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

SYNTHES, INC. AND DEPUY SYNTHES  
SALES, INC.,

Plaintiff,

vs.

GREGORY KNAPP,

Defendants.

No. 2:13-cv-02261-MCE-DAD

**STIPULATION AND ORDER FOR  
the DISCOVERY AND  
EXCHANGE OF CONFIDENTIAL  
INFORMATION**

WHEREAS, Plaintiffs Synthes, Inc. and DePuy Synthes Sales, Inc. and Defendant Gregory Knapp (collectively the “Parties”) have stipulated to the signing and entry of this Stipulated Order for the Discovery and Exchange of Confidential Information (“Agreement”), IT IS HEREBY AGREED that each of the Parties and their counsel shall be governed by the following terms and conditions concerning Confidential Information in the above-captioned action:

1. Information That May Be Designated As Confidential. The Parties to this litigation, and any non-party producing documents or information in response to a subpoena issued in this litigation (such non-parties being included in the definition of “Party” or “Parties” for purposes of this Agreement), may designate as “Confidential Information” any of the following: (a) documents or information produced by them at any time in this litigation; (b) documents or information produced by another Party or a non-party in this litigation; (c) interrogatory answers, responses to document requests, and responses to requests for

1 admissions; (d) deposition, hearing or trial testimony and transcripts, or any part thereof; and  
2 (e) access to premises for inspection or information. The Parties' agreement to utilize certain  
3 definitions of "Confidential Information" herein is solely for the purpose of facilitating  
4 discovery in this matter and does not constitute an admission that any particular category of  
5 information is "Confidential Information" under the law governing the merits of the Parties'  
6 respective claims in this litigation, and no Party shall offer the mere fact of any designation  
7 as evidence in support of any contention that the information is "Confidential" for any  
8 purpose other than the purpose stated in this paragraph.

9 2. This Agreement shall not apply to information or tangible items obtained by means  
10 independent of voluntary production by another Party, discovery or other proceedings in this  
11 action, provided that the acquisition of the information or tangible item has been through  
12 lawful means. The restrictions set forth in this Agreement shall not apply to information or  
13 tangible items which at or prior to disclosure in this action, are or were within public  
14 knowledge through lawful means, or which, after disclosure, come within public knowledge  
15 other than by act or omission of the one receiving the Confidential Information or its agents,  
16 consultants or attorneys.

17 3. Categories of Protected Information.

18 a. Basis For Designation Of Confidential Information. Information may be designated  
19 as "Confidential" based upon a good faith belief that the information constitutes or  
20 contains information of the designating Party which is not available to the general  
21 public, including, but not limited to, trade secrets, know-how, proprietary data and/or  
22 other technical, commercial, business, financial or personal information.

23 b. Basis For Designation Of Confidential – Attorneys' Eyes Only Information.  
24 Information may also be designated as "Confidential – Attorneys' Eyes Only" based  
25 upon a good faith belief that the information constitutes or contains the designating  
26 Party's highly sensitive personal information or highly sensitive business confidential  
27 information which if placed in the hands of a third party may place the designating  
28 Party at a competitive disadvantage because said information relates to the

1 designating Party's: pricing, financial records, sales strategies, distribution strategies,  
2 manufacturing procedures, technical knowledge, unpatented inventions, patent  
3 applications, technical development plans and notes, manufacturing secrets, secret  
4 processes, formulae, potential customers, and potential distributors, or other  
5 confidential and proprietary information, as well as highly sensitive trade secrets  
6 relating to the designating Party's market plans in its industry. As used in this  
7 Agreement, and except as otherwise set forth, "Confidential Information" includes  
8 both information designated as "Confidential" and "Confidential – Attorneys' Eyes  
9 Only."

10 4. Permissible Use Of Confidential Information. Any person having access to Confidential  
11 Information shall use it only for the purposes of this litigation (including appeals); shall not  
12 disclose it to anyone other than those persons designated herein; and shall handle it in the  
13 manner set forth in this Agreement. The designation of material as Confidential shall not  
14 itself affect the rights of the designator (or the designator's authorized representative) to give  
15 or disclose the Confidential Information to any person for any reason, and such giving or  
16 disclosing of confidential information shall not be deemed a waiver of this Agreement.

17 5. Persons With Access To Information Designated as Confidential. Access to information  
18 designated as "Confidential" shall be limited to:

- 19 a. Current officers, directors or employees of Plaintiffs Synthes, Inc. and DePuy Synthes  
20 Sales, Inc., whose consultation is reasonably necessary to the prosecution or defense  
21 of this litigation; and Defendant Gregory Knapp.
- 22 b. Outside counsel for the Parties whose firms have entered an appearance in this  
23 litigation (including outside counsel's employees, agents and clerical assistants);
- 24 c. The Court, court personnel, and court reporters;
- 25 d. Experts and consultants (including their employees and clerical assistants) who are  
26 employed, retained, or otherwise consulted by counsel of record for the Parties for the  
27 purpose of analyzing data, conducting studies, or providing opinions for assistance in  
28 this litigation; and

1 e. Persons whom counsel for the Parties believes are likely to be called to give  
2 testimony on matters related to information designated as “Confidential” or who are  
3 believed to possess information necessary for the prosecution or defense of this  
4 litigation.

