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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KIRANJEET BADYAL; DILAWAR
BADYAL,

Plaintiffs,

v.

BOSCH PACKAGING TECHNOLOGY,
INC., et al,

Defendants.

SIEMENS CORPORATION, et al.

Plaintiffs,

v.

KUHLMAN TECHNOLOGIES, INC., et
al.

Defendants

Case No. **2:11-CV-00349-MCE-AC**
(Consolidated with 2:12-cv-01894-MCE-JFM)

**STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIAL
INFORMATION AND DOCUMENTS**

TO THIS HONORABLE COURT:

1 **IT IS HEREBY STIPULATED** by and between plaintiff Kiranjeet Badyal, plaintiff
2 Dilawar Badyal, plaintiff Siemens Corporation, plaintiff Siemens Healthcare Diagnostics Inc.,
3 and plaintiff Steadfast Insurance Company as Subrogee of Siemens Corporation and Siemens
4 Healthcare Diagnostics Inc., and defendant Robert Bosch Packaging Technology, Inc.
5 (erroneously sued herein as Bosch Packaging Technology, Inc.) and defendant SBM Schoeller-
6 Bleckmann Medizintechnik Ges.M.B.H., by and through their respective undersigned counsel of
7 record that in order to facilitate the exchange of information and documents which may be
8 subject to confidentiality limitations on disclosure due to federal laws, state laws and privacy
9 rights, that a Protective Order Regarding Confidential Information and Documents be entered in
10 this case as follows:

11 1. PURPOSES AND LIMITATIONS

12 Disclosure and discovery activity in this action are likely to involve production of
13 confidential, proprietary, or private information for which special protection from public disclosure
14 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
15 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
16 Order. The parties acknowledge that this Order does not confer blanket protections on all
17 disclosures or responses to discovery and that the protection it affords from public disclosure and
18 use extends only to the limited information or items that are entitled to confidential treatment under
19 the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
20 that this Stipulated Protective Order does not entitle them to file confidential information under
21 seal; Civil Local Rule 141 sets forth the procedures that must be followed and the standards that
22 will be applied when a party seeks permission from the court to file material under seal.

23 2. **DEFINITIONS**

24 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
25 information or items under this Order.
26
27
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1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
3 Civil Procedure 26(c).

4
5 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
6 as their support staff).

7 2.4 Designating Party: a Party or Non-Party that designates information or items that it
8 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

9
10 2.5 Disclosure or Discovery Material: all items or information, regardless of the
11 medium or manner in which it is generated, stored, or maintained (including, among other things,
12 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
13 responses to discovery in this matter.

14
15 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
16 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
17 consultant in this action.

18 2.7 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20
21 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
22 entity not named as a Party to this action.

23 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
24 action but are retained to represent or advise a party to this action and have appeared in this action
25 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.
26

27 2.10 Party: any party to this action, including all of its officers, directors, employees,
28 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3
4 2.12 Professional Vendors: persons or entities that provide litigation support services
5 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
6 storing, or retrieving data in any form or medium) and their employees and subcontractors.

7 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL.”

9
10 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
11 Producing Party.

12 3. SCOPE

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

24 4. DURATION

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

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

3 5. DESIGNATING PROTECTED MATERIAL

4
5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
6 Non-Party that designates information or items for protection under this Order must take care to
7 limit any such designation to specific material that qualifies under the appropriate standards. The
8 Designating Party must designate for protection only those parts of material, documents, items, or
9 oral or written communications that qualify – so that other portions of the material, documents,
10 items, or 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 are shown
13 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
14 encumber or retard the case development process or to impose unnecessary expenses and burdens
15 on other parties) expose the Designating Party to sanctions.

16 If it comes to a Designating Party’s attention that information or items that it designated for
17 protection do not qualify for protection, that Designating Party must promptly notify all other
18 Parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
20 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
21 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
22 designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24
25 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
26 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
27 legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or
28

1 portions of the material on a page qualifies for protection, the Producing Party also must clearly
2 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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

13
14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
15 Designating Party identify on the record, before the close of the deposition, hearing, or other
16 proceeding, all protected testimony.

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

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

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
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
5 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.

