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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARK WILLIG and CYNTHIA  
FRENCH,

Plaintiffs,

vs.

EXIQON, INC.,  
and DOES 1 to 50

Defendant.

Case No. SACV 11-0399 DOC (RNBx)

~~PROPOSED~~ PROTECTIVE  
ORDER

DISCOVERY MATTER

PROTECTIVE ORDER

1 WHEREAS, each of the parties to the above-captioned action, Plaintiffs Mark  
2 Willig and Cynthia French (collectively, “Plaintiffs”) and Defendant Exiqon, Inc.  
3 (“Defendant”), may produce or seek discovery of documents, information or other  
4 Materials that may contain or relate to personal, confidential, proprietary or trade  
5 secret information of another party or a third party;

6 IT IS HEREBY ORDERED that the following Protective Order be entered in  
7 this Action:

8 1. This Protective Order shall govern the production, use and handling of  
9 confidential documents and information produced by any party in any form in this  
10 litigation, including in disclosures pursuant to Federal Rule of Civil Procedure 26,  
11 responses to written discovery, and deposition testimony (collectively “Material”). All  
12 Material subject to this Protective Order shall be used solely for the prosecution and/or  
13 defense of this action and shall not be used by any other party, other than the party that  
14 produced it, in any other litigation, for business, for competitive purposes, or for any  
15 other purpose whatsoever.

16 2. The following classifications shall apply:

17 (a) “Confidential Information” shall mean and include any document  
18 (whether in hard copy or computer readable form), thing, deposition testimony,  
19 interrogatory answers, responses to requests for admissions and/or production,  
20 disclosures pursuant to Federal Rule of Civil Procedure 26, or other information  
21 provided in discovery in this Action (“Discovery Material”), which contains  
22 information that is non-public and confidential or proprietary, whether personal or  
23 business-related; such as personal employment records, personal medical records, and  
24 personal data such as personal bank account numbers and social security numbers, as  
25 well as information that constitutes, reflects, or concerns trade secrets, know-how or  
26 proprietary data, business, financial or commercial information, the disclosure of  
27 which is likely to cause harm to the competitive position of the party making the  
28 confidential designations on Discovery Material (“the Designating Party”), such as

1 non-public customer lists, bank account statements, past sales data, past product  
2 development, past business/strategic plans, past sales/financial projections, past  
3 marketing plans, and non-public contracts. To the extent that any documents or  
4 information disclosed in this matter originates from systems maintained in Denmark,  
5 “Confidential Information” shall also mean and include any Discovery Material that  
6 constitutes “personal data”, as defined in The Act on Processing of Personal Data (the  
7 “PPD”). Certain limited types of “Confidential Information” may be further  
8 designated, as defined and detailed below, as “Confidential Attorneys’ Eyes Only  
9 Information”;

10 (b) The “Confidential Attorneys’ Eyes Only Information” designation  
11 shall be reserved for Confidential Information relating to pending patent applications,  
12 products currently in development and not yet commercially released, current  
13 business/strategic plans, future sales/financial projections, future marketing plans,  
14 recent detailed sales and financial data, or other highly sensitive or proprietary  
15 competitive or financial information; All such Confidential Information or  
16 Confidential Attorneys’ Eyes Only Information designations shall be made in good  
17 faith by the Designating Party and made at the time of disclosure, production, or  
18 tendered to the party receiving the same (“Receiving Party”), or at such other time as  
19 permitted by this Protective Order, provided that the inadvertent failure to so designate  
20 does not constitute a waiver of such claim, and a party may so designate Discovery  
21 Material after such Discovery Material has been produced, with the effect that such  
22 Discovery Material is thereafter subject to the protections of this Protective Order.  
23 Designations of Confidential Information and Confidential Attorneys’ Eyes Only  
24 Information shall constitute a representation that such Discovery Material has been  
25 reviewed by an attorney for the Designating Party and that there is a valid basis for  
26 such designation.

1           3.     The designation of Discovery Material as Confidential Information or  
2 Confidential Attorneys' Eyes Only Information shall be made by the Designating Party  
3 in the following manner:

4           (a)    Each party shall designate Material as Confidential Information by  
5 placing a "CONFIDENTIAL" stamp on each page so designated, for each document or  
6 information that, in good faith, the party believes constitutes Confidential Information.  
7 Any testimony designated as "CONFIDENTIAL" shall be so designated by a Party at  
8 the time of said deposition or within seven (7) days of receipt of the deposition  
9 transcript, whichever is later. Documents and written discovery responses shall be  
10 designated as "CONFIDENTIAL" at the time of production.

11           (b)    Each party shall designate Material as Confidential Attorneys' Eyes  
12 Only Information by placing a "CONFIDENTIAL ATTORNEYS' EYES ONLY"  
13 stamp on each page so designated, for each document or information that, in good  
14 faith, the party believes constitutes Confidential Attorneys' Eyes Only Information.  
15 Any testimony designated as "CONFIDENTIAL ATTORNEYS' EYES ONLY" shall  
16 be so designated by a Party at the time of said deposition or within seven (7) days of  
17 receipt of the deposition transcript, whichever is later. Documents and written  
18 discovery responses shall be designated as "CONFIDENTIAL ATTORNEYS' EYES  
19 ONLY" at the time of production.

