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5 Attorneys for Defendants INTERDENT, INC., aka INTERDENT SERVICE CORPORATION, aka
 GENTLE DENTAL, aka MOUNTAIN VIEW DENTAL, aka BLUE OAK DENTAL GROUP, aka
 6 DEDICATED DENTAL, aka AFFORDABLE DENTAL CARE, aka CAPITAL DENTAL

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

12 SARAH KIM, Individually and as Successor in
 Interest to RICHARD D. BAE, D.D.S., Deceased,

CASE NO. CV 08-5565 EDL

14 Plaintiff,

**[PROPOSED] STIPULATED
 PROTECTIVE ORDER**

15 v.

16 INTERDENT, INC., a Delaware corporation, aka
 INTERDENT SERVICE CORPORATION, a
 17 Washington corporation, aka GENTLE DENTAL,
 aka MOUNTAIN VIEW DENTAL, aka BLUE
 18 OAK DENTAL GROUP, aka DEDICATED
 DENTAL, aka AFFORDABLE DENTAL CARE,
 19 aka CAPITAL DENTAL, and DOES 1
 THROUGH 50, inclusive,

20 Defendants.

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 22
 23 **1. PURPOSES AND LIMITATIONS**

24 Disclosure and discovery activity in this action are likely to involve production of confidential,
 25 proprietary, or private information for which special protection from public disclosure and from use for
 26 any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby
 27 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
 28 acknowledge that this Order does not confer blanket protections on all disclosures or responses to

1 discovery and that the protection it affords extends only to the limited information or items that are
 2 entitled under the applicable legal principles to treatment as confidential. The parties further
 3 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
 4 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
 5 that must be followed and reflects the standards that will be applied when a party seeks permission from
 6 the court to file material under seal.

7 **2. DEFINITIONS**

8 **2.1 Party:** Any party to this action, including all of its officers, directors, employees,
 9 consultants, retained experts, and outside counsel (and their support staff).

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

14 **2.3 "Confidential" Information or Items:** Information (regardless of how
 15 generated, stored or maintained) or tangible things that qualify for protection under standards developed
 16 under F.R.Civ.P. 26(c).

17 **2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:**
 18 Extremely sensitive "Confidential Information or Items" whose disclosure to another Party or non-party
 19 would create a substantial risk of serious injury that could not be avoided by less restrictive means.

20 **2.5 Receiving Party:** A Party that receives Disclosure or Discovery Material from
 21 a Producing Party.

22 **2.6 Producing Party:** A Party or non-party that produces Disclosure or Discovery
 23 Material in this action.

24 **2.7 Designating Party:** A Party or non-party that designates information or items
 25 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
 26 Confidential–Attorneys' Eyes Only".

27 **2.8 Protected Material:** Any Disclosure or Discovery Material that is designated
 28 as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only".

1 **2.9 Outside Counsel:** Attorneys who are not employees of a Party but who are
2 retained to represent or advise a Party in this action.

3 **2.10 House Counsel:** Attorneys who are employees of a Party.

4 **2.11 Counsel (without qualifier):** Outside Counsel and House Counsel (as well as
5 their support staffs).

6 **2.12 Expert:** A person with specialized knowledge or experience in a matter pertinent
7 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
8 consultant in this action and who is not a past or a current employee of a Party or of a competitor of a
9 Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a
10 competitor of a Party's. This definition includes a professional jury or trial consultant retained in
11 connection with this litigation. For good cause shown, a party may apply to have a past, present or
12 prospective competitor's employee deemed to be an "expert" for purpose of the order.

13 **2.13 Professional Vendors:** Persons or entities that provide litigation support
14 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
15 storing, retrieving data in any form or medium; *etc.*) and their employees and subcontractors.

16 **3. SCOPE**

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

21 **4. DURATION**

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

25 **5. DESIGNATING PROTECTED MATERIAL**

26 **5.1 Exercise of Restraint and Care in Designating Material for Protection:** Each Party
27 or non-party that designates information or items for protection under this Order must take care to limit
28 any such designation to specific material that qualifies under the appropriate standards. A Designating

1 Party must take care to designate for protection only those parts of material, documents, items, or oral
2 or written communications that qualify – so that other portions of the material, documents, items, or
3 communications for which protection is not warranted are not swept unjustifiably within the ambit of
4 this Order.

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

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

13 **5.2 Manner and Timing of Designations:** Except as otherwise provided in this Order (see,
14 *e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that
15 qualifies for protection under this Order must be clearly so designated before the material is disclosed
16 or produced.

17 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 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that contains
21 protected 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 asserted
24 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").

25 A Party or non-party that makes original documents or materials available for inspection need
26 not designate them for protection until after the inspecting Party has indicated which material it would
27 like copied and produced. During the inspection and before the designation, all of the material made
28 available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY".

1 After the inspecting Party has identified the documents it wants copied and produced, the Producing
2 Party must determine which documents, or portions thereof, qualify for protection under this Order,
3 then, before producing the specified documents, the Producing Party must affix the appropriate legend
4 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of
5 each page that contains Protected Material. If only a portion or portions of the material on a page
6 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
7 making appropriate markings in the margins) and must specify, for each portion, the level of protection
8 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY”).

10 (b) for testimony given in deposition or in other pretrial or trial proceedings,
11 that the Party or non-party offering or sponsoring the testimony identify on the record, before the close
12 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
13 of the testimony that qualify as ‘HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY’. When
14 it is impractical to identify separately each portion of testimony that is entitled to protection, and when
15 it appears that substantial portions of the testimony may qualify for protection, the Party or non-party
16 that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
17 proceeding is concluded) a right to have up to 20 days **after receipt of the transcript** to identify the
18 specific portions of the testimony as to which protection is sought and to specify the level of protection
19 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).
20 Only those portions of the testimony that are appropriately designated for protection within the 20 days
21 shall be covered by the provisions of this Stipulated Protective Order.

