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17
18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA
20 SACRAMENTO DIVISION

21 THERMOGENESIS CORP.,
22 Plaintiff,
23 v.
24 ORIGEN BIOMEDICAL, INC.,
25 Defendant.

No. 2:13-cv-02619-MCE-DAD
CONFIDENTIALITY AGREEMENT
AND STIPULATED PROTECTIVE
ORDER

1 **CONFIDENTIALITY AGREEMENT AND STIPULATED PROTECTIVE ORDER**

2 In order to adequately protect material entitled to be kept confidential, to ensure that
3 protection is afforded only to material so entitled, and to ensure that no competitive advantage is
4 gained by the receiving party or any nonparty through such disclosure, the parties have stipulated
5 and agreed to the provisions herein and so move the Court for entry of this Confidentiality
6 Agreement and Stipulated Protective Order (“Order”).

7 Good cause exists to protect the confidentiality of such information, as prejudice or harm
8 to a Party may result if no protective order is granted. In particular, business competitors of
9 Plaintiff or Defendant could obtain an unfair advantage and Plaintiff or Defendant could be
10 economically prejudiced. The purpose of this Order is to protect the legitimately designated
11 confidential business information to be produced in this action from public disclosure.

12 Accordingly, the Parties hereby stipulate to and petition the Court to enter the following
13 Order. The use or disclosure of confidential documents that the Parties to this Stipulated
14 Protective Order or any third party produces or discloses in the above captioned case shall be
15 subject to the terms of this Stipulated Protective Order. The Parties acknowledge that this Order
16 does not confer blanket protections on all disclosures or responses to discovery and the
17 protection it affords extends only to the limited information or items that are entitled under the
18 applicable legal principles to treatment as confidential. The Parties further acknowledge, as set
19 forth in Section 10 below, that this Stipulated Protective Order creates no entitlement to file
20 confidential information under seal.

21 **2. DEFINITIONS**

22 2.1. Party: any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and outside counsel (and their support staff).

24 2.2. Discovery Material: all items or information, regardless of the medium or manner
25 generated, stored, or maintained (including, among other things, documents, electronic files,
26 testimony, transcripts, written discovery responses, or tangible things) that are produced or
27 generated in disclosures or responses to discovery in this matter.

28

1 2.3. “Confidential” Information or Items: any and all discovery materials (regardless of
2 how generated, stored or maintained) including electronic files, documents, things, written
3 discovery responses, testimony, or other information derived therefrom of the producing party
4 that are and have been maintained in confidence, including, but not limited to trade secrets;
5 proprietary procedures, manuals, and policies; proprietary and confidential operations
6 information, including, but not limited to, agreements or specifications; internal business or
7 financial information, including, but not limited to, customer lists and sales information;
8 confidential agreements; and other proprietary, confidential, or information or documents that
9 are and have been maintained in confidence, that are designated as “Confidential” at the time of
10 their production or disclosure in this action or within ten (10) court days after this Order is
11 signed by the Court, or as otherwise provided herein.

12 (a) “Confidential” Information or Items shall not include any document,
13 information or other material which:

- 14 1. is, at the time of disclosure, in the public domain by publication or
15 otherwise;
- 16 2. becomes at any time, through no act or failure to act on the part of
17 the recipient party, part of the public domain by lawful publication or other lawful act;
- 18 3. is already in the possession of the receiving party at the time of
19 disclosure and was not acquired directly or indirectly from the disclosing party; or
- 20 4. is or was made available to a party by a third party who obtained
21 the same by legal means and without any obligation of confidentiality to the party to this
22 litigation claiming its confidential nature.

23 2.4. “Confidential – Attorney’s Eyes Only” Information or Items: any and all discovery
24 materials (regardless of how generated, stored or maintained) including electronic files,
25 documents, things, written discovery responses, testimony, or other information derived
26 therefrom of the producing party of a highly confidential and/or proprietary nature. Such highly
27 confidential and/or proprietary information may include: (i) financial information, (ii) current
28 research and development efforts, (iii) products in development or not yet commercially

1 introduced, (iv) current business strategies, (v) the identity of customers and/or suppliers, (vi)
2 trade secrets, and/or (vii) any other material a party reasonably believes contains competitively
3 sensitive business or technical information.

