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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ABBEY ROONEY, an individual;

Plaintiff,

v.

SIGNOSTICS, INC., ECHONOUS, INC.,
and DOES 1 through 10, inclusive,

Defendants.

Case No. 8:17-cv-01865-AG-JDE

**STIPULATED PROTECTIVE
ORDER**

STIPULATED PROTECTIVE ORDER

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or private
3 information requiring special protection from public disclosure and from use for any
4 purpose other than this litigation. Thus, the Court enters this Protective Order. This
5 Order does not confer blanket protections on all disclosures or responses to discovery,
6 and the protection it gives from public disclosure and use extends only to the specific
7 material entitled to confidential treatment under the applicable legal principles. This
8 Order does not automatically authorize the filing under seal of material designated under
9 this Order. Instead, the parties must comply with L.R. 79-5.1 if they seek to file anything
10 under seal. This Order does not govern the use at trial of material designated under this
11 Order.

12 **2. DESIGNATING PROTECTED MATERIAL**

13 **2.1 Over-Designation Prohibited.**

14 Any party or non-party who designates information or items for protection under
15 this Order as “CONFIDENTIAL” (a “designator”) must only designate specific material
16 that qualifies under the appropriate standards. To the extent practicable, only those parts
17 of documents, items, or oral or written communications that require protection shall be
18 designated. Mass, indiscriminate, or routinized designations are prohibited. Unjustified
19 designations expose the designator to sanctions, including the Court’s striking all
20 confidentiality designations made by that designator. Designation under this Order is
21 allowed only if the designation is necessary to protect material that, if disclosed to
22 persons not authorized to view it, would cause competitive or other recognized harm.
23 Material may not be designated if it has been made public, or if designation is otherwise
24 unnecessary to protect a secrecy interest. If a designator learns that information or items
25 that it designated for protection do not qualify for protection at all or do not qualify for
26 the level of protection initially asserted, that designator must promptly notify all parties
27 that it is withdrawing the mistaken designation.
28

1 **2.2 Manner and Timing of Designations.**

2 Designation under this Order requires the designator to affix the applicable legend
3 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY”) to
4 each page that contains protected material. For testimony given in deposition or other
5 proceeding, the designator shall specify all protected testimony and the level of
6 protection being asserted. It may make that designation during the deposition or
7 proceeding, or may invoke, on the record or by written notice to all parties on or before
8 the next business day, a right to have up to 21 days from the deposition or proceeding to
9 make its designation.

10 **2.2.1** A party or non-party that makes original documents or
11 materials available for inspection need not designate them for protection until after
12 the inspecting party has identified which material it would like copied and
13 produced. During the inspection and before the designation, all material shall be
14 treated as “HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY.” After the
15 inspecting party has identified the documents it wants copied and produced, the
16 producing party must designate the documents, or portions thereof, that qualify for
17 protection under this Order.

18 **2.2.2** Parties shall give advance notice if they expect a deposition or
19 other proceeding to include designated material so that the other parties can ensure
20 that only authorized individuals are present at those proceedings when such
21 material is disclosed or used. The use of a document as an exhibit at a deposition
22 shall not in any way affect its designation. Transcripts containing designated
23 material shall have a legend on the title page noting the presence of designated
24 material, and the title page shall be followed by a list of all pages (including line
25 numbers as appropriate) that have been designated, and the level of protection
26 being asserted. The designator shall inform the court reporter of these
27 requirements. Any transcript that is prepared before the expiration of the 21-day
28 period for designation shall be treated during that period as if it had been

1 designated “HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY” unless
2 otherwise agreed. After the expiration of the 21-day period, the transcript shall be
3 treated only as actually designated.

4 **2.3 Inadvertent Failures to Designate.**

5 An inadvertent failure to designate does not, standing alone, waive protection
6 under this Order. Upon timely assertion or correction of a designation, all recipients must
7 make reasonable efforts to ensure that the material is treated according to this Order.

8 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 All challenges to confidentiality designations shall proceed under L.R. 37-1
10 through L.R. 37-4.

11 **4. ACCESS TO DESIGNATED MATERIAL**

12 **4.1 Basic Principles.**

13 A receiving party may use designated material only for this litigation. Designated
14 material may be disclosed only to the categories of persons and under the conditions
15 described in this Order.

16 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**

17 Unless otherwise ordered by the Court or permitted in writing by the designator, a
18 receiving party may disclose any material designated CONFIDENTIAL only to:

19 **4.2.1** The parties, the receiving party’s outside counsel of record in this
20 action, and employees of outside counsel of record to whom disclosure is
21 reasonably necessary;

22 **4.2.2** The officers, directors, and employees of the receiving party to whom
23 disclosure is reasonably necessary, and who have signed the Agreement to Be
24 Bound (Exhibit A);

25 **4.2.3** Experts retained by the receiving party’s outside counsel of record to
26 whom disclosure is reasonably necessary, and who have signed the Agreement to
27 Be Bound (Exhibit A);

28 **4.2.4** The Court and its personnel;

1 **4.2.5** Outside court reporters and their staff, professional jury or trial
2 consultants, and professional vendors to whom disclosure is reasonably necessary,
3 and who have signed the Agreement to Be Bound (Exhibit A);

4 **4.2.6** During their depositions, witnesses in the action to whom disclosure
5 is reasonably necessary and who have signed the Agreement to Be Bound (Exhibit
6 A); and

7 **4.2.7** The author or recipient of a document containing the material, or a
8 custodian or other person who otherwise possessed or knew the information.

