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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MASIMO CORPORATION, a Delaware corporation,)

Plaintiff,)

vs.)

SHENZHEN MINDRAY BIO-MEDICAL ELECTRONICS CO., LTD., a corporation of the People's Republic of China,)

Defendant.)

Case No. SACV 12-02206 CJC (JPRx)

PROTECTIVE ORDER

SHENZHEN MINDRAY BIO-MEDICAL ELECTRONICS CO., LTD., a corporation of the People's Republic of China,)

Counter Claimant,)

vs.)

MASIMO CORPORATION, a Delaware corporation,)

Counter-Defendant.)

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any

1 purpose other than prosecuting this litigation may be warranted. The parties acknowledge that this
2 Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the
3 protection it affords from public disclosure and use extends only to the limited information or items that are
4 entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as
5 set forth in Section 14.3, below, that this Protective Order does not entitle them to file confidential
6 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
7 standards that will be applied when a party seeks permission from the court to file material under seal.

8 **2. DEFINITIONS**

9 2.1 **Challenging Party**: a Party or Non-Party that challenges the designation of information or
10 items under this Order.

11 2.2 **“CONFIDENTIAL” Information or Items**: information (regardless of how it is generated,
12 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
13 26(c).

14 2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House Counsel (as well as their
15 support staff).

16 2.4 **Receiving Party**: a Party that receives Disclosure or Discovery Material from a Producing
17 Party.

18 2.5 **Designating Party**: a Party or Non-Party that designates information or items that it
19 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
20 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

21 2.6 **Disclosure or Discovery Material**: all items or information, regardless of the medium or
22 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,
23 and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

24 2.7 **Expert**: a person with specialized knowledge or experience in a matter pertinent to the
25 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
26 in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time
27 of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.
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1 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
2 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
3 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

4 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
5 sensitive “Confidential Information or Items” representing computer code and associated comments and
6 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in
7 detail the algorithms or structure of software, disclosure of which to another Party or Non-Party would
8 create a substantial risk of serious harm that could not be avoided by less restrictive means.

9 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does
10 not include Outside Counsel of Record or any other outside counsel.

11 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
12 not named as a Party to this action.

13 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but
14 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
15 party or are affiliated with a law firm which has appeared on behalf of that party.

16 2.13 Party: any party to this action, including all of its officers, directors, employees, consultants,
17 retained experts, and Outside Counsel of Record (and their support staffs).

18 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
19 this action.

20 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
21 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
22 retrieving data in any form or medium) and their employees and subcontractors.

23 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
24 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as “HIGHLY
25 CONFIDENTIAL – SOURCE CODE.”

26 3. SCOPE

27 The protections conferred by this Order cover not only Protected Material (as defined above), but
28 also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their
2 Counsel that might reveal Protected Material. However, the protections conferred by this Order do not cover
3 the following information: (a) any information that is in the public domain at the time of disclosure to a
4 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
5 publication not involving a violation of this Order, including becoming part of the public record through
6 trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained
7 by the Receiving Party after the disclosure from a source who obtained the information lawfully and under
8 no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be
9 governed by a separate agreement or order.

10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
12 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise
13 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this
14 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all
15 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions
16 or applications for extension of time pursuant to applicable law.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
19 Party that designates information or items for protection under this Order must take care to limit any such
20 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to
21 do so, the Designating Party must designate for protection only those parts of material, documents, items, or
22 oral or written communications that qualify – so that other portions of the material, documents, items, or
23 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
24 Order.

25 If it comes to a Designating Party's attention that information or items that it designated for
26 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,
27 that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.
28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
2 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
3 Material that qualifies for protection under this Order must be clearly so designated before the material is
4 disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
7 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
9 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or
10 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
11 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
12 portion, the level of protection being asserted.

