

1 STEVEN BARRABEE, BAR NO. 110201
 2 BERNADETTE BANTLY, BAR NO. 124659
 3 MEGHAN E. OLIVERI, BAR NO. 236107
 4 BRADLEY, CURLEY, ASIANO,
 5 BARRABEE & GALE, P.C.
 6 1100 Larkspur Landing Circle, Suite 200
 Larkspur, California 94939
 Telephone: (415) 464-8888
 Facsimile: (415) 464-8887
 Email: bbantly@professionals-law.com
 moliveri@professionals-law.com

7 Attorneys for Third Party Defendant
 8 RAJU REDDY, D.D.S., M.D. erroneously sued
 herein as BAJU REDDY, M.D.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12 EQUAL EMPLOYMENT OPPORTUNITY) COMMISSION,) 13) Plaintiff,) 14 v.) 15 COMMUNITY DENTAL SERVICES, INC.,) dba SMILECARE,) 16 Defendant.) 17 _____) 18 ALL RELATED ACTIONS.) 19 _____)	No. C-07-04950 CRB STIPULATED PROTECTIVE ORDER <hr/>
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20 **1. PURPOSES AND LIMITATIONS**

21 Disclosure and discovery activity in this action are likely to involve production of
 22 confidential, proprietary, or private information for which special protection from public disclosure
 23 and from use for any purpose other than prosecuting this litigation would be warranted.
 24 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 25 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 26 all disclosures or responses to discovery and that the protection it affords extends only to the
 27 limited information or items that are entitled under the applicable legal principles to treatment as
 28 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated

BRADLEY, CURLEY,
 ASIANO, BARRABEE &
 GALE, P.C.
 1100 Larkspur Landing
 Circle, Suite 200
 Larkspur, CA 94939
 TEL (415) 464-8888
 FAX (415) 464-8887

1 Protective Order creates no entitlement to file confidential information under seal. Civil Local Rule
2 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
3 when a party seeks permission from the court to file material under seal.
4

5 **2. DEFINITIONS**

6 **2.1 Party:** any party to this action, including all of its officers, directors, employees,
7 agents, consultants, retained experts, and outside counsel (and their support staff).

8 **2.2 Disclosure or Discovery Material:** all items or information, regardless of the
9 medium or manner generated, stored, or maintained (including, among other
10 things, testimony, transcripts, or tangible things) that are produced or generated in
11 disclosures or responses to discovery in this matter.

12 **2.3 “Confidential” Information or Items:** information (regardless of how
13 generated, stored or maintained) or tangible things that qualify for protection
14 under standards developed under F.R.Civ.P. 26(c), including but not limited to
15 employment and personnel records of the parties and documents containing
16 personal and private information, including but not limited to social security
17 numbers, dates of birth and other identifying data.

18 **2.4 Receiving Party:** a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20 **2.5 Producing Party:** a Party or non-party that produces Disclosure or Discovery
21 Material in this action.

22 **2.6 Designating Party:** a Party or non-party that designates information or items
23 that it produces in disclosures or in responses to discovery as “Confidential.”

24 **2.7 Protected Material:** any Disclosure or Discovery Material that is designated as
25 “Confidential.”

26 **2.8 Outside Counsel:** attorneys who are not employees of a Party but who are
27 retained to represent or advise a Party in this action.

28 **2.9 House Counsel:** attorneys who are employees of a Party.

1 **2.10 Counsel (without qualifier):** Outside Counsel and House Counsel (as well as
2 their support staffs).

3 **2.11 Expert:** a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve
5 as an expert witness or as a consultant in this action and who is not a past or a
6 current employee of a Party or of a competitor of a Party's and who, at the time of
7 retention, is not anticipated to become an employee of a Party or a competitor of a
8 Party's. This definition includes a professional jury or trial consultant retained in
9 connection with this litigation.

10 **2.12 Professional Vendors:** persons or entities that provide litigation support
11 services (e.g., photocopying; videotaping; translating; preparing exhibits or
12 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
13 and their employees and subcontractors.

14
15 **3. SCOPE**

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

20
21 **4. DURATION**

22 Even after the termination of this litigation, the confidentiality obligations imposed by this
23 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
24 otherwise directs.

25
26 **5. DESIGNATING PROTECTED MATERIAL**

27 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

28 Each Party or non-party that designates information or items for protection under

1 this Order must take care to limit any such designation to specific material that qualifies
2 under the appropriate standards. A Designating Party must take care to designate for
3 protection only those parts of material, documents, items, or oral or written
4 communications that qualify – so that other portions of the material, documents, items, or
5 communications for which protection is not warranted are not swept unjustifiably within
6 the ambit of this Order.

