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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA
13 SACRAMENTO DIVISION

14	_____)	Case No. 2:14-cv-02085-GEB-KJN
	CESCA THERAPEUTICS INC.,)	
15	Plaintiff,)	STIPULATED [PROPOSED]
)	PROTECTIVE ORDER
16	v.)	
)	
17	SYNGEN INC., a California)	
	Corporation, PHC MEDICAL INC., a)	
18	California Corporation, PHILIP)	Dept: Courtroom 10, 13 th Floor
	COELHO, an individual, and DOES 1-)	Judge: Hon. Garland E. Burrell, Jr.
19	10, INCLUSIVE,)	
)	
20	Defendants.)	Complaint Filed: September 9, 2014
	_____)	

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21 SYNGEN INC., PHC MEDICAL, INC. and PHILIP COELHO
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1 **1. PURPOSE AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Plaintiff Cesca Therapeutics (“Cesca” or “Plaintiff”) and Defendants SynGen
6 Inc., PHC Medical, Inc., and Philip Coelho (collectively “Defendants”), recognizing that each
7 may have materials containing trade secret or other confidential research, technical, cost,
8 price, sales, marketing or other commercial information, as is contemplated by Federal Rule
9 of Civil Procedure 26(c), have agreed to the terms of the Protective Order (“Order”) as set
10 forth below. The purpose of this Order is to protect the confidentiality of such materials as
11 much as practical during the litigation. Accordingly, the Parties hereby stipulate to and
12 petition the Court to enter the following Stipulated Protective Order. The Parties
13 acknowledge that this Order does not confer blanket protections on all disclosures or
14 responses to discovery and that the protection it affords from public disclosure and use
15 extends only to the limited information or items that are entitled to confidential treatment
16 under the applicable legal principles. The Parties further acknowledge, as set forth in Section
17 12.4, below, that this Stipulated Protective Order does not entitle them to file confidential
18 information under seal; Civil Local Rule 141 sets forth the procedures that must be followed
19 and the standards that will be applied when a Party or Non-Party seeks permission from the
20 Court to file material under seal.

21 As required by Civil Local Rule 141.1(c)(3), the Parties submit that protection should
22 be addressed by a Court Order, as opposed to a private agreement between or among the
23 parties, because of the nature of the claims at issue in this case. Cesca is asserting claims for
24 trade secret misappropriation against Defendants and the violation of other contractual
25 obligations owed by Defendants to Cesca. Defendants claim that they developed the alleged
26 trade secret technology. The litigation will necessarily involve the exchange of confidential
27 and potentially trade secret information and because of the parties’ respective positions, a
28 private agreement between the parties would be insufficient to alleviate the Parties’ concerns

1 that such information remain confidential. Given this concern, Cesca respectfully requests
2 the entry of this Protective Order by the Court.

3 **2. DEFINITIONS**

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
7 generated, stored or maintained) or tangible things that qualify for protection under Federal
8 Rule of Civil Procedure 26(c). As a general guideline, “CONFIDENTIAL” information is
9 material that a party reasonably believes to constitute or include information that is not
10 known or freely accessible to the general public in the categories of 1) confidential technical
11 or trade secret technical information, 2) financial or business information, 3) personal
12 information, 4) research and development and other proprietary information or 5) information
13 furnished to it in confidence by any third-party. There is a particularized need for
14 information in each of these categories to be covered by the Order in order to protect its
15 confidential nature, either because it is protected by confidentiality agreements or otherwise
16 generally not known by the public.

