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19 CORPORATION

20 UNITED STATES DISTRICT COURT
21 EASTERN DISTRICT OF CALIFORNIA

22 MICHAEL JOHNSON,

23 Plaintiff,

24 v.

25 NOVARTIS PHARMACEUTICALS
26 CORPORATION,

27 Defendant.

CASE NO: 2:14-cv-00787-TLN-KJN

**[PROPOSED] PROTECTIVE AND
CONFIDENTIALITY ORDER**

28 It is hereby **ORDERED** and **ADJUDGED**, that:

- (1) This Protective and Confidentiality Order (“Protective Order”) governing the disclosure of confidential, proprietary and other protected information by any party is hereby entered in the above-captioned case.¹

¹ Collectively, defendant Novartis Pharmaceuticals Corporation (“NPC”) and plaintiff Michael Johnson will be referred to herein as the “Parties.”

- 1 (2) For purposes of this Protective Order, any Party may designate as “Confidential Material”
2 any information regarded as confidential by the Party that is contained in any document,
3 written discovery response, testimony, or other material produced or provided by that
4 Party or its representative(s) to any other Party, whether provided voluntarily, pursuant to
5 formal discovery procedures, or otherwise.
- 6 (3) Any Party may designate a document as Confidential Material by stamping it
7 “Confidential,” or “Subject to Protective Order.” All pages of any document that bears
8 such a legend are subject to this Protective Order. The Party shall affix the stamp in such
9 a manner so as not to obscure the text of the document.
- 10 (4) To the extent that matter stored or recorded in the form of electronic or magnetic media
11 (including information, files, databases or programs stored on any digital or analog
12 machine-readable device, computers, Internet sites, discs, networks or tapes)
13 (“Computerized Material”) is produced by any party in such form, the producing Party
14 may designate such materials as Confidential by marking the container that the media is
15 produced in “Confidential.” Whenever any party to whom Computerized Material
16 designated as Confidential is produced reduces such material to hardcopy form, that party
17 shall mark the hardcopy form with the “Confidential” designation.
- 18 (5) If responses to interrogatories, requests for admission, or other written responses to
19 discovery quote, summarize, or contain Confidential Material, the Parties may designate
20 them as Confidential Material by marking the face of any such response with one of the
21 legends set forth in paragraph (3) above and indicating the page and line references of the
22 material that is to be subject to this Protective Order.
- 23 (6) A Party may designate the transcript of any deposition in this Action or any portion
24 thereof, including exhibits thereto, as Confidential Material by either so advising the court
25 reporter and the Parties on the record during the taking of the deposition or within thirty
26 (30) days after receipt of the deposition transcript by written designation served upon the
27 Parties. If all or any portion of a deposition is designated as being subject to this
28 Protective Order, the court reporter and any Parties possessing any transcripts shall label

1 the cover page of each transcript or copy thereof to state that the deposition includes
2 Confidential Material, and shall label as confidential each of the pages of the transcript or
3 exhibits that contain Confidential Material.

4 (7) Any inadvertent production of any confidential or proprietary material will not result in or
5 be construed as a waiver, in whole or in part, of (a) the producing Party's claims of
6 confidentiality either as to the specific information inadvertently disclosed or more
7 generally as to the subject matter of the information disclosed, or (b) the party's right to
8 designate the material as confidential pursuant to this Protective Order. In the event that a
9 Party inadvertently produces any Confidential Material without attaching one of the
10 legends described in paragraph (3) above, the Party may subsequently designate the
11 material as Confidential at any time by forwarding to the opposing Party copies of the
12 material bearing one of the legends required by paragraph (3) and requesting that the
13 opposing Party destroy all prior copies of the Confidential Material. Upon receipt of such
14 a request, the opposing Party shall destroy all copies of the Confidential Material produced
15 inadvertently and replace them with copies bearing the appropriate confidentiality legend.

16 (8) Written and oral communications between or among counsel for the Parties that refer to or
17 discuss Confidential Material automatically shall be subject to this Protective Order.

18 (9) Confidential Material shall be treated by the Parties and their counsel as being confidential
19 and private. Any copy made of Confidential Material shall have the same status as the
20 original. The disclosure and use of Confidential Material shall be confined to the
21 permissible disclosures and uses set forth below. NPC's Confidential Material shall be
22 used (if otherwise relevant and admissible) solely for the litigation of this case.

23 Confidential Material shall not be used in any other legal action or proceeding or for any
24 other purpose without further order of this Court. All other disclosure and use of
25 Confidential Material during the pendency of this Action or after its termination is hereby
26 prohibited.

