential Information, persons to whom disclosure is
6 not authorized under this Order shall not be present.

7 17. Parties and deponents may, within thirty (30) days after receiving a
8 deposition transcript, designate pages of the transcript and/or deposition exhibits as
9 confidential. Confidential Information within the deposition transcript may be
10 designated by underlining the portions of the pages that are confidential and marking
11 such pages with the confidentiality legend pursuant to the provisions of paragraph
12 3(a), above. Until expiration of the thirty (30)-day period, the entire deposition will
13 be treated as subject to protection against disclosure under this Order. If no party or
14 deponent timely designates Confidential Information in a deposition, none of the
15 transcript or its exhibits will be treated as confidential. If a timely designation is
16 made, the confidential portions and exhibits shall be filed under seal, separate from
17 the portions and exhibits not so designated and all copies of the confidential portions
18 and exhibits shall be treated as Confidential Information pursuant to the terms of this
19 Order. If any party in good faith disagrees with a confidential designation of any
20 portion of a deposition transcript or of any deposition exhibit, the procedures of
21 paragraph 4, above, will govern.

22 18. Subject to the Federal Rules of Civil Procedure, the Federal Rules of
23 Evidence, and Local Rules of this Court, Confidential Information may be offered into
24 evidence at trial or any court proceeding.

25 (a) If a party wishes to use Confidential Information during a Court
26 proceeding or hearing other than trial, the proponent of the evidence must give two (2)

1 days' advance notice in writing to the designating party prior to offering the evidence.
2 This provision does not apply to depositions.

3 (b) Any use of Confidential Information at trial shall be governed by
4 the orders of the trial judge. This Order does not govern the use of Confidential
5 Information at trial.

6 19. Use of Confidential Information in Court. To the extent a Party seeks to
7 file any Confidential Information in the public record in this action, that filing Party
8 shall comply with the requirements of Civil Local Rule 79-5. If the parties cannot
9 reach an agreement to eliminate the need to file under seal, the filing Party must, at the
10 request of the designating party, file an application to seal as set forth in Civil Local
11 Rule 79-5.2.2(a) and (b). The parties shall act in good faith to not include or attach
12 Confidential Information to filings in the public record unless the Confidential
13 Information has direct relevance to the submission to the court.

14 20. Nothing in this Order shall preclude a party from introducing into
15 evidence at trial or hearing any Confidential Information that is admissible under the
16 Federal Rules of Evidence.

17 21. Nothing in this Order shall prevent or otherwise restrict counsel from
18 rendering advice to their clients in this lawsuit and, in the course thereof, relying
19 generally on examination of Confidential Information, provided that, in rendering
20 such advice and otherwise communicating with a client, counsel shall not make
21 specific disclosure of any Confidential Information except pursuant to the provisions
22 of this Order. Counsel shall at all times keep secure all notes, abstractions, or other
23 work product derived from or containing Confidential Information and shall be
24 obligated to maintain the confidentiality of such work product, even after the
25 documents designated as confidential have been returned or destroyed pursuant to
26 paragraph 23, below.

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1 (c) The receiving party shall make a reasonable effort to retrieve any
2 Confidential Information from any non-party to whom such information has been
3 given, and shall notify the producing party in writing of the failure to retrieve any such
4 documents. This notice shall (1) specifically identify the Confidential Information not
5 returned, (2) identify the person from whom the Confidential Information could not be
6 retrieved, and (3) state the efforts made to retrieve such Confidential Information and
7 the reasons these efforts were unsuccessful.

8 24. Nothing in this Order shall prevent any party or other person from
9 seeking modification of this Order or from objecting to discovery that it believes to be
10 otherwise improper. The parties shall be given notice and an opportunity to be heard
11 before the Court on any matter that in any way modifies this Order or may result in a
12 decision affecting the substance or effect of this Order.

13 25. Nothing herein shall prevent any party from disclosing any document that
14 it has produced to any other person or shall otherwise restrict the use of such
15 documents by the producing party. Such use and/or disclosure shall not be deemed to
16 waive or otherwise modify the protection or confidentiality provided in this Order.

17 26. Any party may expressly waive in writing the applicability of any
18 provision of this Order to any document or portion thereof that the party produces.
19 Such waiver shall apply only to the document or portion thereof to which the
20 applicability of the specified provision of this Order is expressly waived.

21 27. Any material violation of this Order by any party or person to whom
22 Confidential Information is disclosed pursuant to the terms of the Order shall
23 constitute a violation of a court order and be punishable as such.

24 28. **GOOD CAUSE:** Good cause exists to issue a protective order in this
25 case because disclosure and discovery activity in this action are likely to involve
26 production of confidential, proprietary, or private information that qualify for
27 protection under Federal Rule of Civil Procedure 26(c). Defendant's Confidential
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1 Information includes, but is not limited to: information on corporate organization;
2 IND/NDA submissions and information relating to product development;
3 communications with FDA and state regulatory agencies; marketing research, plans
4 and summaries; sales representative information, records and communications; sales
5 representative training materials; financial and business information and records;
6 external consultant work product and communications; Standard Operating
7 Procedures and manuals; and product safety information. Plaintiff's Confidential
8 Information includes, but is not limited to, Plaintiff Leanka Winters' medical,
9 financial, and/or employment records.

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IT IS SO ORDERED on this 22nd day of February, 2016.



Honorable Sheri Pym
United States Magistrate Judge

EXHIBIT A

I, _____, do hereby acknowledge that I have received a copy of the “PROTECTIVE ORDER OF CONFIDENTIALITY” (the “Order”) that was entered in the above referenced case, with respect to the manner in which confidential discovery information disclosed or made available in the course of the above referenced proceeding is to be treated by me.

I state that: (1) I have read and understand the Order and I hereby represent, warrant and agree that I will abide by the Order; (2) I will use the information or documents disclosed to me in connection with the above referenced proceeding pursuant to the terms of the Order; (3) upon the final resolution of the above referenced proceeding, I will destroy or return all such information and documents to the person or persons from whom I have received them; and (4) I consent to personal jurisdiction in the United States District Court for the Central District of California in the event any party or other person seeks to enforce any claim that I have failed to abide by the terms of the Order.

Signature of Declarant

Signature of Counsel of Record

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