

NOTE: CHANGES MADE BY THE COURT

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

ALLERGAN, INC,  
Plaintiff,

v.

DERMAVITA LIMITED PARTNERSHIP,  
DIMA CORP. S.A., and  
KBC MEDIA RELATIONS LLC,  
Defendants.

Case No. 8:17-cv-00619-CJC (DFMx)

~~[PROPOSED]~~ PROTECTIVE  
ORDER PURSUANT TO  
STIPULATION

[Discovery Document:  
Referred to Magistrate Judge  
Douglas F. McCormick]

Pursuant to the Parties' Stipulation, and good cause appearing therefor, it is hereby  
**ORDERED** that all parties to this action and their counsel comply with the following  
protective order:

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1     1.     PURPOSES AND LIMITATIONS

2             Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
6 following Stipulated Protective Order. The parties acknowledge that this Order does not  
7 confer blanket protections on all disclosures or responses to discovery and that the  
8 protection it affords from public disclosure and use extends only to the limited  
9 information or items that are entitled to confidential treatment under the applicable legal  
10 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this  
11 Stipulated Protective Order does not entitle them to file confidential information under  
12 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the  
13 standards that will be applied when a party seeks permission from the court to file  
14 material under seal.

15             1.1     GOOD CAUSE STATEMENT<sup>1</sup>: The Court may only enter a protective  
16 order upon a showing of good cause. *See, e.g., Kamakana v. City and Cnty. of Honolulu*,  
17 447 F.3d 1172, 1176 (9th Cir. 2006) (holding that parties must make a “particularized  
18 showing” under Rule 26(c) for court to enter protective order). Stipulated protective  
19 orders still require a showing of good cause. *See, e.g., Makar-Wellbon v. Sony Elecs.,*  
20 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999). Here, good cause exists to enter the parties  
21 stipulated protective order for the following reasons:

- 22             •         Allergan is a publicly-traded, *Fortune 100* pharmaceutical company with  
23 valuable intellectual property, including its JUVEDERM<sup>®</sup> trademarks at  
24 issue in this dispute. The Parties anticipate that discovery may require the  
25 disclosure of confidential, proprietary and trade secret information (such as  
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27     <sup>1</sup> This recitation of facts is merely a summation for purposes of this Stipulated Protective  
28 Order and does not constitute representations by any party and shall not be used against  
any party in litigation.

1 proprietary market research and information about products not yet publicly  
2 available; *see* Section 2.7, below) about current products and, potentially,  
3 products under development and not yet released to the public, the public  
4 disclosure of which would cause a substantial risk of serious harm to the  
5 Parties, their businesses and their owners/shareholders;

- 6 • Allergan contends that, through the press release pled in the Complaint  
7 [Compl., Ex. C, Dkt. 1-3], defendant Dima Corp., S.A. (“Dima”) announced  
8 its intention to launch cosmetics and cosmeceutical products in the U.S. and  
9 abroad under the mark “Juvederm,” under a license with defendant  
10 Dermavita Limited Partnership (“Dermavita”). Allergan currently  
11 manufactures, markets and sells an injectable dermal filler under its  
12 registered JUVEDERM<sup>®</sup> trademark. [Compl., Ex. A, Dkt. 1-1.] Allergan  
13 alleges that Dermavita and Dima both make and market products called  
14 “Juvederm” abroad as well. As alleged in the Complaint, because Dima,  
15 Dermavita and Allergan are poised to be direct competitors in the U.S. and  
16 are already direct competitors globally, the disclosure of confidential,  
17 proprietary and trade secret information during the discovery process could  
18 risk creating a competitive advantage/disadvantage and causing a substantial  
19 risk of serious harm.

20 Protective orders are frequently issued in circumstances like these where direct  
21 competitors are involved in a dispute over intellectual property. *See, e.e., Unilin Beheer*  
22 *B.V. v. NSL Trading Corp.*, No. CV 14-2210 BRO (SSX), 2015 WL 12659918, at \*3  
23 (C.D. Cal. Jan. 8, 2015) (“Protective orders are a common feature of patent cases because  
24 the parties are often competitors who understandably are reluctant to disclose trade  
25 secrets and other confidential information to each other (and to the public).”) (citing  
26 *Northbrook Digital, LLC v. Vendio Services, Inc.*, 625 F. Supp. 2d 728, 734 (D. Minn.  
27 2008)).

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1           Accordingly, for similar reasons here, the parties respectfully request that the  
2 Court enter their stipulated protective order set forth herein.