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

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
23 Local Rule 230 (and in compliance with Civil Local Rule 141, if applicable) within 21 days of the
24 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
25 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
26 competent declaration affirming that the movant has complied with the meet and confer
27 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
28

1 motion including the required declaration within 21 days (or 14 days, if applicable) shall
2 automatically waive the confidentiality designation for each challenged designation. In addition, the
3 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
4 good cause for doing so, including a challenge to the designation of a deposition transcript or any
5 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
6 competent declaration affirming that the movant has complied with the meet and confer
7 requirements imposed by the preceding paragraph.

8
9 The burden of persuasion in any such challenge proceeding shall be on the Designating
10 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
11 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
12 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
13 to retain confidentiality as described above, all parties shall continue to afford the material in
14 question the level of protection to which it is entitled under the Producing Party's designation until
15 the court rules on the challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
18 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
20 the categories of persons and under the conditions described in this Order. When the litigation has
21 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
22 DISPOSITION).

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

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
26 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
27 information or item designated "CONFIDENTIAL" only to:

- 28 (a) the Receiving Party's Outside Counsel of Record in this action, as well as

1 employees of said Outside Counsel of Record and to whom it is reasonably necessary to disclose
2 the information for this litigation;

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

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury and Professional Vendors to
11 whom disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
24 must:

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

27 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
28 other litigation that some or all of the material covered by the subpoena or order is subject to this

1 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
2 c) cooperate with respect to all reasonable procedures sought to be pursued by the
3 Designating Party whose Protected Material may be affected.

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

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

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

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

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

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

27 (3) make the information requested available for inspection by the Non-Party.
28

1 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
2 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
3 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
4 protective order, the Receiving Party shall not produce any information in its possession or control
5 that is subject to the confidentiality agreement with the Non-Party before a determination by the
6 court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
7 seeking protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
17 TRIAL-PREPARATION MATERIAL

18 The Parties acknowledge the contents of Federal Rule of Civil Procedure 26(b)(5)(B) with
19 respect to information produced in discovery that is subject to a claim of privilege or of protection
20 as trial-preparation material. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
21 parties reach an agreement on the effect of disclosure of a communication or information covered
22 by the attorney-client privilege or work product protection, the Parties may incorporate their
23 agreement into the stipulated protective order submitted to the court.
24

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
27 seek its modification by the court in the future.
28

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
2 no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered by
5 this Protective Order.

6 12.3 Filing Protected Material. Without written permission from the Designating Party or
7 a court order secured after appropriate notice to all interested persons, a Party may not file in the
8 public record in this action any Protected Material. A Party that seeks to file under seal any
9 Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed
10 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
11 issue. Pursuant to Civil Local Rule 141.1, a sealing order will issue only upon a request establishing
12 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
13 to protection under the law.

14
15 13. FINAL DISPOSITION

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

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

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4
5
6 Dated: September 12, 2014

Respectfully Submitted,

7 **KERSHAW, CUTTER & RATINOFF, LLP**

8

9 By: /s/ C. Brooks Cutter
C. Brooks Cutter
Tiffany T. Tran
10 Attorneys for Plaintiffs Kiranjeet Badyal and
11 Dilawar Badyal

12 Dated: September 12, 2014

Respectfully Submitted,

13 **CLAUSEN MILLER P.C.**

14

15
16 By: /s/ Jay D. Harker
Jay D. Harker
17 Attorneys for Plaintiffs, Siemens Corporation,
18 Siemens Healthcare Diagnostics Inc., and Steadfast
19 Insurance Company as Subrogee of Siemens
Corporation and Siemens Healthcare Diagnostics
Inc.

20 Dated: September 12, 2014

Respectfully Submitted,

21 **DYKEMA GOSSETT LLP**

22

23 By: /s/ Dommond E. Lonnie
Dommond E. Lonnie
24 Attorneys for Defendants Robert Bosch Packaging
25 Technology, Inc. and SBM Schoeller-Bleckmann
26 Medizintechnik Ges.M.B.H.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: September 22, 2014



ALLISON CLAIRE
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 Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on _____ [date] in the case of *Kiranjeet Badyal; Dilawar Badyal v. Bosch Packaging Technology, Inc., et al.*, USDC Eastern District of California Case No. 2:11-cv-00349-MCE-AC. 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 Eastern 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.

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 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____