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

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

16 **5.2 Manner and Timing of Designations.**

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

21 Designation in conformity with this Order requires:

- 22 (a) for information in documentary form (apart from transcripts of depositions
23 or other pretrial or trial proceedings), that the Producing Party affix the legend
24 “CONFIDENTIAL” at the top of each page that contains protected material. If
25 only a portion or portions of the material on a page qualifies for protection, the
26 Producing Party also must clearly identify the protected portion(s) (e.g., by
27 making appropriate markings in the margins) and must affix the legend
28 “CONFIDENTIAL” to each portion.

1 A Party or non-party that makes original documents or materials available
2 for inspection need not designate them for protection until after the inspecting
3 Party has indicated which material it would like copied and produced. During the
4 inspection and before the designation, all of the material made available for
5 inspection shall be deemed “Confidential – Attorneys’ Eyes Only.” After the
6 inspecting Party has identified the documents it wants copied and produced, the
7 Producing Party must determine which documents, or portions thereof, qualify for
8 protection under this Order, then, before producing the specified documents, the
9 Producing Party must affix the legend “CONFIDENTIAL” at the top of each page
10 that contains Protected Material. If only a portion or portions of the material on a
11 page qualifies for protection, the Producing Party also must clearly identify the
12 protected portion(s) (e.g., by making appropriate markings in the margins) and
13 must affix the legend “CONFIDENTIAL” to each portion.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings,
15 that the Party or non-party offering or sponsoring the testimony identify on the
16 record, before the close of the deposition, hearing, or other proceeding, all
17 protected testimony, and further specify any portions of the testimony that qualify
18 as “CONFIDENTIAL.” When it is impractical to identify separately each portion
19 of testimony that is entitled to protection, and when it appears that substantial
20 portions of the testimony may qualify for protection, the Party or non-party that
21 sponsors, offers, or gives the testimony may invoke on the record (before the
22 deposition or proceeding is concluded) a right to have up to 20 days to identify the
23 specific portions of the testimony as to which protection is sought and to specify
24 them as “CONFIDENTIAL.” Only those portions of the testimony that are
25 appropriately designated for protection within the 20 days shall be covered by the
26 provisions of this Stipulated Protective Order.

27 Transcript pages containing Protected Material must be separately bound
28 by the court reporter, who must affix to the top of each such page the legend

1 “CONFIDENTIAL,” as instructed by the Party or nonparty offering or sponsoring
2 the witness or presenting the testimony.

3 (c) for information produced in some form other than documentary, and for
4 any other tangible items, that the Producing Party affix in a prominent place on
5 the exterior of the container or containers in which the information or item is
6 stored the legend “CONFIDENTIAL.” If only portions of the information or item
7 warrant protection, the Producing Party, to the extent practicable, shall identify the
8 protected portions and specify that they qualify as “Confidential.”

9 **5.3 Inadvertent Failures to Designate.**

10 If timely corrected, an inadvertent failure to designate qualified information or
11 items as “Confidential” does not, standing alone, waive the Designating Party’s right to
12 secure protection under this Order for such material. If material is appropriately
13 designated as “Confidential” after the material was initially produced, the Receiving
14 Party, on timely notification of the designation, must make reasonable efforts to assure
15 that the material is treated in accordance with the provisions of this Order.

16
17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 **6.1 Timing of Challenges.**

19 Unless a prompt challenge to a Designating Party’s confidentiality designation is
20 necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a
21 later significant disruption or delay of the litigation, a Party does not waive its right to
22 challenge a confidentiality designation by electing not to mount a challenge promptly
23 after the original designation is disclosed.

24 **6.2 Meet and Confer.**

25 A Party that elects to initiate a challenge to a Designating Party’s confidentiality
26 designation must do so in good faith and must begin the process by conferring directly (in
27 voice to voice dialogue; other forms of communication are not sufficient) with counsel
28 for the Designating Party. In conferring, the challenging Party must explain the basis for

1 its belief that the confidentiality designation was not proper and must give the
2 Designating Party an opportunity to review the designated material, to reconsider the
3 circumstances, and, if no change in designation is offered, to explain the basis for the
4 chosen designation. A challenging Party may proceed to the next stage of the challenge
5 process only if it has engaged in this meet and confer process first.

6 **6.3 Judicial Intervention.**

7 A Party that elects to press a challenge to a confidentiality designation after
8 considering the justification offered by the Designating Party may file and serve a motion
9 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
10 that identifies the challenged material and sets forth in detail the basis for the challenge.
11 Each such motion must be accompanied by a competent declaration that affirms that the
12 movant has complied with the meet and confer requirements imposed in the preceding
13 paragraph and that sets forth with specificity the justification for the confidentiality
14 designation that was given by the Designating Party in the meet and confer dialogue.

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

19 20 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 **7.1 Basic Principles.**

22 A Receiving Party may use Protected Material that is disclosed or produced by
23 another Party or by a non-party in connection with this case only for prosecuting,
24 defending, or attempting to settle this litigation. Such Protected Material may be
25 disclosed only to the categories of persons and under the conditions described in this
26 Order. When the litigation has been terminated, a Receiving Party must comply with the
27 provisions of section 11, below (FINAL DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a

1 location and in a secure manner that ensures that access is limited to the persons
2 authorized under this Order.