3           1.2 Form of Stipulation: The parties have based this Stipulated Protective Order  
4 on the Model Protective Order for Litigation Involving Patents, Highly Sensitive  
5 Confidential Information and/or Trade Secrets of the U.S. District Court for the N.D.  
6 Cal., available at: <http://www.cand.uscourts.gov/model-protective-orders>.

7           2. DEFINITIONS

8           2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10           2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it  
11 is generated, stored or maintained) or tangible things that qualify for protection under  
12 Federal Rule of Civil Procedure 26©.

13           2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
14 (as well as their support staff).

15           2.4 Designating Party: a Party or Non-Party that designates information or items  
16 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18           2.5 Disclosure or Discovery Material: all items or information, regardless of the  
19 medium or manner in which it is generated, stored, or maintained (including, among  
20 other things, testimony, transcripts, and tangible things), that are produced or generated in  
21 disclosures or responses to discovery in this matter.

22           2.6 Expert: a person with specialized knowledge or experience in a matter  
23 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as  
24 an expert witness or as a consultant in this action, (2) is not a past or current employee of  
25 a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to  
26 become an employee of a Party or of a Party’s competitor.

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1           2.7    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information  
2 or Items: extremely sensitive “CONFIDENTIAL” information or items,” disclosure of  
3 which to another Party or Non-Party would create a substantial risk of serious harm that  
4 could not be avoided by less restrictive means, specifically: (a) any documents relating  
5 to pricing, cost and other financial or marketing information; (b) business plans and  
6 competitive strategies; (c) proprietary market research; (d) patent applications; and (e)  
7 information concerning products currently under development for which an ANDA,  
8 NDA, or supplemental NDA has not been approved, in each case (a), (b), (c), (d) and (e),  
9 to the extent such information is not publicly available. The Parties reserve their rights to  
10 amend this list of documents that qualify for “HIGHLY CONFIDENTIAL -  
11 ATTORNEYS’ EYES ONLY” protection based on further discovery.

12           2.8    House Counsel: attorneys who are employees of a party to this action or a  
13 parent, subsidiary, sister or affiliate company of a party to this action. House Counsel  
14 does not include Outside Counsel of Record or any other outside counsel.

15           2.9    Non-Party: any natural person, partnership, corporation, association, or other  
16 legal entity not named as a Party to this action.

17           2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
18 this action but are retained to represent or advise a party to this action and have appeared  
19 in this action on behalf of that party or are affiliated with a law firm which has appeared  
20 on behalf of that party.

21           2.11 Party: any party to this action, including all of its officers, directors,  
22 employees, consultants, retained experts, House Counsel and Outside Counsel of Record  
23 (and their support staffs).

24           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
25 Discovery Material in this action.

26           2.13 Professional Vendors: persons or entities that provide litigation support  
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
2 their employees and subcontractors.

3       2.14 Protected Material: any Disclosure or Discovery Material that is designated  
4 as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
5 ONLY.”

6       2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from  
7 a Producing Party.

### 8 3. SCOPE

9       The protections conferred by this Stipulation and Order cover not only Protected  
10 Material (as defined above), but also (1) any information copied or extracted from  
11 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
12 Material; and (3) any testimony, conversations, or presentations by Parties or their  
13 Counsel that might reveal Protected Material. However, the protections conferred by this  
14 Stipulation and Order do not cover the following information: (a) any information that is  
15 in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
16 public domain after its disclosure to a Receiving Party as a result of publication not  
17 involving a violation of this Order, including becoming part of the public record through  
18 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
19 disclosure or obtained by the Receiving Party after the disclosure from a source who  
20 obtained the information lawfully and under no obligation of confidentiality to the  
21 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
22 agreement or order.

### 23 4. DURATION

24       Even after final disposition of this litigation, the confidentiality obligations  
25 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in  
26 writing or a court order otherwise directs. Final disposition shall be deemed to be the later  
27 of (1) dismissal of all claims and defenses in this action, with or without prejudice; and  
28 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,

1 remands, trials, or reviews of this action, including the time limits for filing any motions  
2 or applications for extension of time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
5 Party or Non-Party that designates information or items for protection under this Order  
6 must take care to limit any such designation to specific material that qualifies under the  
7 appropriate standards. To the extent it is practical to do so, the Designating Party must  
8 designate for protection only those parts of material, documents, items, or oral or written  
9 communications that qualify – so that other portions of the material, documents, items, or  
10 communications for which protection is not warranted are not swept unjustifiably within  
11 the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
13 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
14 to unnecessarily encumber or retard the case development process or to impose  
15 unnecessary expenses and burdens on other parties) expose the Designating Party to  
16 sanctions.