4 (a) "Confidential- Attorney's Only" Information or Items shall not include
5 any document, information or other material which:

6 1. is, at the time of disclosure, in the public domain by publication or
7 otherwise;

8 2. becomes at any time, through no act or failure to act on the part of
9 the recipient party, part of the public domain by lawful publication or other lawful act;

10 3. is already in the possession of the receiving party at the time of
11 disclosure and was not acquired directly or indirectly from the disclosing party; or

12 4. is or was made available to a party by a third party who obtained
13 the same by legal means and without any obligation of confidentiality to the party to this
14 litigation claiming its highly confidential nature.

15 2.5. Receiving Party: a Party that receives Discovery Material from a Producing Party.

16 2.6. Producing Party: a Party or non-party that produces Discovery Material in this
17 action.

18 2.7. Designating Party: a Party or non-party that designates information or items that it
19 produces in disclosures or in responses to discovery as "Confidential" or as "Confidential –
20 Attorney's Eyes Only."

21 2.8. Protected Material: any Discovery Material that is designated as "Confidential" or as
22 "Confidential – Attorney's Eyes Only."

23 2.9. Counsel: attorneys who are retained to represent or advise a Party in this action (as
24 well as their support staffs).

25 2.10. Expert: a person with specialized knowledge or experience in a matter pertinent to
26 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
27 consultant in this action and who is not a past or a current employee of an adverse Party, a
28 present employee of a competitor of an adverse Party, and who, at the time of retention, is not

1 anticipated to become an employee of an adverse Party or a competitor of an adverse Party. This
2 definition includes a professional jury or trial consultant retained in connection with this
3 litigation.

4 2.11. Professional Vendors: persons or entities that provide litigation support services
5 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
6 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

7 2.12. The term “trade secrets” shall be defined in accordance with California Civil Code
8 § 3426.1 and shall include, *inter alia*, any information, including a formula, pattern, compilation,
9 program, device, method, technique, process, financial data, or list of actual or potential
10 customers or suppliers that:

11 (1) Derives independent economic value, actual or potential, from not being
12 generally known to, and not being readily ascertainable by proper means by, the public or other
13 persons who can obtain economic value from its disclosure or use; and

14 (2) Is the subject of efforts that are reasonable under the circumstances to
15 maintain its secrecy.

16 **3. SCOPE**

17 The protections conferred by this Stipulation and Order cover not only Protected Material
18 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
19 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
20 parties or counsel to or in court or in other settings that actually reveal Protected Material.

21 **4. DURATION**

22 The obligations of this Order shall survive the termination of the action and continue to
23 bind the parties, their counsel, experts, and anyone else who obtained Confidential or
24 Confidential – Attorney’s Eyes Only information or items pursuant to this Order. Unless
25 otherwise specified, the confidentiality obligations imposed by this Order shall remain in effect
26 until a Designating Party agrees otherwise in writing or a court order otherwise directs.

27 **5. DESIGNATING PROTECTED MATERIAL**

28 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or

1 non-party that designates information or items for protection under this Order must take care to
2 limit any such designation to specific material that qualifies under the appropriate standards. A
3 Designating Party must take care to designate for protection only those parts of material,
4 documents, items, or oral or written communications that qualify – so that other portions of the
5 material, documents, items, or communications for which protection is not warranted are not
6 swept unjustifiably within the ambit of this Order. Mass or indiscriminate designations are
7 prohibited. Designations that are shown to be clearly unjustified, or that have been made for an
8 improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to
9 impose unnecessary expenses and burdens on other parties), expose the Designating Party to
10 sanctions. If it comes to a Party's or a non-party's attention that information or items that it
11 designated for protection do not qualify for protection at all, or do not qualify for the level of
12 protection initially asserted, that Party or non-party must promptly notify all other parties that it
13 is withdrawing the mistaken designation.

14 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order
15 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
16 material that qualifies for protection under this Order must be clearly so designated before the
17 material is disclosed or produced. Designation in conformity with this Order requires:

18 (a) for information in documentary form (apart from transcripts of depositions
19 or other pretrial or trial proceedings), that the Producing Party affix the legend “Confidential” or
20 “Confidential – Attorney’s Eyes Only” conspicuously on each page that contains protected
21 material. If only a portion or portions of the material on a page qualifies for protection, the
22 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
23 markings in the margins) and must specify, for each portion, the level of protection being
24 asserted (either “Confidential” or “Confidential – Attorney’s Eyes Only”).