13 A Party or Non-Party that makes original documents or materials available for inspection need not
14 designate them for protection until after the inspecting Party has indicated which material it would like
15 copied and produced. During the inspection and before the designation, all of the material made available
16 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
17 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
18 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
19 producing the specified documents, the Producing Party must affix the appropriate legend
20 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
21 CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected Material. If only a portion or
22 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
24 portion, the level of protection being asserted.

25 (b) for testimony given in deposition, that the Designating Party identify on the record,
26 before the close of the deposition, all protected testimony and specify the level of protection being asserted.
27 When it is impractical to identify separately each portion of testimony that is entitled to protection and it
28 appears that substantial portions of the testimony may qualify for protection, the Designating Party may

1 invoke on the record (before the deposition is concluded) a right to have up to 21 days to identify the
2 specific portions of the testimony as to which protection is sought and to specify the level of protection
3 being asserted. Only those portions of the testimony that are appropriately designated for protection within
4 the 21 days shall be covered by the provisions of this Protective Order. Alternatively, a Designating Party
5 may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
6 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY.”

8 Transcripts containing Protected Material shall have an obvious legend on the title page that the
9 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
10 line numbers as appropriate) that have been designated as Protected Material and the level of protection
11 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
12 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
13 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
14 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall
15 be treated only as actually designated.

16 (c) for information produced in some form other than documentary and for any other
17 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
18 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.
20 If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent
21 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
23 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
24 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
25 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
26 Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is
4 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
5 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
6 designation by electing not to mount a challenge promptly after the original designation is disclosed.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
8 providing written notice of each designation it is challenging and describing the basis for each challenge. To
9 avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to
10 confidentiality is being made in accordance with this specific paragraph of the Protective Order and Local
11 Rule 37. The parties shall attempt to resolve each challenge in good faith and must begin the process by
12 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within
13 seven (7) days of the date of service of notice. In conferring, the Challenging Party must explain the basis
14 for its belief that the confidentiality designation was not proper and must give the Designating Party an
15 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
16 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
17 the next stage of the challenge process only if it has engaged in this meet and confer process first or
18 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
19 manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
21 the Designating Party will bear the burden of initiating and conducting a sufficient meet and confer (per
22 Local Rule 37-1); and, if necessary, the Designating Party will bear the burdens of proof and persuasion in
23 moving for a Protective Order (per Local Rule 37-2) to uphold the challenged designation(s). If the
24 Designating Party does not initiate the discovery motion process under Local Rule 37 within fourteen (14)
25 days of a challenge, each subject designation is effectively withdrawn and the subject documents and
26 material may be used for all purposes in this Litigation. The Receiving Party must make de-designation
27 requests in good faith. Mass, indiscriminate, or routinized requests for de-designation are prohibited. In
28

1 order to prevent abuse of this process, the parties agree that after a party has made five (5) unsuccessful
2 designation challenges, that party shall have the burden of moving for de-designation as to any additional
3 designation challenges it chooses to raise. This shifting burden to move does not affect the burden of
4 persuasion, which remains at all times on the Designating Party.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
6 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain
7 confidentiality as described above, all parties shall continue to afford the material in question the level of
8 protection to which it is entitled under the Producing Party's designation until the court rules on the
9 challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
13 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
14 persons and under the conditions described in this Order. When the litigation has been terminated, a
15 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party in a secure manner that
17 ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
19 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
20 item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action who have signed the
22 "Acknowledgement and Agreement to Be Bound" (Exhibit A), as well as the non-attorney employees of
23 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
24 litigation¹;

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28 ¹ A Receiving Party's Outside Counsel shall retain any such executed Acknowledgement and Agreement to Be Bound, which need not be disclosed to the Producing Party.

1 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
2 to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
3 and Agreement to Be Bound” (Exhibit A);

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

7 (d) the court and its personnel, and court reporters and their staff;

8 (e) professional jury or trial consultants, and Professional Vendors to whom disclosure is
9 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
10 Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
12 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
13 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
14 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court
15 reporter and may not be disclosed to anyone except as permitted under this Protective Order.