17 If it comes to a Designating Party’s attention that information or items that it  
18 designated for protection do not qualify for protection at all or do not qualify for the level  
19 of protection initially asserted, that Designating Party must promptly notify all other  
20 parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
22 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
23 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
24 must be clearly so designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic  
27 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),  
28 that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains protected  
2 material. If only a portion or portions of the material on a page qualifies for protection,  
3 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
4 appropriate markings in the margins) and must specify, for each portion, the level of  
5 protection being asserted. If a document is produced in native format such that the  
6 addition of a legend on each page is not appropriate or applicable, the confidentiality  
7 legend should be included in the file name (e.g., PTY\_0001-CONFIDENTIAL).

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

21 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
22 that the Designating Party identify on the record, before the close of the deposition,  
23 hearing, or other proceeding, all protected testimony and specify the level of protection  
24 being asserted. When it is impractical to identify separately each portion of testimony that  
25 is entitled to protection and it appears that substantial portions of the testimony may  
26 qualify for protection, the Designating Party may invoke on the record (before the  
27 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days from  
28 the date the transcript is prepared and delivered to the Designating Party to identify the

1 specific portions of the testimony as to which protection is sought and to specify the level  
2 of protection being asserted. Only those portions of the testimony that are appropriately  
3 designated for protection within the 21 days shall be covered by the provisions of this  
4 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
5 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 –  
7 ATTORNEYS’ EYES ONLY.” If the Designating Party properly invokes the 21 day  
8 period to designate testimony for protection, then all of the testimony for that deposition,  
9 hearing or other proceeding shall be deemed “HIGHLY CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY” during the 21 day period.

11 Parties shall give the other parties notice if they reasonably expect a deposition,  
12 hearing or other proceeding to include Protected Material so that the other parties can  
13 ensure that only authorized individuals who have signed the “Acknowledgment and  
14 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
15 document as an exhibit at a deposition shall not in any way affect its designation as  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17 Transcripts containing Protected Material shall have an obvious legend on the title  
18 page that the transcript contains Protected Material, and the title page shall be followed  
19 by a list of all pages (including line numbers as appropriate) that have been designated as  
20 Protected Material and the level of protection being asserted by the Designating Party.  
21 The Designating Party shall inform the court reporter of these requirements. After the  
22 expiration of that period, the transcript shall be treated only as actually designated.

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

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
4 to designate qualified information or items does not, standing alone, waive the  
5 Designating Party's right to secure protection under this Order for such material. Upon  
6 timely correction of a designation, the Receiving Party must make reasonable efforts to  
7 assure that the material is treated in accordance with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
10 of confidentiality at any time. Unless a prompt challenge to a Designating Party's  
11 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
12 unnecessary economic burdens, or a significant disruption or delay of the litigation, a  
13 Party does not waive its right to challenge a confidentiality designation by electing not to  
14 mount a challenge promptly after the original designation is disclosed.

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

3       6.3    Judicial Intervention.

4           6.3.1 Informal Resolution: If the Parties cannot resolve a challenge without  
5 court intervention, and if both parties agree, the Designating Party shall request an  
6 informal telephonic conference with Magistrate Judge McCormick as set forth in Judge  
7 McCormick’s Procedure No. 3. Only if the parties are unable to reach an agreement to  
8 proceed with an informal conference, or if the informal conference fails to resolve the  
9 dispute, can the Designating Party proceed with the process set forth in section 6.3.2,  
10 below:

11           6.3.2 Formal Resolution: If the Parties are unable to resolve their  
12 disagreement informally with the help of Magistrate Judge McCormick, the Designating  
13 Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 and  
14 37 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
15 initial notice of challenge or within 14 days of the parties agreeing that the meet and  
16 confer process will not resolve their dispute, whichever is earlier. Each such motion must  
17 be accompanied by a competent declaration affirming that the movant has complied with  
18 the meet and confer requirements imposed in the preceding paragraph. Failure by the  
19 Designating Party to make such a motion including the required declaration within 21  
20 days (or 14 days, if applicable) shall automatically waive the confidentiality designation  
21 for each challenged designation.

22           The burden of persuasion in any such challenge proceeding shall be on the  
23 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to  
24 harass or impose unnecessary expenses and burdens on other parties) may expose the  
25 Challenging Party to sanctions. Unless the Designating Party has waived the  
26 confidentiality designation by failing to file a motion to retain confidentiality as described  
27 above, all parties shall continue to afford the material in question the level of protection  
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1 to which it is entitled under the Producing Party’s designation until the court rules on the  
2 challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a Non-Party in connection with this case  
6 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
7 Material may be disclosed only to the categories of persons and under the conditions  
8 described in this Order. When the litigation has been terminated, a Receiving Party must  
9 comply with the provisions of section 13 below (FINAL DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving Party at a  
11 location and in a secure manner<sup>2</sup> that ensures that access is limited to the persons  
12 authorized under this Order.

