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INC.

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12 Attorney for Plaintiff ELIZABETH SAMUELS

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15
16 ELIZABETH SAMUELS,
17 Plaintiff,

18 v.

19 OWENS-BROCKWAY GLASS
CONTAINER INC. and DOES 1 through
20 V,

21 Defendant.

No. 2:13-cv-00713-GEB-DAD

STIPULATED PROTECTIVE ORDER

22
23 Whereas, Plaintiff in the above-captioned action seeks discovery from Defendant of
24 documents, information, or other materials that contain non-public, confidential, competitively-
25 sensitive, and/or proprietary information of Defendant or of third parties;

26 Whereas, Plaintiff and Defendant wish to ensure that such information shall be used only
27 for the purposes of this action and shall not be disclosed or used in any other way; and

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1 Whereas, the parties have stipulated and agreed to the terms, and jointly moved this Court
2 for entry of the following Protective Order, and the Court having found that, in light of the nature
3 of the non-public, confidential, competitively-sensitive, and/or proprietary information that may
4 be sought in discovery;

5 The Court hereby finds that good cause exists for entry of the Protective Order to limit the
6 disclosure and use of certain discovered information in the above-captioned action (the
7 “Litigation”) as hereinafter provided:

8 **1. Scope**

9 a. This Order shall govern all documents, the information contained therein, and all
10 other information produced or disclosed during discovery in the Litigation whether revealed in a
11 document, deposition, other testimony, discovery responses or otherwise, by any party (the
12 “Producing Party”) to any other party (the “Receiving Party”) when the same is designated using
13 the procedures set forth herein.

14 b. Any Producing Party shall have the right to identify and designate as
15 “Confidential” any document or other material it produces or provides, or any testimony given in
16 this proceeding, which it believes in good faith constitutes, reflects or discloses confidential and
17 proprietary information, including: (i) manufacturing, bottling, and shipping processes, bottle
18 specifications, plans, and designs, financial data, marketing and advertising data or plans,
19 strategic or long-range plans, and/or cost, compensation, expense data; (ii) any information that
20 any party believes would compromise and/or jeopardize the Producing Party’s competitive
21 business interests; (iii) information containing employee compensation, benefits, and/or terms and
22 conditions of employment as may be reflected in a collective bargaining agreement or related
23 documents; and (iv) other information understood to be confidential pursuant to a confidentiality
24 agreement.

25 c. Any party may designate as Confidential (“Designating Party”) documents or
26 information produced by another party if that material either originated from the designating party
27 or was generated on the designating party’s behalf, in which case, the designating party shall be
28 deemed a Producing Party for purposes of this Order.

1 **2. Designation of Confidentiality**

2 Documents or information may be designated “Confidential” in the following ways:

3 a. A Producing Party shall, if appropriate, designate specific documents as
4 “Confidential” by marking the first page and each subsequent page of the document containing
5 any Confidential Information with the legend “CONTAINS CONFIDENTIAL
6 INFORMATION.”

7 b. A Producing Party shall designate interrogatory answers and responses to requests
8 for admission as Confidential Information by placing the following legend on each page of
9 interrogatory answers or responses to requests for admission containing Confidential Information:
10 “CONTAINS CONFIDENTIAL INFORMATION.”

11 c. In the case of depositions and the information contained in depositions (including
12 exhibits), counsel for a Producing Party or witness shall designate portions of the transcript
13 (including exhibits) which contain Confidential Information by making a statement on the record
14 in the course of the deposition or by letter within 21 calendar days of receipt of the official
15 deposition transcript or copy thereof (or written notification that the transcript is available). The
16 entire deposition transcript (including exhibits) shall be treated as Confidential Information under
17 this Order until the expiration of the 21-day period for designation. The following legend shall be
18 placed on the front of the original and each copy of the deposition transcript containing
19 Confidential Information: “CONTAINS CONFIDENTIAL INFORMATION.” If all or part of a
20 videotaped deposition is designated as “CONFIDENTIAL,” the video container shall be labeled
21 with the legend provided for in paragraph 2(a) above. When a deposition transcript contains
22 Confidential Information, the Producing Party shall request the stenographic reporter to separate
23 those portions of the transcript containing Confidential Information and bind them separately
24 from the non-confidential portions.

25 **3. Filing of Confidential Information**

26 Without written permission from the Producing/Designating Party or a court order secured
27 after appropriate notice to all interested persons, a Party may not file in the public record in this
28 action any Protected Material. A Party that seeks to file under seal any Protected Material must

1 comply with Civil Local Rule 141. Further, a Party that seeks to file any redacted material must
2 comply with Civil Local Rule 140. Protected Material may only be filed under seal or redacted
3 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a
4 Receiving Party's request to file Protected Material under seal or redacted pursuant to Civil Local
5 Rules 140 and 141 is denied by the Court, then the Receiving Party may file the information in
6 the public record, unless otherwise instructed by the Court.

7 **4. Use of Confidential Information**

8 a. Any person other than the Producing Party shall use Confidential Information only
9 in conducting or defending this Litigation, and shall not use Confidential Information for any
10 business, competitive, personal, private, public, or organizational purposes.