25 A Party or non-party that makes original documents or materials available for inspection
26 need not designate them for protection until after the inspecting Party has indicated which
27 material it would like copied and produced. During the inspection and before the designation, all
28 of the material made available for inspection shall be deemed “Confidential” but shall be viewed

1 only by a Receiving Party's outside counsel of record. After the inspecting Party has identified
2 the documents it wants copied and produced, the Producing Party must determine which
3 documents, or portions thereof, qualify for protection under this Order, then, before producing
4 the specified documents, the Producing Party must affix the appropriate legend "Confidential" or
5 "Confidential – Attorney's Eyes Only" on each page that contains Protected Material. If only a
6 portion or portions of the material on a page qualifies for protection, the Producing Party also
7 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
8 margins).

9 (b) for responses to Interrogatories, Requests for Admission, Demands for
10 Inspection, and Requests for Production containing Confidential information or items or
11 Confidential Attorney's Eyes Only information or items, the title page of the document
12 containing the responses shall be marked "Confidential" or "Confidential – Attorney's Eyes
13 Only." In addition, the provisions of Section 5.2(a) apply to all such documents.

14 (c) for testimony given in deposition or in other pretrial or trial proceedings,
15 that Designating Party, or if the Designating Party is not present the Party or non-party offering or
16 sponsoring the testimony, identify on the record before the close of the deposition, hearing, or
17 other proceeding, all protected testimony, and further specify any portions of the testimony that
18 qualify as "Confidential" or "Confidential – Attorney's Eyes Only." When it is impractical to
19 identify separately each portion of testimony that is entitled to protection, and when it appears
20 that substantial portions of the testimony may qualify for protection, any Party may state on the
21 record which portions of the deposition include "Confidential" and/or "Confidential – Attorney's
22 Eyes Only" material. In the alternative, to obtain protection under this Order, a Designating Party
23 may notify the opposing party in writing within ten (10) court days of the receipt of the transcript
24 of those portions of the testimony as to which protection is sought and to specify the level of
25 protection being asserted ("Confidential" or "Confidential – Attorney's Eyes Only"), in which
26 case only those portions of the testimony that are appropriately designated for protection within
27 the ten (10) court days shall be covered by the provisions of this Stipulated Protective Order.
28 Until such time period passes, all parties shall treat the deposition transcript as Confidential if a

1 statement has been made on the record that the transcript contains Confidential material, or as
2 Confidential – Attorney’s Eyes Only if a statement has been made on the record that the transcript
3 contains Confidential – Attorneys’ Eyes Only material. Transcript pages containing Protected
4 Material shall be separated from the non-confidential portions and shall be securely sealed in an
5 envelope by the court reporter. Both the transcript and the envelope shall be marked
6 “CONFIDENTIAL UNDER PROTECTIVE ORDER.” The court reporter shall provide copies of
7 the confidential portion(s) of the deposition transcript only to the Counsel of the Parties to this
8 Stipulated Protective Order and to the testifying witness.

9 (d) for information produced in some form other than documentary, and for
10 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
11 the container or containers in which the information or item is stored the legend “Confidential”
12 or “Confidential – Attorney’s Eyes Only.” If only portions of the information or item warrant
13 protection, the Producing Party, to the extent practicable, shall identify the protected portions,
14 specifying whether they qualify as “Confidential” or as “Confidential – Attorney’s Eyes Only.”

15 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items as “Confidential” or “Confidential – Attorney’s Eyes
17 Only” does not, standing alone, waive the Designating Party's right to secure protection under
18 this Order for such material. If material is appropriately designated as “Confidential” or
19 “Confidential – Attorney’s Eyes Only” after the material was initially produced, the Receiving
20 Party, on timely notification of the designation, must make reasonable efforts to assure that the
21 material is treated in accordance with the provisions of this Order.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1. Timing of Challenges. A Party does not waive its right to challenge a
24 confidentiality designation by electing not to mount a challenge promptly after the original
25 designation is disclosed.

26 6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
27 confidentiality designation must do so in good faith and must begin the process by conferring
28 directly (in voice to voice dialogue or by e-mail) with Counsel for the Designating Party. For

1 any designation of “Confidential – Attorney’s Eyes Only,” the Designating Party shall, within
2 five (5) court days following a request, provide the Party challenging the designation with a
3 written statement supporting its contention why disclosure to another Party or nonparty would
4 create a substantial risk of serious injury that could not be avoided by less restrictive means
5 including a designation as “Confidential.” If such statement is not timely provided, the material
6 will be automatically reclassified as “Confidential.” In conferring regarding “Confidential”
7 designations, the Designating Party must explain in writing, within ten (10) court days following
8 a request to justify a designation, the basis for its belief that the confidentiality designation was
9 proper or whether it will reconsider the circumstances and change the designation. A
10 challenging Party may proceed to the next stage of the process only if it has engaged in this meet
11 and confer process first.