16 (g) the author or recipient of a document containing the information or a custodian or other
17 person who otherwise possessed or knew the information.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
19 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the
20 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
21 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
22 CONFIDENTIAL – SOURCE CODE” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action who have signed the
24 “Acknowledgement and Agreement to Be Bound” (Exhibit A), as well as the non-attorney employees of
25 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
26 litigation;

1 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
2 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as
3 to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

4 (c) the court and its personnel, and court reporters and their staff;

5 (d) professional jury or trial consultants (and mock jurors who participate in the work of
6 professional jury or trial consultant), and Professional Vendors to whom disclosure is reasonably necessary
7 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
8 and

9 (e) the author or recipient of a document containing the information or a custodian or other
10 person who otherwise possessed or knew the information.

11 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items
13 to Experts.

14 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a
15 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been
16 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
17 – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party
18 that (1) sets forth the full name of the Expert and the city and state of his or her primary residence, (2)
19 attaches a copy of the Expert’s current resume, (3) identifies the Expert’s current employer(s), (4) identifies
20 each person or entity from whom the Expert has received compensation or funding for work in his or her
21 areas of expertise or to whom the expert has provided professional services, including in connection with a
22 litigation, at any time during the preceding five years,² and (5) identifies (by name and number of the case,
23 filing date, and location of court) any litigation in connection with which the Expert has offered expert
24 testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding
25 five years.

26 _____
27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
28 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 (b) A Party that makes a request and provides the information specified in the preceding
2 respective paragraphs may disclose the subject Protected Material to the identified Expert unless, within ten
3 (10) days of delivering the request, the Party receives a written objection from the Designating Party. Any
4 such objection must set forth in detail the grounds on which it is based.

5 (c) A Party that receives a timely written objection must meet and confer with the
6 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within
7 seven (7) days of the written objection. If no agreement is reached, the Party seeking to make the disclosure
8 to the Expert may file a motion in accordance with the Local Rules seeking permission from the court to do
9 so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the
10 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
11 suggest any additional means that could be used to reduce that risk. In addition, any such motion must be
12 accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement
13 (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by
14 the Designating Party for its refusal to approve the disclosure.

15 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving
16 that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the
17 Receiving Party's need to disclose the Protected Material to its Expert.

18 8. PROSECUTION BAR³

19 Absent written consent from the Producing Party, any individual who receives access to "HIGHLY
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"
21 information that describes the structure and/or operation of the Producing Party's product and that has not
22 lost its confidential status shall not thereafter engage in Prohibited Patent Prosecution relating to pulse
23 oximetry. Attorneys who have received or reviewed such information may provide other patent prosecution
24 counsel with public information produced in this case so that the information may be filed with the U.S.
25 Patent Office. Any individual who receives access to the "HIGHLY CONFIDENTIAL – ATTORNEYS'

26 _____
27 ³ The Court ordered Shenzhen Mindray to prepare this document "incorporating the Court's rulings" on the protective order issues
28 disputed by the parties in this case. (D.I. 119.) Shenzhen Mindray hereby reserves all rights to object to the Court's rulings on the
protective order issues, including, without limitation, the Court's rulings on provisions of the prosecution bar.

1 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information described above shall
2 implement an ethical wall to prevent disclosure of this information to any individual engaged in Prohibited
3 Patent Prosecution relating to pulse oximetry for the duration of this Prosecution Bar. For purposes of this
4 paragraph, “Prohibited Patent Prosecution” includes directly or indirectly drafting, amending, advising, or
5 otherwise affecting the scope or maintenance of patent claims, and includes, for example, any original
6 prosecution, reissue, and reexamination proceedings. To avoid any doubt, “Prohibited Patent Prosecution”
7 as used in this paragraph does not include representing a party challenging a patent before a domestic or
8 foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
9 reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first
11 received by the affected individual and shall end two (2) years after final termination of this action.