11 b. Notwithstanding the foregoing, nothing in this Order shall be deemed to limit or
12 restrict any Producing Party from using its own documents or its own Confidential Information
13 for any purpose. The Producing Party may withdraw or modify any designation.

14 **5. Disclosure of Confidential Information**

15 Access to information designated as "CONFIDENTIAL" pursuant to this Order shall be
16 limited to:

17 a. The Court or any other court exercising jurisdiction with respect to this Litigation,
18 Court personnel, jurors, and qualified persons (including necessary clerical personnel) recording,
19 taking or transcribing testimony and argument at any deposition, hearing, trial or appeal in this
20 Litigation;

21 b. Mediators or other individuals engaged or consulted in settlement of this
22 Litigation, but only after such persons execute the Acknowledgement and Agreement to be
23 Bound by Protective Order, attached hereto as Exhibit A;

24 c. Outside counsel of record for the parties in this Litigation (including members or
25 associates of such counsel's firm) or in-house counsel for the parties, as well as their paralegal,
26 investigative, secretarial, and clerical personnel who are engaged in assisting such counsel in this
27 Litigation, but only after such persons execute the Acknowledgement and Agreement to be
28 Bound by Protective Order, attached hereto as Exhibit A;

1 d. Outside photocopying, data processing, or graphic production services employed
2 by the parties or their counsel of record to assist in this Litigation, but only after such persons
3 execute the Acknowledgement and Agreement to be Bound by Protective Order, attached hereto
4 as Exhibit A;

5 e. Any expert witness retained by a party to give testimony in the Litigation or to
6 assist counsel of record in the prosecution or defense of this Litigation, provided, however, that
7 such witness executes, in advance, the Acknowledgement and Agreement to be Bound by
8 Protective Order, attached hereto as Exhibit A;

9 f. Any person who: (i) authored or is listed as a recipient of the particular material
10 sought to be disclosed to that person; (ii) is currently employed by the Producing Party, but only
11 as to Confidential Information to which the employee is lawfully entitled to have access in
12 connection with his or her employment; (iii) was formerly employed by the Producing Party, but
13 only as to specific material to which the person had access during his/her employment; and

14 g. Any other person to whom the Producing Party agrees in writing or on the record
15 in advance of the disclosure or the Court directs should have access.

16 h. The Plaintiff, but only after the Plaintiff executes the Acknowledgement and
17 Agreement to be Bound by Protective Order, attached hereto as Exhibit A;

18 **6. Custody of Acknowledgement and Agreement to be Bound by Protective Order**

19 Counsel of record for the disclosing party shall keep originals of every Acknowledgement
20 and Agreement to be Bound by Protective Order executed pursuant to Section 5 above.

21 **7. Objections to Designations**

22 In the event a party objects to the designation of any material under this Order, the
23 objecting party shall state its objections in a letter to counsel for the designating party in this
24 Litigation, whereupon, the interested parties shall meet and confer in an attempt to resolve any
25 objection. If the objection is not resolved within fourteen (14) days of transmission of that letter,
26 the Producing/Designating Party must apply to the Court within the next ten (10) court days for
27 an Order confirming the propriety of the designation with respect to the challenged discovery
28 materials. Failure to file said petition within that period constitutes a waiver of any such claim of

1 confidentiality. If such a request is made, the Producing/Designating Party has the burden of
2 establishing that the designation is proper. If the Producing/Designating Party agrees to change
3 the designation to nonconfidential, the Producing Party shall send a written notice of the change
4 in designation to all other parties. Any documents or other materials that have been designated
5 “Confidential” shall be treated in the manner designated until such time as the Court rules that
6 they should not be treated as Confidential, or the Producing/Designating Party agrees to change
7 the designation.

8 **8. Preservation of Rights and Privileges**

9 Nothing contained in this Order shall affect the right, if any, of any party or witness to
10 make any type of objection, claim, or other response to discovery requests, including, without
11 limitation, interrogatories, requests for admission, requests for production of documents or
12 questions at a deposition. Nor shall this Order be construed as a waiver by any party of any right
13 to withhold any Confidential Information as attorney work product or based on privilege, or of
14 any right which any party may have to assert such privilege at any stage of this Litigation.

15 **9. Return or Destruction of Materials**

16 Within sixty (60) business days after the final resolution of this Litigation, a Receiving
17 Party shall return all Confidential Information to counsel for the Producing Party or, in lieu
18 thereof, the Receiving Party shall certify in writing that all such information has been destroyed.