9 **4.3 Disclosure of HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY**
10 **Material Without Further Approval.**

11 Unless permitted in writing by the designator, a receiving party may disclose
12 material designated HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY without
13 further approval only to:

14 **4.3.1** The receiving party's outside counsel of record in this action and
15 employees of outside counsel of record to whom it is reasonably necessary to
16 disclose the information;

17 **4.3.2** The Court and its personnel;

18 **4.3.3** Outside court reporters and their staff, professional jury or trial
19 consultants, and professional vendors to whom disclosure is reasonably necessary,
20 and who have signed the Agreement to Be Bound (Exhibit A); and

21 **4.3.4** The author or recipient of a document containing the material, or a
22 custodian or other person who otherwise possessed or knew the information.

23 **4.4 Procedures for Approving or Objecting to Disclosures of HIGHLY**
24 **CONFIDENTIAL - ATTORNEY EYES ONLY Material to In-House Counsel or**
25 **Experts.**

26 Unless agreed to in writing by the designator:

27 **4.4.1** A party seeking to disclose to in-house counsel any material
28 designated HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY must first

1 make a written request to the designator providing the full name of the in-house
2 counsel, the city and state of such counsel's residence, and such counsel's current
3 and reasonably foreseeable future primary job duties and responsibilities in
4 sufficient detail to determine present or potential involvement in any competitive
5 decision-making.

6 **4.4.2** A party seeking to disclose to an expert retained by outside counsel of
7 record any information or item that has been designated HIGHLY
8 CONFIDENTIAL - ATTORNEY EYES ONLY must first make a written request
9 to the designator that (1) identifies the general categories of HIGHLY
10 CONFIDENTIAL - ATTORNEY EYES ONLY information that the receiving
11 party seeks permission to disclose to the expert, (2) sets forth the full name of the
12 expert and the city and state of his or her primary residence, (3) attaches a copy of
13 the expert's current resume, (4) identifies the expert's current employer(s), (5)
14 identifies each person or entity from whom the expert has received compensation
15 or funding for work in his or her areas of expertise (including in connection with
16 litigation) in the past five years, and (6) identifies (by name and number of the
17 case, filing date, and location of court) any litigation where the expert has offered
18 expert testimony, including by declaration, report, or testimony at deposition or
19 trial, in the past five years. If the expert believes any of this information at (4) - (6)
20 is subject to a confidentiality obligation to a third party, then the expert should
21 provide whatever information the expert believes can be disclosed without
22 violating any confidentiality agreements, and the party seeking to disclose the
23 information to the expert shall be available to meet and confer with the designator
24 regarding any such confidentiality obligations.

25 **4.4.3** A party that makes a request and provides the information specified
26 in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified
27 in-house counsel or expert unless, within seven days of delivering the request, the
28

1 party receives a written objection from the designator providing detailed grounds
2 for the objection.

3 **4.4.4** All challenges to objections from the designator shall proceed under
4 L.R. 37-1 through L.R. 37-4.

5 **5. PROSECUTION BAR**

6 Absent written consent from the designator, any individual who receives access to
7 **HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY** information shall not be
8 involved in the prosecution of patents or patent applications concerning the field of the
9 invention of the patents-in-suit for the receiving party or its acquirer, successor,
10 predecessor, or other affiliate during the pendency of this action and for one year after its
11 conclusion, including any appeals. "Prosecution" means drafting, amending, advising on
12 the content of, or otherwise affecting the scope or content of patent claims of
13 specifications. These prohibitions shall not preclude counsel from participating in
14 reexamination or *inter partes* review proceedings to challenge or defend the validity of
15 any patent, but counsel may not participate in the drafting of amended claims in any such
16 proceedings.

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

19 **6.1 Subpoenas and Court Orders.**

20 This Order in no way excuses non-compliance with a lawful subpoena or court
21 order. The purpose of the duties described in this section is to alert the interested parties
22 to the existence of this Order and to give the designator an opportunity to protect its
23 confidentiality interests in the court where the subpoena or order issued.

24 **6.2 Notification Requirement.**

25 If a party is served with a subpoena or a court order issued in other litigation that
26 compels disclosure of any information or items designated in this action as
27 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY**, that
28 party must:

1 **6.2.1** Promptly notify the designator in writing. Such notification shall
2 include a copy of the subpoena or court order;

3 **6.2.2** Promptly notify in writing the party who caused the subpoena or
4 order to issue in the other litigation that some or all of the material covered by the
5 subpoena or order is subject to this Order. Such notification shall include a copy
6 of this Order; and

7 **6.2.3** Cooperate with all reasonable procedures sought by the designator
8 whose material may be affected.

