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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KERRICK MORRIS,
Plaintiff,

v.

OLYMPUS AMERICA INC.; and
DOES 1 to 20, inclusive,
Defendants.

CASE NO. SACV13-01189-DOC (JPRx)

DISCOVERY MATTER

**ORDER RE: CONFIDENTIAL
MATERIAL AND PROTECTIVE
ORDER**

1 4. The term “**Producing Party**,” as used herein, refers to any party to
2 this Litigation producing Material in this Litigation, or any other person or entity
3 producing Material in this Litigation, who agrees to be bound by the terms of this
4 Stipulation and Order.

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6 5. The term “**Legend**,” as used herein, refers to a stamp or similar
7 insignia stating “CONFIDENTIAL.” When any Material is designated
8 Confidential pursuant to this Stipulation and Order, the appropriate Legend shall be
9 affixed to all confidential pages of such Material. In the case of Confidential
10 Information disclosed in a non-paper medium (e.g., videotape, audio tape, computer
11 disks or tapes, etc.), the appropriate Legend shall be affixed to the outside of the
12 medium or its container so as to give clear notice of the designation. To the extent
13 that paper or hard copies are made of Confidential Information that has been
14 produced in any non-paper medium as referenced above, the party making such
15 copies shall place the appropriate Legend on each page of such paper or hard copy
16 and any such paper or hard copies shall be deemed protected under this Stipulation
17 and Order. The CONFIDENTIAL designation shall be deemed to apply to the
18 Material itself and to information contained therein. The Producing Party shall
19 only designate as CONFIDENTIAL those Materials that the Producing Party
20 reasonably believes in good faith is entitled to confidential treatment under
21 applicable law and only those portions of those Materials that the Producing Party
22 reasonably believes in good faith is entitled to confidential treatment under
23 applicable law.

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25 6. When reference is made in this Stipulation and Order to any Material
26 or party, the singular shall include the plural and plural shall include the singular.

1 II. EFFECT OF DESIGNATION

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3 Unless and until otherwise ordered by the Court, or otherwise agreed by the
4 parties, all Material designated Confidential shall be treated as such under this
5 Stipulation and Order. However, by agreeing to this Stipulation and Order, no
6 party shall be deemed to agree that any other party's designation of any document
7 or other Material as Confidential is proper, or waives the right to challenge such
8 designation.

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10 III. SCOPE OF APPLICATION

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12 This Stipulation and Order shall govern all Material generated or produced
13 by any party to this Litigation in response to any formal discovery or informal
14 discovery or exchange of information, if so designated, conducted by any party to
15 this Litigation. This stipulation shall not govern the use or admissibility of any
16 evidence at trial or the procedures for using such Material at trial.

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18 IV. LIMITATION ON USE

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20 Confidential Information may be used only for purposes of this Litigation,
21 and may not be used for any other purpose including, without limitation, any
22 business or commercial purpose, except by consent of the Producing Party.
23 Nothing in this Stipulation and Order shall be construed to limit the parties' ability
24 to use its own Materials, not produced by another party to this Litigation,
25 containing Confidential Information, as they otherwise would during the ordinary
26 course of business.

1 Information that is designated Confidential and any summaries, charts or
2 notes made therefrom, and any facts or information contained therein or derived
3 therefrom and from no other source, shall be disclosed only to the extent necessary
4 for the prosecution and/or defense of this Litigation and only to:

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6 1. Parties to this Litigation and the employees, officers and directors of
7 such parties who have a reasonable need to review the information in connection
8 with this Litigation;

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10 2. The parties' in-house and outside counsel who have a reasonable need
11 to review the information in connection with this Litigation;

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13 3. Counsel of record in this Litigation, paralegals, legal assistants,
14 secretarial and clerical employees of such counsel of record, including outside copy
15 services, who have a reasonable need to review the information in connection with
16 this Litigation;

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18 4. Independent contractors, experts or consultants who are employed or
19 retained by, or consulted about retention on behalf of, any of the parties or counsel
20 of record in this Litigation for the parties hereto to assist in preparation of this
21 Litigation;

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23 5. Deponents, trial witnesses and their counsel who have a reasonable
24 need to review this material during the course of, or in preparation for, their
25 testimony in this Litigation, including but not limited to deponents or trial witnesses
26 who may be employees of a party;

1 6. Stenographic reporters who are involved in depositions or any hearings
2 or proceedings before the Court in this Litigation; and

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4 7. The Court and any persons employed by the Court whose duties
5 require access to Confidential Information.