19 **10. Correction of Designation and Inadvertent Production of Confidential or Privileged**
20 **Information**

21 a. Inadvertent production of Confidential Information shall not be deemed a waiver
22 of any party’s right to designate materials under the terms of this Order. If a party discovers that
23 documents or information that qualify as Confidential Information have been produced without
24 the designations set forth in this Order, that party shall be entitled to make a correction to the
25 document or information’s designation. Such correction and notice thereof shall be made in
26 writing, accompanied by substitute copies of each item of Discovery Material, appropriately
27 designated. Upon receipt of a notice of correction, the Receiving Party shall place the appropriate
28 marking on the material to reflect its confidential status and certify that the original and all copies

1 of the materials have been appropriately marked. Individuals who reviewed any mis-designated
2 material prior to notice of the mis-designation shall abide by the provisions of this Order with
3 respect to all future use and disclosure of any information contained in the mis-designated
4 materials. In the event the Receiving Party disputes the designation, the Producing/Designating
5 Party may seek an order confirming the designation pursuant to the provisions of this Order.

6 b. A party that learns that the party inadvertently produced documents or other
7 information during discovery in this Litigation which that party has a good faith reason to believe
8 is privileged under the attorney-client or other privilege, or protected from discovery as work
9 product, may, upon discovery of such inadvertent production, request the return of such
10 documents or information. Inadvertent production shall not be deemed a waiver of any applicable
11 privilege. Upon receipt of a written request for return by the inadvertently Producing Party, the
12 Receiving Party shall (a) return the original and all copies of the documents within thirty (30)
13 days of the request, and shall not use the information for any purpose except upon further order of
14 the Court, or (b) object to the request as described below. In the event the Receiving Party objects
15 to the return of the document, the Producing Party shall move the Court within thirty (30) days of
16 the date of the Receiving Party's written objection for an order as to whether the production was
17 inadvertent or whether the document or information is otherwise privileged or protected from
18 discovery. All materials related to the inadvertently produced document or information, and
19 motion, shall be treated as Confidential Information pursuant to this Order, unless otherwise
20 ordered by the Court. If such a motion is made within the thirty (30) day period the Receiving
21 Party may retain the produced document or information until the Court resolves the motion.
22 However, the Receiving Party shall not use the document or information for any purpose except
23 upon further order of the Court. Failure to file said motion within the specified period constitutes
24 a waiver of any such claim of inadvertent production and any claimed privilege or other basis for
25 protection from discovery of the document or information.

26 c. If Confidential Information is disclosed by a Receiving Party to anyone other than
27 in a manner authorized by this Order, the Receiving Party responsible for that disclosure must
28 immediately bring all pertinent facts related to that disclosure to the attention of the Producing

1 Party and make every reasonable effort to retrieve that Confidential Information and to prevent
2 further disclosure.

3 **11. Limitation on the Scope of this Order**

4 The restrictions in this Order shall not apply to documents or information that are publicly
5 available or that are obtained independently by the Receiving Party from a person lawfully in
6 possession of those documents.

7 **12. No Admission**

8 A party's compliance with the terms of this Order shall not operate as an admission that
9 any particular document is or is not (a) confidential, (b) privileged, or (c) admissible in evidence
10 at trial.

11 **13. Duty to Notify of Receipt of Request for Confidential Information**

12 If any Receiving Party receives a request of any kind, including via subpoena or other
13 legal process, for documents subject to this Order, such Receiving Party must inform the party
14 requesting the information of this Order, provide the requesting party with a copy of this Order,
15 and give the Producing Party, or other party who designated information under the terms of this
16 Order, written notice of the request within three (3) business days after its receipt and three (3)
17 business days before it produces any documents in response to the request, so that the Producing
18 Party has an opportunity to take appropriate action, including moving for relief, prior to the
19 production of any responsive material.

20 **14. Duration**

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

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1 **15. Modification of Order**

2 This Order is binding on all parties to this Litigation and on all other parties who have
3 received Confidential Information pursuant to this Order, and shall remain in full force and effect
4 until modified, superseded, or terminated by further order of the Court.

5 Nothing in this Order shall prevent a Producing Party from seeking further, greater or
6 lesser protection with respect to the use of any Confidential Information.

7 The Court may modify the terms and conditions of this Order for good cause, or in the
8 interest of justice, or on its own order at any time in these proceedings. The parties prefer that the
9 Court provide them with notice of the Court's intent to modify the Order and the content of those
10 modifications, prior to entry of such order.

11 IT IS SO STIPULATED:

12 Dated: February 25, 2014

SANDRA J. COHEN

14 By: /s/ Sandra J. Cohen
15 Sandra J. Cohen
16 Attorneys for Plaintiff
ELIZABETH SAMUELS

17 Dated: February 25, 2014

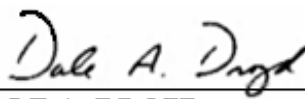
SCHIFF HARDIN LLP

19 By: /s/ Sarah D. Youngblood
20 Sarah D. Youngblood
21 Attorneys for Defendant
OWENS-BROCKWAY GLASS
CONTAINER INC.

22
23 **ORDER**

24 Pursuant to the parties' stipulation, IT IS SO ORDERED.

25 Dated: February 25, 2014

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27 DALE A. DROZD
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

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 in the case of *Elizabeth Samuels v. Owens-Brockway Glass Container, Inc.*, Case No. 2:13-cv-00713-GEB-DAD. 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: _____

Signature: _____

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