12 9. SOURCE CODE

13 (a) To the extent production of source code becomes necessary in this case, a
14 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it
15 comprises or includes confidential, proprietary or trade secret source code.

16 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
17 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to
19 the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be
20 disclosed, as set forth in Paragraphs 7.3 and 7.4.

21 (c) Any source code produced in discovery shall be made available for inspection, in a
22 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
23 mutually agreeable times, at the San Diego office of the Producing Party’s counsel, in the case of source
24 code produced by Shenzhen Mindray, or at the Orange County office of the Producing Party’s counsel, in
25 the case of source code produced by Masimo, or another mutually agreed upon location. The source code
26 shall be made available for inspection on a secured computer in a secured room without Internet access or
27 network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer
28 any portion of the source code onto any recordable media or recordable device. The Producing Party may

1 visually monitor the activities of the Receiving Party's representatives during any source code review, but
2 only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

3 (d) The Receiving Party may request paper copies of limited portions of source code
4 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers,
5 or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code
6 other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide
7 all such source code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL -
8 SOURCE CODE." The Producing Party may challenge the amount of source code requested in hard copy
9 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
10 Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for purposes
11 of dispute resolution.

12 (e) The Receiving Party shall maintain a record of any individual who has inspected
13 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
14 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not
15 create any electronic or other images of the paper copies and shall not convert any of the information
16 contained in the paper copies into any electronic format. The Receiving Party shall only make additional
17 paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers
18 (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for
19 the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing
20 Party at the end of each day and must not be given to or left with a court reporter or any other individual.

21 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
22 LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"
26 that Party must:

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

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

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

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8 The Designating Party shall bear the burden and expense of seeking protection in that court
9 of its confidential material – and nothing in these provisions should be construed as authorizing or
10 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
12 LITIGATION

13 (a) The terms of this Order are applicable to information produced by a Non-Party in
14 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such information produced by Non-Parties in
16 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in
17 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
19 Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-
20 Party not to produce the Non-Party’s confidential information, then the Party shall:

21 1. promptly notify in writing the Requesting Party and the Non-Party that some or all
22 of the information requested is subject to a confidentiality agreement with a Non-Party;

23 2. promptly provide the Non-Party with a copy of the Protective Order in this
24 litigation, the relevant discovery request(s), and a reasonably specific description of the information
25 requested; and

26 3. make the information requested available for inspection by the Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this court within 14
28 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-

1 Party's confidential information responsive to the discovery request. Absent a court order to the contrary,
2 the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

3 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Protective Order, the Receiving
6 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
7 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons
8 to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or
9 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

10 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
11 MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain inadvertently
13 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving
14 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This Paragraph is not intended to
15 modify whatever procedure may be established in an e-discovery order that provides for production without
16 prior privilege review.

17 14. MISCELLANEOUS

18 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
19 modification by the court in the future.

20 14.2 Right to Assert Other Objections. The entry of this Protective Order does not eliminate any
21 right a Party would otherwise have to object to disclosing or producing any information or item on any
22 ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground
23 to use in evidence of any of the material covered by this Protective Order.

24 14.3 Filing Protected Material. Without written permission from the Designating Party or a court
25 order secured after appropriate notice to all interested persons, a Party may not file in the public record in
26 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply
27 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
28 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a

1 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,
2 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request
3 to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
4 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
5 unless otherwise instructed by the court.

6 15. FINAL DISPOSITION

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

21
22 IT IS SO ORDERED.

23 DATED: March 17, 2014



Hon. Jean P. Rosenbluth
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand
the Protective Order that was issued by the United States District Court for the Central District of California
on [date] in the case of Masimo Corporation v. Shenzhen Mindray Bio-Medical Electronics Co., Ltd., Case
No. SACV 12-02206 CJC (JPRx). I agree to comply with and to be bound by all the terms of this Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Protective Order, even if such
enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or any proceedings related to
enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]