5 6. Persons With Access To Information Designated as Confidential – Attorneys’ Eyes Only.

6 Access to information designated as “Confidential – Attorneys’ Eyes Only” shall be limited  
7 to:

8 a. Outside counsel for the Parties whose firms have entered an appearance in this  
9 litigation (including outside counsel’s employees, agents and clerical assistants), and  
10 one in-house counsel designated by Plaintiffs (Ed Yures);

11 b. The Court, court personnel, and court reporters;

12 c. Experts and consultants (including their employees and clerical assistants) who are  
13 employed, retained, or otherwise consulted by counsel of record for the Parties for the  
14 purpose of analyzing data, conducting studies, or providing opinions for assistance in  
15 this litigation;

16 d. Deposition witnesses, if it is clear from the designated documents that the witness(es)  
17 previously had access to such information; and

18 e. Any other person only upon order of the Court or upon stipulation of the Party that  
19 designated the Confidential Information.

20 f. Any Party disclosing Confidential Information to the persons listed in Paragraph 5(d)  
21 or 5(e), or Paragraph 6(c), or 6(d), shall advise such person of the existence of this  
22 Confidentiality Agreement and the terms herein. Furthermore, prior to disclosing  
23 Confidential Information to the persons listed in Paragraph 5(d) or 5(e), or Paragraph  
24 6(c) or 6(d), the producing Party shall obtain a signed declaration (in the form  
25 attached as Exhibit 1 hereto) from such person (but only to the extent the person is  
26 not an officer, director or employee of the producing Party). The executed  
27 declaration, Exhibit 1, shall be retained by the producing Party.

28 g. Notwithstanding anything to the contrary in Paragraphs 5 and 6 above, with respect to

1 documents or things designated as Confidential Information, any person indicated on  
2 the face of the document or thing as an originator, author or recipient of a copy  
3 thereof may be shown the same, without restriction.

4 7. Filing And Use Of Confidential Information In Court. If a Party wishes to file with the Court  
5 a pleading, motion, memorandum, brief, deposition transcript, discovery request or response,  
6 exhibit, or other document that produces, paraphrases, summarizes or otherwise contains any  
7 information previously designated as “Confidential” or “Confidential – Attorneys Eyes  
8 Only”, that Party shall place the legend “Confidential – Filed Under Seal and Subject to  
9 Confidentiality Agreement” on the front page of any such document filed with the court. The  
10 Parties shall file any such document in accordance with the requirements of Federal Rule of  
11 Civil Procedure 5.2, and United States District Court for the Eastern District of California  
12 Local Rule 141.

13 8. Procedures To Designate Confidential Information. For the purposes of this Agreement,  
14 “documents” shall have the broadest possible meaning as defined in both plaintiffs’ and  
15 defendant’s discovery requests (and such definitions are incorporated by reference herein).

16 a. The Parties, or any non-party that produces or discloses information which the  
17 producing Party believes, in good faith, to constitute Confidential Information, as  
18 defined by this Agreement, may designate the same as “Confidential” or  
19 “Confidential – Attorneys’ Eyes Only” in accordance with the provisions of this  
20 Agreement. In the case of documents, designation shall be made by placing the  
21 words “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
22 on at least the first page of the document prior to production or, in the case of native  
23 electronic documents, otherwise indicating the designation of the document.

24 b. The Parties may also designate as “Confidential” or “Confidential – Attorneys’ Eyes  
25 Only” in accordance with the provisions of this Agreement any Confidential  
26 Information, as defined by this Agreement, produced by a non-party to this litigation  
27 by providing written notice to every other Party within ten (10) business days from  
28 the date of receipt of the documents produced by the non-party. Failure to do so

1 within the time prescribed shall constitute a waiver of the Party's right to designate  
2 the information produced by the non-party as Confidential Information. From the  
3 time that information is produced by a non-party until the expiration of the 10-day  
4 period, all information produced by a non-party shall be designated "Confidential –  
5 Attorneys' Eyes Only."