27 (10) Confidential Material may be disclosed only to the following persons and only insofar as it
28 is reasonably necessary to the effective prosecution of the Parties' claims and defenses:

- 1 (a) Parties, their representatives, in-house counsel and regular employees
2 who are actively engaged in, or actively overseeing this case or
3 involved in complying with NPC's legal obligations to provide
4 information to the Food and Drug Administration;
- 5 (b) Counsel of record for this case, including their associated attorneys,
6 paralegal and secretarial personnel, and other support staff;
- 7 (c) Experts and consultants (including their employees) who are retained
8 by a Party to assist in the litigation of this case;
- 9 (d) Third-party contractors and their employees who are retained by one or
10 more Parties to provide litigation-support or copy services in
11 connection with the litigation of this case;
- 12 (e) Witnesses or prospective witnesses in this case;
- 13 (f) Court reporters and other persons involved in recording deposition
14 testimony in this case;
- 15 (g) Court personnel of the United States District Court for the Eastern
16 District of California or, if on appeal, of a court with appellate
17 jurisdiction;
- 18 (h) Jurors in this case; and
- 19 (i) The Food and Drug Administration, to the extent NPC is required to
20 disclose any Confidential Material by law.

21 Counsel for each Party disclosing Confidential Material in accordance with this paragraph
22 shall (i) advise each person to whom such disclosure is made (except Court personnel,
23 jurors, and the Food and Drug Administration) of the terms of this Protective Order and of
24 the obligation of each such person to comply with those terms and (ii) provide a copy of
25 this Protective Order to each such person. Prior to the disclosure of any Confidential
26 Information to any person identified in subparagraphs c, d, e, and f above, such person
27 shall sign an Acknowledgment, in the form attached hereto as Exhibit A, acknowledging
28 that he or she has read this Protective Order and shall abide by its terms. Counsel shall
maintain a list of persons to whom confidential materials are disclosed (excluding jurors,
Court personnel, and the Food and Drug Administration). Upon learning of any disclosure
of Confidential Material to any person not authorized by this paragraph to receive

1 Confidential Material, the Party who so learns shall immediately (i) inform in writing the
2 Party from which the Confidential Material was originally received of such disclosure,
3 including to whom the material was disclosed, and (ii) take all necessary steps to retrieve
4 as soon as possible each and every copy of all Confidential Material from the
5 unauthorized person and any person to whom the unauthorized person disclosed the
6 Confidential Material.

7 (11) Disclosure of Confidential Material in accordance with this Protective Order shall not
8 effect, nor shall it be deemed to effect, a waiver of the attorney-client privilege, the work-
9 product immunity, or any other privilege or immunity from disclosure to which such
10 Confidential Material may be entitled, whether in this action, in actions subject to MDL
11 1760 or in any other action or as to any non-party.

12 (12) Documents bearing confidentiality designations shall not be used as exhibits at trial.
13 Before trial, and upon request, the producing Party shall provide copies of such documents
14 free of any confidentiality designation for use at trial. Such documents shall be used only
15 for trial purposes and shall be returned, along with any and all copies made, to the
16 producing Party after this case is finally determined as to the Party to whom the
17 documents were produced.

18 (13) Each Party agrees that in the event it is served by a non-party with a subpoena or request
19 for production of Confidential Material originally received from another Party, it will give
20 sufficient notice to allow that Party a reasonable opportunity to intervene to oppose such
21 production. The notice shall include a description of the material sought, the date and
22 location for compliance with the subpoena or request, the identity of the requester of the
23 Confidential Material, the docket number of the matter where requested and all other
24 information reasonably necessary to intervene and oppose such production.

25 (14) Should any Party to whom Confidential Material is disclosed object to the designation of
26 that material as proprietary, confidential, or otherwise protected, it shall make a good-faith
27 effort to resolve the dispute informally with the disclosing Party. Except where good
28 cause is shown, all objections to the designation of documents as Confidential Material

1 must be interposed in writing no later than thirty (30) days after the close of merits
2 discovery, or such objections shall be deemed waived. Should the Parties be unable to
3 resolve the dispute, the Party opposing the inclusion of such material under this Protective
4 Order, within a reasonable time, may apply in writing to the Court for a ruling that the
5 information should not be entitled to protection under this Protective Order. The Party
6 designating the material as confidential shall have the burden of proving that said material
7 is subject to protection. Until such time as the Court rules on the motion, the material that
8 is the subject of the dispute shall continue to be subject to this Protective Order. The
9 Parties agree that documents that have been admitted into evidence at trial are no longer
10 confidential under the Protective and Confidentiality Order and, therefore a party need not
11 challenge their confidentiality.