3 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.**

4 Unless otherwise ordered by the court or permitted in writing by the Designating
5 Party, a Receiving Party may disclose any information or item designated
6 CONFIDENTIAL only to:

- 7 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
8 employees of said Counsel to whom it is reasonably necessary to disclose the
9 information for this litigation and who have signed the “Agreement to Be Bound
10 by Protective Order” that is attached hereto as Exhibit A;
 - 11 (b) the officers, directors, and employees (including House Counsel) of the
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and
13 who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);
 - 14 (c) experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the
16 “Agreement to Be Bound by Protective Order” (Exhibit A);
 - 17 (d) the Court and its personnel;
 - 18 (e) court reporters, their staffs, and professional vendors to whom disclosure
19 is reasonably necessary for this litigation and who have signed the “Agreement to
20 Be Bound by Protective Order” (Exhibit A);
 - 21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Agreement to Be Bound by
23 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or
24 exhibits to depositions that reveal Protected Material must be separately bound by
25 the court reporter and may not be disclosed to anyone except as permitted under
26 this Stipulated Protective Order.
 - 27 (g) the author of the document or the original source of the information.
- 28

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
5 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax,
6 if possible) immediately and in no event more than three court days after receiving the subpoena or
7 order. Such notification must include a copy of the subpoena or court order.

8 The Receiving Party also must immediately inform in writing the Party who caused the
9 subpoena or order to issue in the other litigation that some or all the material covered by the
10 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
11 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
12 caused the subpoena or order to issue.

13 The purpose of imposing these duties is to alert the interested parties to the existence of
14 this Protective Order and to afford the Designating Party in this case an opportunity to try to
15 protect its confidentiality interests in the court from which the subpoena or order issued. The
16 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
17 confidential material – and nothing in these provisions should be construed as authorizing or
18 encouraging a Receiving Party in this action to disobey a lawful directive from another court.
19

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, (c)
25 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
26 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
27 Be Bound” that is attached hereto as Exhibit A.
28

1 **10. FILING PROTECTED MATERIAL**

2 Without written permission from the Designating Party or a court order secured after
3 appropriate notice to all interested persons, a Party may not file in the public record in this action
4 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
5 with Civil Local Rule 79-5.

6
7 **11. FINAL DISPOSITION**

8 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
9 after the final termination of this action, each Receiving Party must return all Protected Material to
10 the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
11 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
12 Protected Material.

13 With permission in writing from the Designating Party, the Receiving Party may destroy
14 some or all of the Protected Material instead of returning it. Whether the Protected Material is
15 returned or destroyed, the Receiving Party must submit a written certification to the Producing
16 Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that
17 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed
18 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,
19 summaries or other forms of reproducing or capturing any of the Protected Material.

20 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
21 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
22 even if such materials contain Protected Material. Any such archival copies that contain or
23 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
24 (DURATION), above.

25
26 **12. MISCELLANEOUS**

27 **12.1 Right to Further Relief.**

28 Nothing in this Order abridges the right of any person to seek its modification by

1 the Court in the future.

2 **12.2 Right to Assert Other Objections.**

3 By stipulating to the entry of this Protective Order no Party waives any right it
4 otherwise would have to object to disclosing or producing any information or item on any
5 ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
6 right to object on any ground to use in evidence of any of the material covered by this
7 Protective Order.
8

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 Dated: September 23, 2008

Dated: August 20, 2008

11 MANATT, PHELPS & PHILLIPS, LLP

12 By: / s /
13 JONATHAN T. PECK
14 Attorneys for Plaintiff
15 EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

By: / s /
NOEL S. COHEN
Attorneys for Defendant/ Third Party Plaintiff
COMMUNITY DENTAL SERVICES, INC.,
dba SMILECARE

16 Dated: August 20, 2008

17 BRADLEY, CURLEY, ASIANO, BARRABEE &
18 GALE, PC

19 By: / s /
20 MEGHAN E. OLIVERI
21 Attorneys for Third Party Defendant
RAJU REDDY, D.D.S., M.D.

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

23
24 Date: September 26, 2008


25 CHARLES R. BREYER
26 UNITED STATES DISTRICT JUDGE

27
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3
4 I, _____ [print full name], of _____
5 [print full address], declare under penalty of perjury that I have read in its entirety and understand
6 the Stipulated Protective Order that was issued by the United States District Court for the Northern
7 District of California on [date] in the case of *Equal Employment Opportunity Commission v.*
8 *Community Dental Services, Inc., dba Smilecare v. Bajju Reddy, M.D.*, United States District Court,
9 Northern District Case No. C-07-04950 CRB. I agree to comply with and to be bound by all the
10 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
14 of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
17 Order, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint _____ [print full name] of
19 _____ [print full address and telephone
20 number] as my California agent for service of process in connection with this action or any
21 proceedings related to enforcement of this Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26
27 Signature: _____

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