12 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality
13 designation after considering the justification offered by the Designating Party may file and
14 serve a motion, consistent with the requirements of Section 10 of this Protective Order, that
15 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
16 motion must be accompanied by a competent declaration that affirms that the movant has
17 complied with the meet and confer requirements imposed in the preceding paragraph and that
18 sets forth with specificity the justification for the confidentiality designation that was given by
19 the Designating Party in the meet and confer dialogue.

20 6.4. The burden of persuasion in any such challenge proceeding shall be on the
21 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the Producing Party's
23 designation.

24 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

25 7.1. Basic Principles. Any person subject to this Stipulated Protective Order and in
26 possession of Confidential Information or Confidential – Attorney’s Eyes Only Information of
27 another party or non-party shall exercise reasonable and appropriate care with regard to the
28 storage, custody and use of Confidential Information and Confidential – Attorney’s Eyes Only

1 Information in order to ensure that the confidential nature of the same is maintained. A
2 Receiving Party may use Protected Material that is disclosed or produced by another Party or by
3 a non-party in connection with this case only for prosecuting, defending, or attempting to settle
4 this litigation, and not for any business purposes or in connection with any other litigation or
5 other judicial or administrative proceeding. Such Protected Material may be disclosed only to
6 the categories of persons and under the conditions described in this Order. When the litigation
7 has been terminated, a Receiving Party must comply with the provisions of Section 11, below
8 (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving
9 Party at a location and in a secure manner that ensures that access is limited to the persons
10 authorized under this Order.

11 7.2. Disclosure of “Confidential” Information or Items. Unless otherwise ordered by the
12 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
13 information or item designated “Confidential” only to:

- 14 a. Any outside legal counsel of record and any member of management
15 designated in writing by a Party to receive Confidential information.
- 16 b. Court personnel, stenographic reporters, and videographers engaged in
17 proceedings incident to this litigation, including preparation for trial or trial;
- 18 c. Clerical personnel and paralegal assistants employed by the legal counsel
19 or contracted by such firms; and
- 20 d. Persons who, on the face of a document, either authored or received the
21 document.
- 22 e. If a party to this Stipulated Protective Order seeks to have an expert(s)
23 receive Confidential Information or Confidential – Attorney’s Eyes Only Information of another
24 party or non-party, the party shall nominate such expert(s) to whom disclosure of Confidential
25 Information or Confidential – Attorney’s Eyes Only Information may be made, as follows:
 - 26 (i) Each such nominee shall be particularly identified by written notice
27 to the attorneys of all parties. Such notice shall include a brief description of the nominee’s
28 purpose in being provided with the Confidential Information or Confidential – Attorney’s Eyes

1 Only Information, the nominee’s curriculum vitae, and a signed copy of the “Confidentiality
2 Undertaking” that is attached as Exhibit A.

3 (ii) Within five (5) court days after receipt of such notice, any
4 undersigned party, for good cause, may oppose the nomination by serving a written objection to
5 the nomination. Within ten (10) court days of sending the notice, the opposing party may file a
6 motion to preclude disclosure to the nominated expert.

7 (iii) The party seeking the nomination shall not disclose any
8 Confidential Information or Confidential – Attorney’s Eyes Only Information of the objecting
9 party to the nominee unless 1) the objecting party agrees in writing to the disclosure; 2) a Court
10 Order permits the disclosure; or 3) the time for an objecting party to serve a notice or a motion
11 under Section 7.2(f)(ii) has expired.

12 (iv) Any person as may be hereafter qualified to receive Confidential
13 Information or Confidential – Attorney’s Eyes Only Information, pursuant to paragraph 7.2(e)
14 above (1) shall not retain copies of such Confidential Information or Confidential – Attorney’s
15 Eyes Only Information in tangible or machine readable form after termination of proceedings in
16 this litigation, shall not use such Confidential Information or Confidential – Attorney’s Eyes Only
17 Information other than in connection with this case, and shall not disclose such Confidential
18 Information or Confidential – Attorney’s Eyes Only Information to anyone not authorized under
19 this Stipulated Protective Order; and (2) must agree to be bound by the terms of this Stipulated
20 Protective Order by executing Exhibit A attached hereto.