17 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel
18 (as well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or items
20 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless of the
23 medium or manner in which it is generated, stored, or maintained (including, among other
24 things, testimony, transcripts, and tangible things), that are produced or generated in
25 disclosures or responses to discovery in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the parties’ dispute who has been retained by a Party or its counsel to serve as an
28 expert witness or as a consultant solely for the purpose of advising and assisting Outside

1 Counsel of Record or giving expert testimony.

2 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
3 Items: extremely sensitive “CONFIDENTIAL Information or Items,” disclosure of which to
4 another Party or Non-Party would result in the disclosure of information only known on a
5 “need-to-know basis” and generally not known by individuals not affiliated with a Party,
6 including information in the categories of 1) trade secrets, 2) other highly sensitive research,
7 3) development, 4) production, 5) personnel, 6) commercial, 7) technical, 8) financial, or 9)
8 business information (with information in these categories including but not limited to
9 proprietary information, contracts, bids, corporate planning documents, strategic planning
10 documents, documents that reveal market or customer analyses, competitive strategy,
11 research and development documents, financial statements, and other financial or budgetary
12 documents). There is a particularized need for information in each of these categories to be
13 covered by the Order in order to protect its highly sensitive and confidential nature, as
14 disclosure could create a substantial risk of serious harm that could not be avoided by less
15 restrictive means.

16 2.8 In-House Counsel: attorneys who are employees of a Party. In-House Counsel
17 does not include Outside Counsel of Record or any other outside counsel.

18 2.9 Non-Party: any natural person, partnership, corporation, association, or other
19 legal entity not named as a Party to this action.

20 2.10 Outside Counsel of Record: Outside litigation counsel of record, and their
21 paralegals, secretaries, and other support staff.

22 2.11 Party: any party to this action, including all of its officers, directors,
23 employees, consultants, retained experts, and Outside Counsel of Record (and their support
24 staffs).

25 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
26 Material in this action.

27 2.13 Professional Vendors: persons or entities that provide litigation support
28 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,

1 and organizing, storing, or retrieving data in any form or medium) and their employees and
2 subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
4 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
6 Producing Party.

7 **3. SCOPE**

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

21 **4. DURATION**

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

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
3 Party or Non-Party that designates information or items for protection under this Order must
4 take care to limit any such designation to specific material that qualifies under the appropriate
5 standards. To the extent it is practical to do so, the Designating Party must designate for
6 protection only those parts of material, documents, items, or oral or written communications
7 that qualify – so that other portions of the material, documents, items, or communications for
8 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
11 unnecessarily encumber or retard the case development process or to impose unnecessary
12 expenses and burdens on other parties) may expose the Designating Party to sanctions.

13 If it comes to a Designating Party’s attention that information or items that it
14 designated for protection do not qualify for protection at all or do not qualify for the level of
15 protection initially asserted, that Designating Party must promptly notify all other Parties that
16 it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this
18 Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or
19 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must
20 be clearly so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents,
23 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
24 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” (in such a manner as will not interfere with the legibility
26 thereof), on at least the first page of the document that contains protected material.

27 A Party or Non-Party that makes original documents or materials available for
28 inspection need not designate them for protection until after the inspecting Party has indicated

1 which material it would like copied and produced. During the inspection and before the
2 designation, all of the material made available for inspection shall be deemed “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified
4 the documents it wants copied and produced, the Producing Party must determine which
5 documents, or portions thereof, qualify for protection under this Order. Then, before
6 producing the specified documents, the Producing Party must affix the appropriate legend
7 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (in
8 such a manner as will not interfere with the legibility thereof)), on at least the first page of the
9 document that contains Protected Material.

10 (b) for testimony given in deposition or in other pretrial or trial proceedings,
11 that the Designating Party will have 21 days after receipt of the deposition transcript to
12 inform the other Party or Parties to the action of the portions of the transcript to be designated
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Only
14 those portions of the testimony that are appropriately designated for protection within the 21
15 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a
16 Designating Party may specify, at the deposition or up to 21 days after receipt of the
17 deposition transcript, that the entire transcript shall be treated as “CONFIDENTIAL” or
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19 The use of a document as an exhibit at a deposition shall not in any way affect its
20 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY.”

22 Each deposition transcript shall be treated to be designated “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety until the expiration of the
24 14-day period for the Designating Party to specifically designate the deposition transcript,
25 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only
26 as actually designated.