6
7 V. MANNER OR MEANS OF DESIGNATION

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9 A Producing Party may designate any Material that contains Confidential
10 Information as Confidential pursuant to this Stipulation and Order by affixing the
11 appropriate Legend as provided under paragraph I.5. to any Material containing, or
12 that the Producing Party believes contains, Confidential Information.

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14 VI. DESIGNATION OF MATERIAL PRODUCED BY THIRD PARTIES

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16 Any party may designate as Confidential any Material produced or disclosed
17 without such designation by any third party, within thirty (30) days of production of
18 such Material to the designating party (or such other time as may be agreed),
19 provided that such Material contains Confidential Information of a designating
20 party, in the following manner:

21
22 1. Parties to this Litigation may designate such Material by sending
23 written notice of such designation, accompanied by copies of the designated
24 Material bearing the Legend, to all other parties in possession or custody of such
25 previously undesignated Material. Any party receiving such notice and copy of the
26 designated Material pursuant to this subparagraph shall, within fifteen (15) days of
27 receipt of such notice (or such other time as may be agreed), return to the
28 designating party all undesignated copies of such Material in their custody or

1 possession, or alternatively shall affix the Legend to all copies of such designated
2 Material in the receiving party's custody or possession.

3
4 2. Upon notice of designation pursuant to this paragraph, parties shall
5 also: (i) make no further disclosure of such designated Material contained therein
6 except as allowed under this Stipulation and Order; (ii) take reasonable steps to
7 notify any persons who were provided copies of such Material of the terms of this
8 Stipulation and Order; and (iii) take reasonable steps to reclaim any such Material
9 in the possession of any person not permitted access to such Material under the
10 terms of this Stipulation and Order.

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12 VII. DESIGNATION OF DEPOSITION TRANSCRIPTS

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14 In the case of Confidential Information revealed during a deposition, if a
15 deposition has not previously been designated as Confidential prior to its
16 preparation by the stenographer, counsel for a party may designate a deposition or a
17 portion thereof, disclosing, containing or referring to any Confidential Information
18 hereunder as Confidential by informing counsel for all other parties to this action in
19 writing within thirty (30) days after receipt of the transcript (or such other time as
20 may be agreed), as to the specific pages so deemed, and thereafter such pages shall
21 constitute Confidential Information pursuant to this Stipulation and Order. Upon
22 receipt of such notice, any party in possession of copies of such undesignated
23 transcript shall affix the appropriate Legend thereto. Until the expiration of such
24 thirty (30) day period, the entire transcript shall be treated as containing
25 Confidential Information.

1 VIII. COPIES

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3 All copies of all Material containing Confidential Information shall also
4 constitute and be treated as Confidential Information as provided in this Stipulation
5 and Order. Any person making, or causing to be made, copies of any Confidential
6 shall make certain that each such copy bears the appropriate Legend pursuant to the
7 requirements of this Stipulation and Order. Nothing herein shall preclude any
8 arrangement among the parties by which Material may be copied by the Producing
9 Party.

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11 IX. OBJECTIONS TO DESIGNATION

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13 Any party (the “Requesting Party”) may at any time request in writing that
14 any information or document designated as Confidential be released from the
15 requirements of this Stipulation and Order, and, unless otherwise agreed in writing,
16 the Producing Party shall confer with the Requesting Party within ten (10) days of
17 receipt of such written request. If an agreement cannot be reached by negotiation
18 and the Court has not provided for a different procedure to handle such disputes,
19 then the Requesting Party must make an application for a ruling from the Court to
20 remove the Confidential or designation from such information or document. The
21 procedures and burdens for any such motion are governed by the Federal Rules of
22 Civil Procedure and Local Rules 37-1 and 37-2 of the Central District of California.
23 In the event that such application is made, any relevant information or document
24 shall be submitted to the Court under seal for the Court’s review in accordance with
25 Local Rule 79-5, and the terms of this Stipulation and Order shall continue to apply
26 to such information or document until the Court rules on the application. Unless
27 otherwise ordered by the Court, the Court's ruling that any Confidential Information
28 is not properly designated as Confidential shall not affect any other Confidential

1 Information so designated. The above procedure shall not preclude application to
2 the Court on a more expedited basis as circumstances warrant.