6 c. Whenever a deposition taken on behalf of any Party or an inspection of premises is  
7 made which involves a disclosure of Confidential Information:

8 i. Said deposition, inspection or portions thereof may be designated as  
9 "Confidential" or "Confidential – Attorney's Eyes Only." Such designations  
10 shall be made on the record whenever possible, but a producing Party may  
11 designate portions of depositions as "Confidential" or "Confidential –  
12 Attorney's Eyes Only" after transcription by no later than ten (10) business  
13 days after receipt of the deposition transcript, informing the other Parties to  
14 this action in writing of the portions of the transcript designated  
15 "Confidential" or "Confidential – Attorneys' Eyes Only;"

16 ii. The producing Party shall have the right to exclude from attendance at  
17 depositions or inspections, during time(s) that Confidential Information is or  
18 may be disclosed, any person other than a deponent, counsel (including their  
19 staff and associates), the court reporter, and the person(s) agreed upon  
20 pursuant to Paragraphs 5 and 6 above. The Confidential Information shall not  
21 be disclosed until requirements of this provision have been met or waived; and

22 iii. The original transcripts containing Confidential Information and all copies  
23 thereof shall bear the legend "Confidential" or "Confidential Attorneys' Eyes  
24 Only" as appropriate.

25 9. Retention of Confidential Information. All Confidential Information which has been  
26 designated as "Confidential" or "Confidential – Attorneys' Eyes Only" by the producing or  
27 producing Party, and any and all reproductions thereof shall be retained only in the custody  
28 of counsel for the receiving Party, except that experts and consultants authorized to view

1 such information under the terms of this Agreement may retain custody of such copies as are  
2 necessary for their participation in this litigation.

3 10. Disclosure Of Confidential Information In Other Actions. In the event that a person (the  
4 “Recipient”) subject to this Agreement receives a subpoena related to another action that  
5 seeks the production of Confidential Information (which was produced by another Party or  
6 non-party in this action), the Recipient shall, within not more than ten (10) business days,  
7 provide notice to the Party that designated such information as Confidential Information (the  
8 “designating party”). To the extent permitted by law, the Recipient shall not produce the  
9 Confidential Information at issue for at least ten (10) business days from the date the  
10 Recipient receives the subpoena and shall cooperate fully with the designating Party in  
11 contesting the subpoena and/or ensuring the continued confidentiality of the Confidential  
12 Information.

13 11. Return or Destruction of Confidential Information. Immediately after entry of final judgment  
14 including appeals, or of dismissal in connection with this action, all Confidential Information  
15 produced in this litigation, including any copies thereof and summaries or descriptions  
16 thereof contained in other documents, shall be returned to counsel for the producing party.  
17 Alternatively, the receiving party may destroy such information, including by rendering  
18 electronically stored information inaccessible, and the Party in possession of the information  
19 shall provide written confirmation of the destruction of the Confidential Information. This  
20 provision does not prohibit outside counsel for the Parties from retaining court filings,  
21 deposition transcripts, exhibits, and other documents that are deemed necessary in order to  
22 maintain complete client files, and/or comply with a bona fide record retention policy,  
23 provided, however, that outside counsel shall retain those copies as Attorneys’ Eyes Only,  
24 and shall use them solely in connection with the Litigation.

25 12. Inadvertent Production. Inadvertent production of information considered Confidential  
26 Information without the “Confidential” or “Confidential – Attorneys’ Eyes Only” designation  
27 shall not constitute a waiver of the producing Party’s right to designate the information  
28 produced as Confidential Information. The producing Party shall give prompt written notice

1 to the Party receiving the information which was produced without the “Confidential” or  
2 “Confidential – Attorneys’ Eyes Only” designation as soon as the omission is discovered.  
3 The receiving Party shall then mark as “Confidential” or “Confidential – Attorneys’ Eyes  
4 Only” all documents or things indicated by the producing Party as having been produced  
5 without such designation, and treat those documents in accordance with this Agreement.  
6 Further, if multiple versions of the same document are produced with different  
7 confidentiality designations, the more restrictive designation shall apply to all copies  
8 produced even if not so designated. Finally, the inadvertent production of any document or  
9 other information shall be without prejudice to any claim that such material is subject to the  
10 attorney client privilege or is protected from discovery as work product within the meaning  
11 of the Federal Rules of Civil Procedure and controlling case law. No Party to this Agreement  
12 shall be held to have waived any rights by such inadvertent production.

13 13. Challenges To Designations Of Confidentiality.

14 a. No Party concedes that any material designated by any other person as “Confidential”  
15 or “Confidential -Attorneys’ Eyes Only” does in fact contain or reflect trade secrets,  
16 proprietary or confidential information, or has been properly designated as  
17 Confidential. Any Party may at any time move for relief from the provisions of this  
18 Agreement with respect to specific material, as set forth below.