20           4.     Notwithstanding any other terms of this Protective Order, a Party may not  
21 designate Material produced by another Party.

22           5.     Confidential Information shall not be shown, revealed, released,  
23 disclosed, or communicated in any way to any person or entity, except those listed in  
24 Paragraphs 6 and 9 below, without the advance written authorization of the party that  
25 produced it.

26           6.     Confidential Information may only be disclosed to the following:  
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1 (a) To the Court and court personnel, subject to paragraph 9 below.  
2 The Court and court personnel are not required to sign a confidentiality agreement or  
3 written acknowledgement of this Protective Order;

4 (b) The attorneys of record for the parties to this litigation, their  
5 respective associates, partners, clerks, paralegals, legal assistants, secretaries, and other  
6 support staff who are actively engaged in assisting such attorneys in the prosecution or  
7 defense of this litigation or the related litigation;

8 (c) Experts retained or consulted by any party or their counsel as  
9 required to assist in the conduct of this litigation, to the extent that counsel of record  
10 determines that disclosure is necessary for the prosecution or defense of this litigation,  
11 provided that prior to disclosure, any such expert is provided with a copy of this  
12 Protective Order and acknowledges in writing that he or she agrees to be bound by  
13 these terms;

14 (d) The parties to this litigation, to the extent that their respective  
15 counsel determines that such disclosure is necessary for the prosecution or defense of  
16 this litigation;

17 (e) Clerical or ministerial service providers, including outside copying  
18 services and court reporters, retained by a party's counsel to assist such counsel in  
19 connection with this litigation; and

20 (f) Authors, addressees or recipients of the Confidential Information.

21 7. Confidential Attorneys' Eyes Only Information shall not be shown,  
22 revealed, released, disclosed, or communicated in any way to any person or entity,  
23 except those listed in Paragraphs 8 and 9 below, without the advance written  
24 authorization of the party that produced it.

25 8. Confidential Attorneys' Eyes Only Information shall be disclosed solely  
26 to:  
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1 (a) To the Court and court personnel, subject to paragraph 9 below.  
2 The Court and court personnel are not required to sign a confidentiality agreement or  
3 written acknowledgement of this Protective Order;

4 (b) The attorneys of record for the parties to this litigation, their  
5 respective associates, partners, clerks, paralegals, legal assistants, secretaries, and other  
6 support staff who are actively engaged in assisting such attorneys in the prosecution or  
7 defense of this litigation or the related litigation;

8 (c) To the Party who produced it, to the extent that their respective  
9 counsel determines that such disclosure is necessary for the prosecution or defense of  
10 this litigation or the related litigation;

11 (d) The author of the document or Material and to anyone shown on  
12 the document or Material as having received it in the ordinary course of business; and

13 (e) To such other persons, including retained expert witnesses, as  
14 hereafter may be designated by written stipulation of the Parties or by further order of  
15 the Court.

16 9. If any papers to be filed with the Court contain Confidential Information  
17 or Confidential Attorneys' Eyes Only Information, the proposed filing shall be  
18 accompanied by an application to file the papers or the portion thereof containing the  
19 Confidential Information or Confidential Attorneys' Eyes Only Information (if such  
20 portion is segregable) under seal. Any such application shall be directed to the Judge  
21 to whom the papers are directed. For motions, the parties should also file a redacted  
22 version of the motion and supporting papers. Nothing contained herein shall alter or  
23 limit the provisions of Central District of California Local Rule 79-5.1, to which the  
24 parties are obligated to comply.

25 10. Any party to this Protective Order has the right to challenge another  
26 party's designation of information as "CONFIDENTIAL" or "CONFIDENTIAL  
27 ATTORNEYS' EYES ONLY" pursuant to this Protective Order by taking appropriate  
28 action pursuant to Central District of California Local Rule 37-1 and 37-2. This

1 Protective Order shall not be construed as a waiver of either party's right to challenge  
2 the "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY"  
3 designation of a producing party as to information that is not entitled to protection as  
4 confidential information under state or federal law. Pending a resolution of the  
5 disputed designation, Materials designated as "CONFIDENTIAL" will be treated in  
6 accordance with Paragraphs 6 and 9, and Materials designated as "CONFIDENTIAL  
7 ATTORNEYS' EYES ONLY" will be treated in accordance with Paragraphs 8 and 9,  
8 until one of the following occurs:

9 (a) the party who claims that the Material is Confidential Information  
10 or Confidential Attorneys' Eyes Only Information withdraws such designation in  
11 writing or publicly discloses the Material by filing it with the Court without seeking an  
12 order to file such under seal; or

13 (b) the Court rules that the Material is not Confidential Information or  
14 Confidential Attorneys' Eyes Only Information.

15 11. Subject to the provisions of the Federal Rules of Civil Procedure, nothing  
16 in this Protective Order shall in any way limit the uses that the Parties may make of  
17 their own Confidential Information or Confidential Attorneys' Eyes Only Information.  
18 To the extent a Designating Party elects to publicly disclose Confidential Information  
19 or Confidential Attorneys' Eyes Only Information in a court filing (by not filing such  
20 under seal), all other parties may do likewise unless the Designating Party previously  
21 advises that the disclosure was inadvertent.