27 (c) for information produced in some form other than documentary and for any
28 other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. A Party does not waive its right to challenge a confidentiality
6 designation by electing not to mount a challenge promptly after the original designation is
7 disclosed.

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

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
23 intervention, the Challenging Party shall file and serve a motion challenging the designation
24 under Civil Local Rule 251 within 21 days of the initial notice of challenge or within 14 days
25 of the parties agreeing that the meet and confer process will not resolve their dispute,
26 whichever is earlier.

27 The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to

1 harass or impose unnecessary expenses and burdens on other parties) may expose the
2 Challenging Party to sanctions. All parties shall continue to afford the material in question the
3 level of protection to which it is entitled under the Producing Party's designation until the
4 Court rules on the challenge.

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

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this case only
8 for prosecuting, defending, or attempting to settle this case. Such Protected Material may be
9 disclosed only to the categories of persons and under the conditions described in this Order.

10 Protected Material must be stored and maintained by a Receiving Party at a location
11 and in a secure manner intended reasonably to ensure that access is limited to the persons
12 authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record, as defined in Section
17 2.10;

18 (b) the officers, directors, and employees (including In-House Counsel) of the
19 Receiving Party to whom disclosure is reasonably necessary;

20 (c) Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary and who have signed the "Acknowledgment and
22 Agreement to Be Bound" (Exhibit A);

23 (d) the Court and its personnel;

24 (e) Court reporters and their staff, professional jury or trial consultants, and
25 Professional Vendors to whom disclosure is reasonably necessary;

26 (f) during their depositions, witnesses in the action to whom disclosure is
27 reasonably necessary, unless otherwise agreed by the Designating Party or ordered by the
28 Court; and

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

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
4 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item designated
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

7 (a) the Receiving Party’s Outside Counsel of Record, as defined in Section
8 2.10;

9 (b) Experts (as defined in this Order) of the Receiving Party (1) to whom
10 disclosure is reasonably necessary, (2) who have signed the “Acknowledgment and
11 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
12 Paragraph 7.4(a), below, have been followed;

13 (c) the Court and its personnel;

14 (d) Court reporters and their staff, Professional Vendors to whom disclosure is
15 reasonable necessary for this;

16 (e) professional jury or trial consultants, and to whom disclosure is reasonably
17 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
18 Bound” (Exhibit A); and

19 (f) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information as confirmed by
21 written records.

22 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

24 (a) Unless otherwise ordered by the Court or agreed to in writing by the
25 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
26 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY” pursuant to Paragraph 7.3(b) first must make a written request to the
28 Designating Party that sets forth the full name of the Expert and the city and state of his or

1 her primary residence and attaches a copy of the Expert's current resume.

2 (b) A Party that makes a request and provides the information specified in the
3 preceding respective paragraphs may disclose the subject Protected Material to the identified
4 Expert unless, within ten days of delivering the request, the Party receives a written objection
5 from the Designating Party. Any such objection must set forth in detail the grounds on which
6 it is based.

7 (c) A Party that receives a timely written objection must meet and confer with
8 the Designating Party (through direct voice-to-voice dialogue) to try to resolve the matter by
9 agreement within seven days of the written objection. If no agreement is reached, the Party
10 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local
11 Rule 251 seeking permission from the Court to do so.

12 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
13 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
14 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its
15 Expert.

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation that
19 compels disclosure of any information or items designated in this action as
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that
21 Party must:

22 (a) promptly notify in writing the Designating Party, where such notification
23 shall include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena or order
26 is subject to this Protective Order, where such notification shall include a copy of this
27 Stipulated Protective Order; and

28 (c) cooperate with respect to all reasonable procedures sought to be pursued by

1 the Designating Party whose Protected Material may be affected.

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

10 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
11 **IN THIS LITIGATION**

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

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

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

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

28 3. make the information requested available for inspection by the Non-

1 Party.

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

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

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this Stipulated
12 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
13 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
14 copies of the Protected Material, (c) make every effort to prevent further disclosure by the
15 Receiving Party and by the person(s) receiving the unauthorized disclosure, and, (d) inform
16 the person(s) to whom unauthorized disclosures were made of all the terms of this Order.