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4 X. SUBPOENA OF CONFIDENTIAL INFORMATION

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6 If at any time any Confidential Information protected by this Stipulation and
7 Order is subpoenaed by any court, administrative or legislative body, or is formally
8 requested by any other person or entity purporting to have authority to require the
9 production of such Material, the party to whom the subpoena or other request is
10 directed shall immediately give written notice thereof to any Producing Party that
11 has designated such Material as Confidential so as to advise such person of the need
12 promptly to obtain a protective order or to move to quash the subpoena. The
13 burden shall be on the Producing Party to file a motion to obtain protection for such
14 Material either before a response to the subpoena is due or on a schedule otherwise
15 agreed to by the parties. The pendency of this Stipulation and Order shall not be
16 grounds for refusing to provide such Confidential Information in response to a
17 subpoena or formal request. Nor shall the production of Confidential Information
18 by a third party operate as a waiver of or otherwise limit the protections afforded to
19 Material subject to this Stipulation and Order.

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21 XI. CONTINUATION OF PROTECTION AFTER DISPOSITION

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23 1. The termination of proceedings in this Litigation shall not relieve the
24 parties of the obligation to maintain the confidentiality of all Confidential
25 Information under this Stipulation and Order, unless otherwise ordered by the Court
26 or stipulated in writing by all parties to this Stipulation and Order.

1 2. Within sixty (60) days after the final disposition of this Litigation by
2 settlement or by final judgment not subject to any further appeal, the attorneys for
3 the parties shall either: (a) return promptly to the Producing Party from whom it
4 was obtained any Material designated Confidential and all copies, extracts and
5 summaries thereof; or (b) destroy all Material designated Confidential and copies,
6 extracts and summaries thereof. Notwithstanding this provision, the parties to this
7 Litigation may keep a complete set of deposition transcripts, all documents filed or
8 lodged with the Court, which may include Material designated Confidential, and
9 any of their counsel's work product, provided that such Material is stored in a
10 manner so as to preserve its confidentiality.

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12 **XII. MODIFICATIONS TO THIS ORDER**

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14 Nothing herein shall preclude any party from applying to the Court to modify
15 this Stipulation and Order to provide for additional safeguards to ensure the
16 confidentiality of Material produced in this action, or to seek relief from any
17 provision of this Stipulation and Order. Any of the parties may modify any of the
18 provisions of this Stipulation and Order by written agreement between or among
19 themselves so long as any such agreement among fewer than all of the parties does
20 not affect the rights, duties and obligations of any other party to this Litigation or
21 the rights, duties and obligations of any third party. No stipulation amongst the
22 parties to modify an existing Order of the Court will have the force or effect of a
23 Court Order unless the Court approves the modification.

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25 **XIII. RESERVATION OF RIGHTS**

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27 By designating any Material as Confidential, the parties do not acknowledge
28 that any such Material is relevant or discoverable in this action, nor does the fact

1 that a party designates Material as Confidential constitute an adjudication by the
2 Court or an agreement by any other party that the Material is properly so designated
3 or that such Material, in fact, constitutes or contains any trade secrets or otherwise
4 private, confidential or proprietary information. All parties reserve the right to seek
5 or resist discovery of, or challenge the designation of, such Material in this action.

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7 **XIV. MATERIAL ALREADY POSSESSED**

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9 Nothing herein shall preclude a party's right to use Material that it has
10 acquired independently of the other party.

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12 **XV. INADVERTENT PRODUCTION/NON-DESIGNATION**

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14 Any inadvertent failure to designate Material that in fact constitutes
15 Confidential Information shall not be deemed to be a waiver of any such protection
16 to which the Material is entitled. If, through inadvertence, a Producing Party
17 produces any Material containing Confidential Information but fails to designate
18 the Material as Confidential, the Producing Party may subsequently designate the
19 Material as Confidential pursuant to paragraph I.5., so long as the Producing Party
20 does this immediately upon its discovery of its inadvertent failure to designate such
21 documents. The non-Producing Party shall not be deemed in breach of this Order,
22 however, if it discloses such Material prior to designation.

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24 **XVI. OTHER PROVISIONS**

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26 Neither the taking of any action in accordance with the provisions of this
27 Stipulation and Order, nor the failure to object hereto, shall be construed as a
28 waiver of any claim or defense in the action. This Stipulation and Order shall not

1 be construed as a waiver of any right to object to the furnishing of Material in
2 response to discovery and, except as expressly provided, shall not relieve any party
3 or witness of the obligation to produce Material sought in the course of discovery.
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5 **IT IS SO ORDERED.**



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7 Dated: December 27, 2013__
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9 HONORABLE JEAN P. ROSENBLUTH
10 United States Magistrate Judge
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