12 (15) The inadvertent production by any Party in the course of discovery in these proceedings of
13 a document subject to a claim of privilege, work product, or other statutory or court-
14 ordered confidentiality, will not result in a waiver of any of the foregoing protections,
15 whether in these or any other proceedings, for the produced document or any other
16 withheld document covering the same or similar subject matter. If any Party should
17 inadvertently produce a document, upon notice of such disclosure, all originals and copies
18 thereof, shall be immediately returned to the producing Party, and such returned material
19 shall be deleted from any litigation-support or other database. All notes or other work
20 product reflecting the contents of such inadvertently disclosed Confidential Materials shall
21 be destroyed and receiving counsel shall certify in writing to the producing party's counsel
22 that any notes or other work product reflecting the inadvertently disclosed document's
23 contents have been destroyed by counsel, the receiving party, and any experts or others in
24 their employment.

25 (16) When a Party wishes to use a document that has been designated as confidential in support
26 of a motion or other filing with the Court, it will consult with the Party that has made the
27 confidentiality designation (a) to resolve a way to present the evidence without the
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1 necessity of filing it with the Court; or (b) if no such resolution can be reached, to arrange
2 for appropriate protection under seal.

3 (17) This Protective Order shall not prevent the Parties from using or disclosing their own
4 documents and other materials in any manner, notwithstanding their designation as
5 Confidential Material subject to this Protective Order. The use or disclosure by a Party of
6 its own documents or materials shall not terminate, waive or otherwise diminish in any
7 way the status of such documents or materials as Confidential Materials subject to this
8 Protective Order.

9 (18) Upon the final determination, including any appeals related thereto, of this case, NPC will
10 send a letter to plaintiff's counsel advising them that the litigation is concluded and that all
11 Confidential Material should be returned or destroyed. Within thirty (30) days after
12 receipt of that letter, all attorneys in possession of Confidential Material shall return all
13 Confidential Material to the disclosing Party or, alternatively, shall immediately destroy
14 all such material. All counsel of record shall, within forty-five days of this final
15 determination, certify that all Confidential Material, including any such material disclosed
16 to any other entity, has been returned or destroyed. The sole exception to the requirements
17 described above is that information that has been incorporated into attorney work product
18 or other privileged documents need not be returned or destroyed. Such information shall
19 be retained by the person to whom the information was produced, and shall be treated as
20 Confidential Material in accordance with this Order.

21 (19) This Protective Order shall not enlarge or affect the proper scope of discovery in this or
22 any other litigation, nor shall this Protective Order imply that material designated as
23 Confidential Material under the terms of this Protective Order is properly discoverable,
24 relevant or admissible in this or any other litigation.

25 (20) Each Party shall retain all rights and remedies available to it under the law for the
26 enforcement of this order against anyone who violates it.

27 (21) The restrictions of this Protective Order shall continue to apply after this case is finally
28 determined and the Court shall retain jurisdiction for all purposes in connection therewith.

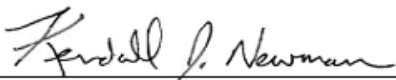
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All persons receiving or given access to Confidential Material in accordance with the terms of this Protective Order consent to the continuing jurisdiction of the Court for the purposes of enforcing this Protective Order and remedying any violations thereof.

IT IS SO ORDERED, except that the court will not retain jurisdiction over the stipulated protective order and related disputes after termination of the action. See E.D. Cal. L.R. 141.1(f) (“Once the Clerk has closed an action, unless otherwise ordered, the Court will not retain jurisdiction over enforcement of the terms of any protective order filed in that action”).

SIGNED AND ENTERED.

Dated: August 13, 2014


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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Attorneys for Defendant
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CORPORATION

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14 EASTERN DISTRICT OF CALIFORNIA

16 MICHAEL JOHNSON,

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19 NOVARTIS PHARMACEUTICALS
20 CORPORATION,

21 Defendant.

CASE NO: 2:14-cv-00787-TLN-KJN

Exhibit A:
Acknowledgment and Agreement to be
Bound by Protective Order

22
23 The undersigned agrees and declares under penalty of perjury the following:

24 I hereby attest that information or documents designated confidential are provided to me
25 subject to the Protective and Confidentiality Order (the "Order") that was issued by the United
26 States District Court for the Eastern District of California on _____, 2014, in
27 *Johnson v. Novartis Pharmaceuticals Corp.*, No. 2:14-cv-00787-TLN-KJN (E.D. Cal). I have
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1 read this Order in its entirety and agree to comply with and to be bound by all the terms of this
2 Order. I understand that my execution of this Acknowledgment, indicating my agreement to be
3 bound by this Order, is a prerequisite to my review of any information or documents designated
4 as confidential pursuant to the Order. I also understand and acknowledge that failure to so
5 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
6 promise that I will not disclose in any manner any information or item that is subject to this Order
7 except in strict compliance with the provisions of this Order.

8 I further agree to submit to the jurisdiction of the United States District Court for the
9 Eastern District of California for the purpose of enforcing the terms of this Order, even if such
10 enforcement proceedings occur after termination of these proceedings.

11
12 Date: _____
13 City and State where sworn and signed: _____
14 Printed Name: _____
15 Signature: _____

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