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
15 may disclose any information or item designated “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
17 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
18 disclose the information for this litigation;

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

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

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

27 \_\_\_\_\_  
28 <sup>2</sup> It may be appropriate under certain circumstances to require the Receiving Party to  
store any electronic Protected Material in password-protected form.

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

4 (g) during their depositions, witnesses in the action to whom disclosure is  
5 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
6 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
7 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
8 Protected Material must be identified by the court reporter with the appropriate  
9 confidentiality designation and legend pursuant to this Order and may not be disclosed to  
10 anyone except as permitted under this Stipulated Protective Order.

11 (h) the author or recipient of a document containing the information or a  
12 custodian or other person who otherwise possessed or knew the information.

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
14 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
15 writing by the Designating Party, a Receiving Party may disclose any information or item  
16 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
18 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
19 disclose the information for this litigation;

20 (b) House Counsel of the Receiving Party to whom disclosure is reasonably  
21 necessary for this litigation and who has signed the “Acknowledgment and Agreement to  
22 Be Bound” (Exhibit A).

23 (c) Experts of the Receiving Party to whom disclosure is reasonably  
24 necessary for this litigation, and who have signed the “Acknowledgment and Agreement  
25 to Be Bound” (Exhibit A);

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

1 (f) professional jury or trial consultants (including mock jurors), and  
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
3 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

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

6 In the event that counsel for a party believes it necessary to disclose any  
7 information designed “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” to  
8 any person not permitted under this Stipulated Protective Order, said counsel shall notify  
9 counsel for the Producing Party in writing identifying (a) the specific information,  
10 documents, or testimony proposed to be disclosed; (b) the person(s) to whom such  
11 disclosure is proposed to be made; and (c) a short summary explaining the need to  
12 disclose the Protected Information to the identified person(s). If an agreement cannot be  
13 reached, the party desiring to disclose “HIGHLY CONFIDENTIAL - ATTORNEYS’  
14 EYES ONLY” information may not disclose such information but may make an  
15 appropriate motion and shall bear the burden of showing that the proposed disclosure is  
16 necessary.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
18 OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that  
20 compels disclosure of any information or items designated in this action as  
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
22 that Party must:

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

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

1 (c) cooperate with respect to all reasonable procedures sought to be pursued  
2 by the Designating Party whose Protected Material may be affected.<sup>3</sup>

3 If the Designating Party timely seeks a protective order, the Party served with the  
4 subpoena or court order shall not produce any information designated in this action as  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
6 before a determination by the court from which the subpoena or order issued, unless the  
7 Party has obtained the Designating Party’s permission. The Designating Party shall bear  
8 the burden and expense of seeking protection in that court of its confidential material –  
9 and nothing in these provisions should be construed as authorizing or encouraging a  
10 Receiving Party in this action to disobey a lawful directive from another court.

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

13 9.1 The terms of this Order are applicable to information produced by a Non-  
14 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-  
16 Parties in connection with this litigation is protected by the remedies and relief provided  
17 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party  
18 from seeking additional protections.

19 9.2 In the event that a Party is required, by a valid discovery request, to produce  
20 a Non-Party’s confidential information in its possession, and the Party is subject to an  
21 agreement with the Non-Party not to produce the Non-Party’s confidential information,  
22 then the Party shall:

23 9.2.1 promptly notify in writing the Requesting Party and the Non-Party  
24 that some or all of the information requested is subject to a confidentiality agreement  
25 with a Non-Party;

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26 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of  
27 this Protective Order and to afford the Designating Party in this case an opportunity to try  
28 to protect its confidentiality interests in the court from which the subpoena or order  
issued.

1           9.2.2 promptly provide the Non-Party with a copy of the Stipulated  
2 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
3 specific description of the information requested; and

4           9.2.3 make the information requested available for inspection by the Non-  
5 Party.

6           9.3 If the Non-Party fails to object or seek a protective order from this court  
7 within 14 days of receiving the notice and accompanying information, the Receiving  
8 Party may produce the Non-Party’s confidential information responsive to the discovery  
9 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
10 produce any information in its possession or control that is subject to the confidentiality  
11 agreement with the Non-Party before a determination by the court.<sup>4</sup> Absent a court order  
12 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in  
13 this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
16 Protected Material to any person or in any circumstance not authorized under this  
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
18 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
19 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
20 whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
21 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”  
22 that is attached hereto as Exhibit A.