17 **11. INADVERTENT PRODUCTION OF PROTECTED MATERIAL**
18 **INFORMATION**

19 Notwithstanding anything contrary herein, if a party through inadvertence or mistake
20 produces any Protected Material without designating it with the legend "CONFIDENTIAL"
21 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or by designating it with
22 an incorrect level of confidentiality, the Producing Party may give written notice to the
23 Receiving Party that the Disclosure or Discovery Material contains Protected Material and
24 should be treated as such in accordance with the provisions of this Order. Upon receipt of
25 such notice, the Receiving Party must treat such Disclosure or Discovery Material as
26 Protected Material. Counsel for the parties will agree on a mutually acceptable manner of
27 labeling or marking the inadvertently produced materials as "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." The inadvertent or

1 unintentional disclosure by the Producing Party of Protected Material, regardless of whether
2 the information was so designated at the time of disclosure, shall not be deemed a waiver in
3 whole or in part of the Producing Party's claim of confidentiality either as to the specific
4 information disclosed, or as to any other information relating thereto or on the same or related
5 subject matter. The Receiving Party shall not be responsible for the disclosure or other
6 distribution of belatedly designated Protected Material as to such disclosure or distribution
7 that may occur before the receipt of such notification of a claim of confidentiality and such
8 disclosure or distribution shall not be deemed to be a violation of this Order.

9
10 **12. MISCELLANEOUS**

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
12 to seek its modification by the Court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
14 Order no Party waives any right it otherwise would have to object to disclosing or producing
15 any information or item on any ground not addressed in this Stipulated Protective Order.
16 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
17 material covered by this Protective Order.

18 12.3 Redacted Information. Documents and things produced or made available for
19 inspection may be subject to redaction, in good faith by the Producing Party, of sensitive
20 material that is subject to the attorney-client privilege or to work-product immunity. Each
21 such redaction, regardless of size, will be clearly labeled. This paragraph shall not be
22 construed as a waiver of any party's right to seek disclosure of redacted information.

23 12.4 Filing Protected Material. Without written permission from the Designating
24 Party or a court order secured after appropriate notice to all interested persons, a Party may
25 not file in the public record in this action any Protected Material. A Party that seeks to file
26 under seal any Protected Material must comply with Civil Local Rule 141. Protected
27 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
28 specific Protected Material at issue. Pursuant to Civil Local Rule 140, where possible, a

1 Party must also seek to publicly file material with the Protected Material redacted, provided
2 that the Court has also granted the filing of an unredacted copy of the material under seal.

3 12.5 Electronic Notice. Transmission by electronic mail is acceptable for all
4 notification purposes within this Order.

5 **13. PRIVILEGE**

6 All privileged material or attorney work-product information shall be withheld and
7 entered on a privilege log except for communications involving litigation counsel for either
8 side.

9 Regardless of the diligence of any party, an inadvertent production of privileged or
10 attorney work product documents may occur. If a Party, through inadvertence, produces or
11 provides discovery that it reasonably believes is privileged or otherwise immune from
12 discovery, the Party may claw back the protected document by making a written request to
13 the receiving party specifically identifying the protected document, including the date, author,
14 addressees, and topic of the document as well as a brief explanation substantiating the claim
15 of privilege. A bates number associated with the document or other document identifier
16 specific to this litigation may be used to identify the document. Otherwise, information to
17 identify the document must at least include the date, author, addressees, and topic of the
18 document. A claw-back request for an identified document must also include a brief
19 explanation substantiating the claim of privilege. If these conditions are met, the Receiving
20 Party shall sequester (for purposes of challenging the claim of privilege), destroy, or return to
21 the producing party such inadvertently produced materials and all copies thereof within five
22 (5) calendar days of receipt of the written request. Return of the materials shall not constitute
23 an admission or concession, or permit any inference, that the returned materials are, in fact,
24 properly subject to a claim of privilege or immunity from discovery.