22 Transcript pages containing Protected Material must be separately bound by the court reporter,
23 who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering or
25 sponsoring the witness or presenting the testimony.

26 (c) for information produced in some form other than documentary, and for
27 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
28 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only portions of the information or
2 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
3 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
4 Eyes Only”.

5 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
6 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes
7 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
8 Order for such material. If material is appropriately designated as “Confidential” or “Highly Confi-
9 dential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on timely
10 notification of the designation, must make reasonable efforts to assure that the material is treated in
11 accordance with the provisions of this Order.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 **6.1 Timing of Challenges:** Unless a prompt challenge to a Designating Party’s confi-
14 dentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic
15 burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the original
17 designation is disclosed.

18 **6.2 Meet and Confer:** A Party that elects to initiate a challenge to a Designating Party’s
19 confidentiality designation must do so in good faith and must begin the process by conferring directly
20 (in voice to voice dialogue) **followed by written communication** with counsel for the Designating
21 Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality
22 designation was not proper and must give the Designating Party an opportunity to review the designated
23 material, to reconsider the circumstances, and, if no change in designation is offered, to explain the
24 basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge
25 process only if it has engaged in this meet and confer process first.

26 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a confidentiality
27 designation after considering the justification offered by the Designating Party may file and serve an
28 application with the Special Master that identifies the challenged material and sets forth in detail the

1 basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms
 2 that the movant has complied with the meet and confer requirements imposed in the preceding
 3 paragraph and that sets forth with specificity the justification for the confidentiality designation that was
 4 given by the Designating Party in the meet and confer dialogue.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
 6 Until the Special Master rules on the challenge, all parties shall continue to afford the material in
 7 question the level of protection to which it is entitled under the Producing Party's designation.

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

9 **7.1 Basic Principles:** A Receiving Party may use Protected Material that is disclosed or
 10 produced by another Party or by a non-party in connection with this case only for prosecuting,
 11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
 12 categories of persons and under the conditions described in this Order, **and will be stored in location**
 13 **consistent with the purposes of this Order, not including the offices of any party.** When the
 14 litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below
 15 (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a location and
 17 in a secure manner that ensures that access is limited to the persons authorized under this Order.

18 **7.2 Disclosure of "CONFIDENTIAL" Information or Items:** Unless otherwise ordered
 19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 20 information or item designated CONFIDENTIAL only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 22 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
 23 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto
 24 as Exhibit A;

25 (b) the officers, directors, and employees (including House Counsel) of the
 26 Receiving Party, and the parties to the litigation, to whom disclosure is reasonably necessary for this
 27 litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

28 ///

1 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
2 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
3 Order" (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters, their staffs, and professional vendors to whom disclosure is
6 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
7 Order" (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
9 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages
10 of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
11 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
12 this Stipulated Protective Order;

13 (g) the author of the document or the original source of the information;

14 (h) liability insurers for any Receiving Party who have signed the Agreement to Be
15 Bound by Protective Order" (Exhibit A).

16 **7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"**

17 **Information or Items.** Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
19 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as well as
21 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
22 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto
23 as Exhibit A;

24 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary
25 for this litigation, and (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit
26 A);

27 (c) the Court and its personnel;

28 (d) court reporters, their staffs, and professional vendors to whom disclosure is

1 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
2 Order” (Exhibit A); and

3 (e) the author of the document or the original source of the information.

4 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
5 **LITIGATION**

6 If a Receiving Party is served with a subpoena or an order issued in other litigation that would
7 compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”, the Receiving Party must so notify the
9 Designating Party, in writing immediately and in no event more than three court days after receiving
10 the subpoena or order. Such notification must include a copy of the subpoena or court order.

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

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

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

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

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1 **10. FILING PROTECTED MATERIAL**

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

6 **11. FINAL DISPOSITION**

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

22 **12. MISCELLANEOUS**


23 **12.1 Right to Further Relief:** Nothing in this Order abridges the right of any person to seek
24 its modification by the Court in the future.

25 **12.2 Right to Assert Other Objections:** By stipulating to the entry of this Protective Order
26 no Party waives any right it otherwise would have to object to disclosing or producing any information
27 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
28 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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Dated: Jan. 20, 2010

By: 
Attorneys for Plaintiff Sarah Kim

Dated: _____, 2010

By: _____
Attorneys for Defendants INTERDENT,
INC., aka INTERDENT SERVICE
CORPORATION, aka GENTLE DENTAL,
aka MOUNTAIN VIEW DENTAL, aka
BLUE OAK DENTAL GROUP, aka
DEDICATED DENTAL, aka
AFFORDABLE DENTAL CARE, aka
CAPITAL DENTAL

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2010

UNITED STATES DISTRICT JUDGE

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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Dated: _____, 2010

By: _____
Attorneys for Plaintiff Sarah Kim

Dated: 1/19, 2010

By: *[Signature]*
Attorneys for Defendants INTERDENT,
INC., aka INTERDENT SERVICE
CORPORATION, aka GENTLE DENTAL,
aka MOUNTAIN VIEW DENTAL, aka
BLUE OAK DENTAL GROUP, aka
DEDICATED DENTAL, aka
AFFORDABLE DENTAL CARE, aka
CAPITAL DENTAL

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2010

Susan Helton
UNITED STATES DISTRICT JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the U.S. District Court for the Northern District of California on December __, 2009, in the case of *Kim v. InterDent, Inc., et al.* United States District Court Northern District Case No. 08-5565. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the San Francisco Superior Court for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

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

Date: _____

City and State where sworn and signed: _____

[printed name]

[signature]