21 7.3. Disclosure of “Confidential – Attorney’s Eyes Only” Information or Items. Unless
22 otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving
23 Party may disclose any information or item designated “Confidential – Attorney’s Eyes Only”
24 only to those legal counsel and individuals authorized to access Confidential Information under
25 Section 7.2(a) - (d), with the exception of management for either Party designated in section
26 7.2(a) above.

27 7.4. Nothing contained herein shall prevent the use of the Confidential Information or
28 Confidential – Attorney’s Eyes Only Information of another party at any hearing, trial or

1 proceeding in this case, or in or with any written submissions to the Court in connection with this
2 litigation, or any appeal relating thereto, provided that the parties to this Stipulated Protective
3 Order shall take appropriate measures to maintain their confidentiality, including filing under
4 seal written submissions to the Court that include such Confidential Information or Confidential
5 – Attorney’s Eyes Only Information. The parties to this Stipulated Protective Order shall make
6 reasonable efforts to minimize filings under seal and shall place Confidential Information or
7 Confidential – Attorney’s Eyes Only Information only in attachments whenever possible.

8 7.5. When Confidential Information or Confidential – Attorney’s Eyes Only Information
9 of another party to this Stipulated Protective Order is discussed, quoted or referred to in any
10 deposition, the Parties shall cooperate to ensure that only persons qualified to have access are
11 present.

12 7.6. Nothing herein shall preclude a party from using its own Confidential or
13 Confidential – Attorney’s Eyes Only information or items in any manner.

14 7.7. Competitive Decision-Making Bar. Protected Material under this Protective Order
15 shall be used by Receiving Parties solely for the preparation and trial of this Action (including
16 appeals and retrials, if any) and Protected Material shall not be used for any other purpose.

17 a. Absent written consent from the Designating Party, any individual who
18 receives or desires to receive access to any Party’s Confidential - Attorneys’ Eyes Only
19 Information in this action, shall not be involved in competitive decision making (as defined in
20 *U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984)) for the Receiving
21 Party.

22 b. The competitive decision making bar herein shall commence when
23 Confidential - Attorneys’ Eyes Only Information is first received by the affected individual and
24 shall end one (1) year after final termination of this litigation (including appeals and retrials, if
25 any).

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION.**

3 If a Receiving Party is served with a subpoena or an order issued in other litigation that
4 would compel disclosure of any information or items designated in this action as “Confidential”
5 or “Confidential – Attorney’s Eyes Only,” the Receiving Party must so notify the Designating
6 Party, in writing (by fax or e-mail, if possible) as soon as practicable, and each party will use its
7 best efforts to provide this notice within five (5) court days after receiving the subpoena or order.
8 Such notification must include a copy of the subpoena or court order. The Receiving Party also
9 must make reasonable efforts to inform in writing promptly the party who caused the subpoena
10 or order to issue in the other litigation that some or all the material covered by the subpoena or
11 order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy
12 of this Stipulated Protective Order promptly to the party in the other action that caused the
13 subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties
14 to the existence of this Protective Order and to afford the Designating Party in this case an
15 opportunity to try to protect its confidentiality interests in the court from which the subpoena or
16 order issued. The Designating Party shall bear the burdens and the expenses of seeking
17 protection in that court of its confidential material – and nothing in these provisions should be
18 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
19 directive from another court.

20 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
22 Material to any person or in any circumstance not authorized under this Stipulated Protective
23 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
24 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
25 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
26 this Order, and (d) request such person or persons to execute Exhibit A.
27
28

1 **10. FILING PROTECTED MATERIAL**

2 A Receiving Party may not file in the public record in this action any Protected Material
3 without complying with the rules of Court regarding lodging or filing material under seal. Each
4 Party agrees not to oppose any motion to seal Protected Material, except and only to the extent
5 that a Party has previously challenged, in any manner, the designation of the Protected Material
6 which is the subject of the motion to seal.