19 b. If the receiving Party believes that any information labeled Confidential Information  
20 is not properly designated “Confidential” or “Confidential – Attorneys’ Eyes Only”,  
21 the receiving Party may, at any time, notify the designating Party and request a  
22 release of confidentiality or modification of the confidentiality designation. The  
23 Parties shall attempt in good faith to resolve any dispute that may arise and should  
24 only seek appropriate application with the Court in order to protect the rights created  
25 by this Agreement after all efforts to privately resolve their dispute have failed. If the  
26 designating Party does not grant the requested release or modification of  
27 confidentiality within ten (10) business days, the receiving Party may thereafter file a  
28 motion with the Court requesting a determination by the Court as to whether the

1 information at issue shall be treated as “Confidential” or “Confidential – Attorney’  
2 Eyes Only” under the terms hereof. If the receiving Party files a motion with the  
3 Court requesting such a determination, the confidential status of the information shall  
4 be maintained pending the Court’s ruling on the motion. The burden of proving  
5 confidentiality of designated information remains with the Party asserting such  
6 confidentiality. The Parties shall not be obligated to challenge the propriety of any  
7 designation of information as “Confidential” or “Confidential – Attorneys’ Eyes  
8 Only” and the failure to do so promptly shall not preclude any subsequent objection  
9 to such designation.

10 14. Reservation Of Rights. The Parties agree that the execution or filing and entry of this  
11 Agreement shall not constitute a waiver of any rights under any applicable law and/or court  
12 rules. In addition, nothing in the foregoing provisions of this Agreement shall be deemed to  
13 preclude any Party or non-party from seeking and obtaining, on an appropriate showing,  
14 additional protection with respect to the confidentiality of documents or other discovery  
15 material or relief from this Agreement with respect to particular material designated as  
16 containing Confidential Information. Nothing contained in or related to this Agreement shall  
17 be construed as an admission by Knapp that any information of Plaintiffs is “confidential” or  
18 a “trade secret.”

19 15. Jurisdiction and Choice of Law. The Parties and any other person or entity subject to the  
20 terms of this Agreement agree that the United States District Court for the Eastern District of  
21 California shall have jurisdiction over it and those persons for the purposes of enforcing this  
22 Agreement, notwithstanding any subsequent disposition of this Action. The Parties and any  
23 other person or entity subject to the terms of this Agreement further agree that California law  
24 shall govern any action to enforce or relating to this Agreement.

25 16. Inadvertent Production – Privilege and Attorney Work Product. The inadvertent production  
26 of any document or other information during discovery in this action shall be without  
27 prejudice to any claim that such material is subject to the attorney client privilege or is  
28 protected from discovery as work product within the meaning of Federal Rule of Civil

1 Procedure 26 and Federal Rule of Evidence 502. No Party shall be held to have waived any  
2 rights by such inadvertent production.

3 17. Production or disclosure of Confidential Information under this Agreement shall not  
4 prejudice the right of any person making that production or disclosure to maintain the trade  
5 secret status or confidentiality of that information in other contexts.

6 18. Nothing in this Agreement shall affect in way any Party's rights to introduce Confidential  
7 Information into evidence during trial or at any hearing in the above-captioned matter.

8 19. This Confidentiality Agreement may be signed in counterparts.

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10 SO AGREED:

11 /s/ Howard M. Knee

12 Howard M. Knee  
13 BLANK ROME LLP  
14 2029 Century Park East  
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16 Los Angeles, California 90067  
17 Phone: (424) 239-3100  
18 Knee@blankrome.com

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27 *Attorneys for Plaintiffs Synthes, Inc. and*  
28 *DePuy Synthes Sales, Inc.*

/s/ Malcolm S. Segal

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jmcshea@mcshealawfirm.com

*Attorneys for Defendant Gregory Knapp*

Dated: December 11, 2014

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**Exhibit 1 to Confidentiality Agreement**

**DECLARATION**

I, \_\_\_\_\_, hereby understand and agree that information and/or documents designated as Confidential Information shall be provided to me subject to the terms and conditions set forth in the Confidentiality Agreement for the Discovery Of Confidential Information (the "Agreement"), which was agreed to by the Parties in the matter entitled *Synthes, Inc. et al. v. Gregory Knapp*, United States District Court for the Eastern District of California, Civil Action No. 2:13-cv-02261-MCE-DAD.

I hereby acknowledge that I have been given a copy of and have read the Agreement. I agree that I shall not disclose the information and/or documents to others and that the information and/or documents shall be used only for the purpose of this litigation. I agree that, following the conclusion of this litigation, I will return or destroy all Confidential Information, including all copies thereof and all summaries or descriptions thereof contained in other documents.

I further agree to be bound by the terms of the Agreement and to subject myself to the jurisdiction of the United States District Court for the Eastern District of California for the enforcement of the Agreement and understand that, in the event that I fail to abide by the terms of the Agreement, I may be subject to sanctions by the Court.

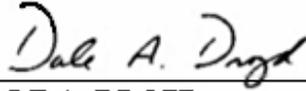
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**ORDER**

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

Dated: December 16, 2014



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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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