9 **6.3 Wait For Resolution of Proactive Order.**

10 If the designator timely seeks a protective order, the party served with the
11 subpoena or court order shall not produce any information designated in this action as
12 CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY before a
13 determination by the court where the subpoena or order issued, unless the party has
14 obtained the designator's permission. The designator shall bear the burden and expense
15 of seeking protection of its confidential material in that court.

16 **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
18 designated material to any person or in any circumstance not authorized under this Order,
19 it must immediately (1) notify in writing the designator of the unauthorized disclosures,
20 (2) use its best efforts to retrieve all unauthorized copies of the designated material, (3)
21 inform the person or persons to whom unauthorized disclosures were made of all the
22 terms of this Order, and (4) use reasonable efforts to have such person or persons execute
23 the Agreement to Be Bound (Exhibit A).

24 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
25 **PROTECTED MATERIAL**

26 When a producing party gives notice that certain inadvertently produced material is
27 subject to a claim of privilege or other protection, the obligations of the receiving parties
28 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not

1 intended to modify whatever procedure may be established in an e-discovery order that
2 provides for production without prior privilege review pursuant to Federal Rule of
3 Evidence 502(d) and (e).

4 **9. FILING UNDER SEAL**

5 Without written permission from the designator or a Court order, a party may not
6 file in the public record in this action any designated material. A party seeking to file
7 under seal any designated material must comply with L.R. 79-5.1. Filings may be made
8 under seal only pursuant to a court order authorizing the sealing of the specific material at
9 issue. The fact that a document has been designated under this Order is insufficient to
10 justify filing under seal. Instead, parties must explain the basis for confidentiality of each
11 document sought to be filed under seal. Because a party other than the designator will
12 often be seeking to file designated material, cooperation between the parties in preparing,
13 and in reducing the number and extent of, requests for under seal filing is essential. If a
14 *receiving party's* request to file designated material under seal pursuant to L.R. 79-5.1 is
15 denied by the Court, then the receiving party *may file the material in the public record*
16 unless (1) *the designator* seeks reconsideration within four days of the denial, or (2) as
17 otherwise instructed by the Court.

18 **10. FINAL DISPOSITION**

19 Within 60 days after the final disposition of this action, each party shall return all
20 designated material to the designator or destroy such material, including all copies,
21 abstracts, compilations, summaries, and any other format reproducing or capturing any
22 designated material. The receiving party must submit a written certification to the
23 designator by the 60-day deadline that (1) identifies (by category, where appropriate) all
24 the designated material that was returned or destroyed, and (2) affirms that the receiving
25 party has not retained any copies, abstracts, compilations, summaries, or any other format
26 reproducing or capturing any of the designated material. This provision shall not prevent
27 counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition,
28 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,

1 expert reports, attorney work product, and consultant and expert work product, even if
2 such materials contain designated material. Any such archival copies remain subject to
3 this Order.

4 **IT IS SO STIPULATED AND ORDERED.**

5
6 DATED: February 22, 2018

LOVELESS LAW FIRM, LLP

7
8 By: /s/ Andrea Loveless

9 Andrea Loveless
10 Attorneys for Plaintiff
ABBEY ROONEY

11 DATED: February 22, 2018

SEYFARTH SHAW LLP

12
13 By: /s/ Meagan Sue O'Dell

14 Mark P. Grajski
15 Meagan Sue O'Dell
16 Attorneys for Defendants
SIGNOSTICS INC. and ECHONOUS,
INC.

17 **ECF CERTIFICATION**

18 The filing attorney attests that she has obtained concurrence regarding the filing of this
19 document from the signatories to this document.


20 DATED: February 22, 2018

SEYFARTH SHAW LLP

21
22 By: /s/ Meagan Sue O'Dell

23 Mark P. Grajski
24 Meagan Sue O'Dell
25 Attorneys for Defendants
SIGNOSTICS INC. and ECHONOUS,
INC.

26 DATED: February 23, 2018

27 
28 JOHN D. EARLY
United States Magistrate Judge

1 EXHIBIT A

2 AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety
5 and understand the Protective Order that was issued by the United States District Court
6 for the Central District of California on February 23, 2018 in the case of *Abbey Rooney v.*
7 *Signostics Inc., et al.*, Case No. 8:17-cv-01865-AG-JDE. I agree to comply with and to
8 be bound by all the terms of this Protective Order, and I understand and acknowledge that
9 failure to so comply could expose me to sanctions and punishment for contempt. I
10 solemnly promise that I will not disclose in any manner any information or item that is
11 subject to this Protective Order to any person or entity except in strict compliance with
12 this Order.

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

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

20 Date: _____

21 City and State where sworn and signed: _____

22
23
24 Printed name: _____
25 [printed name]

26 Signature: _____
27 [signature]