7 **11. FINAL DISPOSITION**

8 11.1. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
9 (60) court days after the final termination of this action and upon demand, each Receiving Party
10 must return all Protected Material to the Producing Party. As used in this subdivision, “all
11 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
12 reproducing or capturing any of the Protected Material. With permission in writing from the
13 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
14 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party
15 must submit a written certification to the Producing Party (and, if not the same person or entity,
16 to the Designating Party) by the sixty (60) day deadline that identifies (by category, where
17 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
18 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms
19 of reproducing or capturing any of the Protected Material. Notwithstanding this provision,
20 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
21 memoranda, correspondence or attorney work product, even if such materials contain Protected
22 Material. Any such archival copies that contain or constitute Protected Material remain subject
23 to this Protective Order as set forth in Section 4 (DURATION), above.

24 11.2. Patent Prosecution Bar. Any attorney who, on behalf of a Receiving Party, reviews
25 any “Confidential” or “Confidential – Attorney’s Eyes Only” information or items shall not
26 thereafter prosecute or file, on behalf of any party, or any other client, for one (1) year after final
27 termination of this litigation (including appeals, if any) any U.S. or foreign patent application
28 that claims, discloses, or describes the subject matter of the Protected Material of the Producing

1 Party disclosed in any “Confidential” or “Confidential – Attorney’s Eyes Only” materials, as
2 defined in Sections 2.3(a) and 2.4(a). For purposes of this Section 11.2, prohibited patent
3 prosecution shall include, without limitation: preparation of and/or amendments to original,
4 continuation, divisional, continuation-in-part, request for continued examination, reexamination,
5 reissue, *inter partes* review, post-grant proceedings, substitute, renewal or convention patent
6 applications; claims drafting; or consultation on any of the above matters with others performing
7 these activities.

8 **12. MISCELLANEOUS**

9 12.1. Nothing herein shall prevent disclosure if each party designating information as
10 “Confidential” or “Confidential – Attorney’s Eyes Only” consents in writing to such disclosure.

11 12.2. General disclosures of information shall not be deemed to place more specific
12 disclosures of information concerning the same subject into the public domain.

13 12.3. Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the Court in the future.

15 12.4. Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order, no Party waives any right it otherwise would have to object to disclosing or producing
17 any information or item on any ground not addressed in this Stipulated Protective Order.
18 Similarly, no Party waives any right to object on any ground to use in evidence any of the
19 material covered by this Protective Order. This Stipulated Protective Order is not intended to
20 deal with any discovery objections on the grounds of relevancy, attorney-client privilege or work
21 product, or other evidentiary grounds, or to preclude any party to this Stipulated Protective Order
22 from seeking relief either from a provision of this Stipulated Protective Order or any other relief
23 from this Court which may be appropriate under the Federal Rules of Civil Procedure or the
24 Federal Rules of Evidence. In the event that information is redacted and/or withheld from
25 disclosure, the party requesting the information may move for an Order compelling further
26 disclosure of the redacted and/or withheld information. Upon written request by the moving
27 party during a motion to compel, an unredacted copy of the information sought shall be lodged
28 with the Court, under seal, for an *in camera* inspection by the Court.

1 12.5. This Stipulated Protective Order is entered solely for the purpose of facilitating the
2 exchange of documents and information between the parties hereto without involving the Court
3 unnecessarily in the process. Nothing in this Stipulated Protective Order (or the production of
4 any information of documents under the terms of this Order) shall be deemed to have the effect
5 of an admission or waiver by either party or of altering the confidentiality or non-confidentiality
6 of any such document or information or altering any existing obligation of any party or the
7 absence thereof.

8 12.6. Nothing in this Stipulated Protective Order shall disqualify, bar, or otherwise
9 restrict any attorney from rendering advice to his client with respect to this litigation and, in the
10 course thereof referring or relying generally upon his or her examination of documents, items, or
11 information designated “Confidential” or “Confidential – Attorney’s Eyes Only”; provided,
12 however, that in rendering such advice and in otherwise communicating with his or her clients,
13 the attorney shall not disclose the contents of such information or documents contrary to the
14 terms of this Stipulated Protective Order.

15 12.7. The Parties to this Stipulated Protective Order and their Counsel agree to be bound
16 by the terms of this Stipulated Protective Order as soon as they sign this document, irrespective
17 of when the Court actually signs it.