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27 <sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of  
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to  
protect its confidentiality interests in this court.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
2 PROTECTED MATERIAL

3 The production of privileged or protected material, whether inadvertent or  
4 otherwise, is not a waiver of the privilege or protection from discovery in this case or in  
5 any other federal or state proceeding. Regardless of the steps taken to prevent disclosure,  
6 if a party produces information that it discovers, or in good faith later asserts, to be  
7 privileged or otherwise protected from disclosure, the production of that information will  
8 not constitute a waiver of any applicable privileges or other protection, and the Receiving  
9 Party may not argue that the Producing Party failed to take reasonable steps to prevent  
10 production of the privileged or protected materials.

11 In such circumstances, the Producing Party must notify in writing the Receiving  
12 Party of the production and the basis for the privilege or other protection, and request in  
13 writing the return or treatment of the produced privileged or protected information  
14 consistent with Federal Rule of Civil Procedure 26(b)(5)(B). When a Producing Party  
15 provides such notice, the obligations of the Receiving Parties are those set forth in  
16 Federal Rule of Civil Procedure 26(b)(5)(B), and encompass all later created excerpts,  
17 summaries, compilations, and other documents or records that include, communicate or  
18 reveal the information claimed to be privileged or protected.

19 This Order shall be interpreted to provide the maximum protection allowed by  
20 Federal Rule of Evidence 502(d).

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
23 person to seek its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
25 Protective Order no Party waives any right it otherwise would have to object to disclosing  
26 or producing any information or item on any ground not addressed in this Stipulated  
27 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
28 evidence of any of the material covered by this Protective Order.

1           12.3 Filing Protected Material. Without written permission from the Designating  
2 Party or a court order secured after appropriate notice to all interested persons, a Party  
3 may not file in the public record in this action any Protected Material. A Party that seeks  
4 to file under seal any Protected Material must comply with Civil Local Rule 79-5.  
5 Protected Material may only be filed under seal pursuant to a court order authorizing the  
6 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
7 sealing order will issue only upon a request establishing that the Protected Material at  
8 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
9 the law. If a Receiving Party's request to file Protected Material under seal pursuant to  
10 Civil Local Rule 79-5.2 is denied by the court, then the Receiving Party may file the  
11 Protected Material in the public record pursuant to Civil Local Rule 79-5.2 unless  
12 otherwise instructed by the court.

13   13.   FINAL DISPOSITION

14           Within 60 days after the final disposition of this action, as defined in paragraph 4,  
15 each Receiving Party must return all Protected Material to the Producing Party or destroy  
16 such material. As used in this subdivision, "all Protected Material" includes all copies,  
17 abstracts, compilations, summaries, and any other format reproducing or capturing any of  
18 the Protected Material. Whether the Protected Material is returned or destroyed, the  
19 Receiving Party must submit a written certification to the Producing Party (and, if not the  
20 same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies  
21 (by category, where appropriate) all the Protected Material that was returned or destroyed  
22 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
23 compilations, summaries or any other format reproducing or capturing any of the  
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
25 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
27 work product, and consultant and expert work product, even if such materials contain  
28

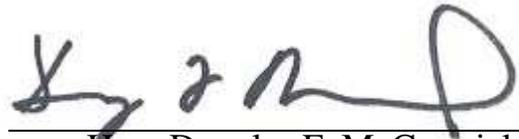
1 Protected Material. Any such archival copies that contain or constitute Protected Material  
2 remain subject to this Protective Order as set forth in Section 4 (DURATION).

3 14. EFFECTIVE UPON EXECUTION OF THE PARTIES

4 The Parties agree to be bound by the terms of this Stipulation pending the entry by  
5 the Court of this Stipulation, and any violation of its terms shall be subject to the same  
6 sanctions and penalties as if this Stipulation had been entered by the Court.

7 **IT IS SO ORDERED.**

8  
9 DATED: September 15, 2017



Hon. Douglas F. McCormick  
U.S. Magistrate Judge

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12 **\*Note change to page 11 made by the Court.**

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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 Stipulated Protective Order that was issued by  
the United States District Court for the Central District of California in the case of  
*Allergan, Inc., v. Dermavita Limited Partnership, Dima Corp. S.A., and KBC Media  
Relations LLC*, Case No. 8:17-cv-619-CJC (DFMx). I agree to comply with and to be  
bound by all the terms of this Stipulated 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 Stipulated 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 Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this  
action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]

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