22 12. Within sixty (60) days of the conclusion of all proceedings, each party  
23 shall destroy all Material designated Confidential and/or Confidential Attorneys' Eyes  
24 Only or return such Material to the party on whose behalf such Material was produced.

25 13. This Protective Order shall continue to be binding throughout this  
26 litigation and after its conclusion. A settlement or final judgment in this action shall  
27 not relieve any person to whom Confidential Information or Confidential Attorneys'  
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1 Eyes Only Information has been disclosed from the obligation of maintaining the  
2 confidentiality of such information as set forth herein.

3 14. Nothing herein shall operate as a waiver of the right of any person to  
4 object on any ground to the admissibility of any Confidential Information or  
5 Confidential Attorneys' Eyes Only Information in connection with any motions or  
6 trial. Nothing herein shall prevent a witness from reviewing a transcript of his or her  
7 deposition testimony and any exhibits thereto, in accordance with the Federal Rules of  
8 Civil Procedure, or any stipulation placed on the record by counsel.

9 15. By entering into this Protective Order, the Parties do not waive any  
10 right(s) to assert the attorney client privilege, work product doctrine, financial privacy  
11 or any other objection that could be raised in response to any request to produce  
12 documents, interrogatory and/or deposition examination.

13 16. The inadvertent production in discovery of any privileged or otherwise  
14 protected or exempted information, or Confidential Information or Confidential  
15 Attorneys' Eyes Only Information as well as the inadvertent production in discovery of  
16 information without an appropriate designation of confidentiality, shall not be deemed  
17 a waiver or impairment of any claim or privilege or protection including but not  
18 limited to the attorney-client privilege, the protection afforded to work-product  
19 Materials or the subject matter thereof, or the confidential nature of any such  
20 information, provided that the producing party shall immediately notify receiving party  
21 in writing when inadvertent production is discovered. Upon receiving written notice  
22 from the producing party that privileged information or work-product material has  
23 been inadvertently produced, the receiving party shall not duplicate the privileged  
24 information, or distribute the privileged information by any means other than returning  
25 it to the designating party. In addition, once notified of the production of inadvertent  
26 privileged information, the receiving party shall, if such Material has previously been  
27 disclosed to others by the receiving party, take reasonable steps to obtain all such  
28 previously disclosed Material and advise such persons of the claims of privilege.

1           17.    Agreeing to produce or receive Confidential Material designated as  
2 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY,” or  
3 otherwise complying with the terms of this Protective Order shall not:

4                   (a)    Operate as an admission by any party that any Confidential  
5 Information and/or Confidential Attorneys’ Eyes Only Information contains or reflects  
6 trade secrets or any other type of confidential or proprietary information entitled to  
7 protection under applicable law;

8                   (b)    Prejudice in any way the rights of any party to object to the  
9 production of documents it considers not subject to discovery, or operate as an  
10 admission by any party that the restrictions and procedures set forth herein constitute  
11 adequate protection for any particular information deemed by any party to be  
12 Confidential Information or Confidential Attorneys’ Eyes Only Information;

13                   (c)    Prejudice in any way the rights of any party to object to the  
14 authenticity or admissibility into evidence of any document, testimony or the evidence  
15 subject to this Protective Order;

16                   (d)    Prejudice in any way the rights of any party to seek a determination  
17 by the Court whether any Confidential Information or Confidential Attorneys’ Eyes  
18 Only Information should be subject to the terms of this Protective Order;

19                   (e)    Prejudice in any way the rights of any party to petition the Court for  
20 a further protective order, or modification or amendment of this order, relating to any  
21 purportedly Confidential Information or Confidential Attorneys’ Eyes Only  
22 Information;

23                   (f)    Prejudice in any way the rights of any party to petition the Court for  
24 permission to disclose or use particular Confidential Information or Confidential  
25 Attorneys’ Eyes Only Information more broadly than would otherwise be permitted by  
26 the terms of this Protective Order; or

27                   (g)    Prevent any designating party from agreeing to alter or waive the  
28 provisions or protections provided for herein with respect to any particular

1 Confidential Information or Confidential Attorneys' Eyes Only Information. Provided,  
2 however, that no modification of this Protective Order by the parties shall have the  
3 force or effect of a court order unless the Court approves the modification.

4 18. Nothing in this Order shall be construed as authorizing a party to disobey  
5 a lawful subpoena issued in another action.

6 19. Any violation of the terms of this Protective Order may be punishable by  
7 money damages, sanctions, contempt of court citation, or such other or additional relief  
8 as the Court deems appropriate. The foregoing remedies are in addition to any other  
9 common law or statutory relief that may be available for violation of the terms of this  
10 Protective Order.

11 20. The Court retains jurisdiction subsequent to settlement or entry of  
12 judgment to enforce the terms of this Protective Order.

13 IT IS SO ORDERED

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16 DATED: May 19, 2011



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Hon. Robert N. Block  
United States Magistrate Judge