18 **13. NON-WAIVER OF PRIVILEGE OR WORK PRODUCT (FED. R. EVID. 502(d))**

19 13.1. The disclosure, through inadvertence, mistake, accident, or other error, by one
20 party to another of the substance of any document or communication entitled to protection under
21 the attorney-client privilege and/or the attorney work-product doctrine shall not constitute a
22 waiver of such protection as to the subject matter of those, or related, documents or
23 communications. If during the discovery process in this case either party mistakenly produces a
24 document entitled to protection under the attorney-client privilege or the attorney work-product
25 doctrine, the Producing Party may, at any time prior to the commencement of trial, but in any
26 event not more than fifteen (15) court days after the disclosure is first identified as containing
27 potentially privileged or work product information, marked as a deposition exhibit, or identified
28 as a potential trial exhibit, request the return or destruction of the document and all copies

1 thereof. Such a request must be made in writing and must identify the basis for the privilege or
2 work product claimed.

3 13.2. In the case of documents, if the Receiving Party agrees that it is privileged or work
4 product (without regard to its production), then the document and all copies shall promptly be
5 returned to the Producing Party or destroyed, and no reference to such document shall be made
6 in connection with the proof of the facts in this dispute. If the Receiving Party does not agree
7 that the document was privileged, then it shall so notify the Producing Party in writing within ten
8 (10) court days of receiving written notice of the asserted privilege or work product protection.
9 In such event, the Producing Party may move the Court to resolve the question. Unless the
10 parties otherwise agree in writing, any such motion must be made within fifteen (15) court days
11 of receiving notification that the Receiving Party disputes the claim of privilege or work product.

12 a. If the Court rules that the document is protected (without regard to the fact
13 of production), then the Receiving Party shall promptly return the document and all known
14 copies to the Producing Party (except that counsel of record may retain copies as needed for the
15 sole purpose of seeking reconsideration or appellate review of the Court's ruling on the question
16 of privilege or work product) and shall make no reference to the document in connection with the
17 proof of the facts in this case.

18 b. If the Court rules that the document is not protected (without regard to the
19 fact of production), then the Receiving Party may retain the document pursuant to the terms of
20 this Protective Order, subject to the designation of the document by the Producing Party under
21 Section 5.3 hereof.

22 DATED: February 19, 2014

23 STOEL RIVES LLP

24
25 By: /s/ Thomas A. Woods
26 THOMAS A. WOODS
27 Attorneys for Defendant
28 ORIGEN BIOMEDICAL, INC.

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DATED: February 19, 2014

MAJESTY LAW GROUP PLC

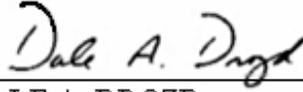
By: /s/ JoAnna M. Esty
(as authorized on 2/3/14)
JOANNA M. ESTY
Attorneys for Plaintiff
THERMOGENESIS CORP.

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ORDER

Pursuant to the parties' stipulation, **IT IS SO ORDERED.**¹

Dated: February 25, 2014



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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¹ The parties stipulated protective order provides that a party will not file any Protected Material without complying with the Local Rules of this court regarding lodging or filing material under seal. The parties are directed to refer to Local Rules 141 and 141.1 in the event any party wishes to file any materials under seal.

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15 Attorneys for Plaintiff
16 THERMOGENESIS CORP.

17
18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA
20 SACRAMENTO DIVISION

21 THERMOGENESIS CORP.,
22 Plaintiff,
23 v.
24 ORIGEN BIOMEDICAL, INC.,
25 Defendant.

Case No. 2:13-CV-02619-MCE-DAD
CONFIDENTIALITY UNDERTAKING
Honorable Judge Morrison C. England, Jr.

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I, _____, declare that:

1. My address is _____.

2. My present employer is _____.

3. My present occupation or job description is _____
_____.

4. I have carefully read and received a copy of the Protective Order entered in this
action on _____, 2014.

5. I hereby agree, under penalty of contempt of court, to be bound by and comply
with the terms of the Protective Order and not to disseminate or disclose any information
contained in the Protective Order, which I either review or about which I am told, to any person,
entity, party, or agency for any reason, except in accordance with the terms of the Protective
Order.

6. I will return all confidential material that comes into my possession, and
documents or things that I have prepared relating thereto, to counsel for the party by whom I am
employed or retained.

7. I further agree to submit to the jurisdiction of this Court for the purposes of
enforcement of the terms of this Protective Order.

I declare under penalty of perjury of the laws of the United States that the foregoing is true
and correct.

EXECUTED this _____ day of _____, 2014.

(Signature)

(Typed Name)