25 The Receiving Party may challenge the Producing Party's claim of privilege or work-
26 product by making a motion to compel to the Court. If the receiving party sequesters the
27 inadvertently produced materials, such information must not be used or disclosed until the
28 claim is resolved, other than for its motion to compel. Further, the record of the identity and

1 nature of an inadvertently produced document may not be used for any purpose other than in
2 preparation of a motion to compel the production of the same document in this Action. No
3 information in an inadvertently produced document may be used or relied upon for any other
4 purpose until the Court so orders.

5 **14. FINAL DISPOSITION**

6 Within 60 days after the final disposition, as defined in Section 4, each Receiving
7 Party must return all Protected Material to the Producing Party or destroy such material. As
8 used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
9 summaries, and any other format reproducing or capturing any of the Protected Material.
10 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
11 written certification to the Producing Party (and, if not the same person or entity, to the
12 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate)
13 all the Protected Material that was returned or destroyed, and (2) affirms that the Receiving
14 Party has not retained any copies, abstracts, compilations, summaries or any other format
15 reproducing or capturing any of the Protected Material. Notwithstanding this provision,
16 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
17 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
18 exhibits, expert reports, attorney work product, and consultant and expert work product, even
19 if such materials contain Protected Material. Any such archival copies that contain or
20 constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

21
22 **IT IS SO STIPULATED.**

23 KNOBBE, MARTENS, OLSON & BEAR, LLP

24 Dated: November 24, 2015

25 By: /s/ Ali S. Razai

26 Steven J. Nataupsky
27 Michael K. Friedland
28 Ali S. Razai
Jenna C. Kelleher

Attorneys for Plaintiff
CESCA THERAPEUTICS INC.

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KEKER & VAN NEST LLP

Dated: November 24, 2015

By: /s/ Matan Shacham (with permission)
Stuart I. Gasner
Eric H. Macmichael
Matan Shacham

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Attorneys for Defendants
SYNGEN INC., PHC MEDICAL, INC., and
PHILIP COELHO

ECF CERTIFICATION


Pursuant to Civil L. R. 5-1(i)(3), the filing attorney attests that he has obtained concurrence regarding the filing of this Stipulated [Proposed] Protective Order from the signatory Matan Shacham, Counsel for Defendants, to this document.

Dated: November 24, 2015

By: /s/ Ali S. Razai
Ali S. Razai

IT IS SO ORDERED.

Dated: November 24, 2015


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____, declare and say that:

5 1. I am employed as _____ by
6 _____.

7 2. I have read in its entirety and understand the Stipulated Protective Order that
8 was issued by the United States District Court for the Northern District of California on ____
9 in the case of *SunPower Corporation v. SunEdison, Inc.; Shane Messer; Kendall Fong; and*
10 *Vikas Desai*, Case No. 3:15-cv-02462-WHO (“Protective Order”). I hereby agree to comply
11 with and be bound by all of the terms and conditions of this Stipulated Protective Order.

12 3. I promise that I will use any and all “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, as defined in the Protective
14 Order, given to me only in a manner authorized by the Protective Order, and only to assist
15 counsel in the litigation of this matter.

16 4. I promise that I will not disclose or discuss such “CONFIDENTIAL” or
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information with anyone
18 other than the persons authorized in accordance with Sections 7.2 and 7.3 of the Protective
19 Order.

20 5. When I have completed my assigned or legal duties relating to this litigation, I
21 will promptly return or destroy all Protected Material in my possession, or that I have
22 prepared relating to such Protected Material, to counsel for the Party by whom I am employed
23 or retained. I acknowledge that such return or the subsequent destruction of such materials
24 shall not relieve me from any of the continuing obligations imposed on me by the Protective
25 Order.

26 6. I acknowledge that, by signing this agreement, I am subjecting myself to the
27 jurisdiction of the United States District Court for the Northern District of California with
28 respect to enforcement of the Protective Order.

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7. I understand that any disclosure or use of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

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

Executed this day of _____, 2015 at _____

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