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12 Attorneys for Defendant
 13 BAYER HEALTHCARE LLC

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

17 SEMHAL SIRAJ,
 18 Plaintiff,
 19 vs.
 20 BAYER HEALTHCARE LLC and DOES
 21 1 through 20,
 22 Defendants.

Case No. C 09-00233 SI

**CONFIDENTIALITY AGREEMENT AND
 STIPULATION AND PROTECTIVE
 ORDER**

1 In connection with the above-captioned action, Plaintiff Semhal Siraj (“Plaintiff” or
2 “Siraj”) and Defendant Bayer HealthCare LLC (“Defendant” or “Bayer”), collectively referred to
3 as the “Parties,” by and through their undersigned attorneys, stipulate that the following
4 Confidentiality Agreement and Stipulation and Protective Order may be entered by the Court:

5 1. This Confidentiality Agreement and Stipulation and Protective Order applies to the
6 site inspection to take place on September 15, 2009, from approximately 1:00 p.m. to 5:00 p.m.,
7 in Building 55 of Bayer HealthCare LLC, located at 800 Dwight Way, Berkeley, CA 94701
8 (hereinafter, the “Site Inspection”).

9 2. For purposes of the Site Inspection, Defendant agrees to allow Plaintiff’s expert to
10 enter and inspect Building 55 of Bayer’s facility in Berkeley, California. Plaintiff’s expert will
11 not be permitted to enter any other buildings.

12 3. During the Site Inspection, Plaintiff’s expert may observe, photograph and/or
13 videotape Production Technicians and/or Production Specialists as they perform their jobs. In
14 order to ensure minimal disruption of employees’ work, the Parties agree that Plaintiff’s expert
15 may not interview or otherwise disturb Bayer employees during their shifts, unless counsel agree
16 at the time of the inspection.

17 4. The following individuals are permitted to participate in the Site Inspection: (1)
18 Plaintiff’s expert; (2) one attorney from the Law Offices of Nevin & Absalom, counsel for
19 Plaintiff; (3) one attorney from Morgan, Lewis & Bockius, LLP, counsel for Defendant; (4) one
20 representative from Bayer HealthCare LLC; and (5) Plaintiff Semhal Siraj. No other individuals
21 will be permitted to participate in the Site Inspection.

22 5. All participants of the Site Inspection, listed in Paragraph 4, agree to abide by all
23 rules, regulations and procedures related to health and safety, sterilization, and proprietary
24 information applicable to employees at Bayer’s Berkeley facility, including, but not limited to,
25 the mandatory procedures for gowning in and gowning out of laboratories.

26 6. All videotapes, photographs, digital files, or other images, electronic or otherwise,
27 captured by Plaintiff’s expert during the Site Inspection (hereinafter “Site Inspection Materials”)
28 shall be clearly marked as CONFIDENTIAL and may only be used for the purposes of preparing

1 for and conducting the litigation or settlement of the instant action and shall not be used for any
2 other purpose whatsoever. The Site Inspection Materials shall not be disclosed except in
3 accordance with the terms of this Confidentiality Agreement and Stipulation and Protective
4 Order.

5 7. The Site Inspection Materials may be referred to by Plaintiff or Defendant in
6 papers filed with the Court in the instant action and/or in discovery papers. However, no such
7 information shall be used for any of these purposes unless the papers, or the portion thereof
8 referencing the Site Inspection Materials, are appropriately designated as CONFIDENTIAL and,
9 if filed with the Court, filed under seal.

10 8. The production or disclosure of the Site Inspection Materials by Defendant shall in
11 no way constitute a waiver of any of Defendant's rights to object to the production or disclosure
12 of other confidential material or information and shall have no effect on any other dispute over
13 the parties' right to apply to the Court for a further protective order relating to any other
14 confidential material.

15 9. All copies or derivations of the Site Inspection Material shall also be labeled
16 CONFIDENTIAL and shall be treated as such in accordance with the terms of this
17 Confidentiality Agreement and Stipulation and Protective Order.

18 10. If the Site Inspection Materials, or any material derived therefrom, are used at a
19 deposition, those portions of deposition testimony must also be designated as CONFIDENTIAL.
20 The Defendant may state during the deposition which testimony should be treated as
21 CONFIDENTIAL and request that the Court reporter print that portion of the transcript separately
22 and mark it CONFIDENTIAL.

23 11. The Site Inspection Materials, and all material derived therefrom, may only be
24 disclosed or made available to Qualified Persons, who are defined to consist of:

- 25 (a) The Court and employees of the Court;
26 (b) Counsel to the Parties in the instant matter (both in-house and outside
27 counsel), including clerical, secretarial and paralegal staff employed by
28 such counsel;

- 1 (c) Experts or consultants and their staff assisting in the prosecution or defense
- 2 of the instant matter, provided that they sign Exhibit A;
- 3 (d) The Parties and representatives or employees of the Parties (e.g., officers,
- 4 directors, employees, trustees) on a need-to-know basis;
- 5 (e) Any person who has knowledge of the specific facts identified in the Site
- 6 Inspection Materials, provided that they sign Exhibit A;
- 7 (f) Court reporters and other persons involved in recording deposition
- 8 testimony in this action by any means;
- 9 (g) Any other person to whom Defendant agrees in writing;
- 10 (h) Commercial photocopying services ordinarily used by counsel for the
- 11 purposes of photocopying, if such services are deemed reasonably
- 12 necessary under the circumstances; and
- 13 (i) Other witnesses when testifying or persons who a party reasonably believes
- 14 may be called as a witness, provided that they sign Exhibit A.

15 12. Counsel for the parties shall take all reasonable precautions to prevent the
16 unauthorized disclosure of the Site Inspection Materials and other confidential information
17 derived therefrom.

18 13. The binding effect of this Protective Order shall survive termination of this action,
19 and the Court shall retain jurisdiction to enforce the Protective Order.

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1 IT IS SO STIPULATED.

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3 Dated: September 14, 2009

NEVIN & ABSALOM

4 By Kenneth C. Absalom
Kenneth C. Absalom
Attorneys for Plaintiff
SEMHAL SIRAJ

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7 Dated: September 14, 2009

MORGAN, LEWIS & BOCKIUS LLP

8 By Michelle A. Griffith-Jones
Michelle A. Griffith-Jones
Attorneys for Defendants
BAYER HEALTHCARE LLC

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13 IT IS SO ORDERED.

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16 DATED: _____

Susan Illston

Honorable Susan Illston
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, _____ [full name], of _____
[full address], declare under penalty of perjury that I have read in its entirety and understand the Confidentiality Agreement and Stipulation and Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *Semhal Siraj v. Bayer HealthCare LLC*, Case No. C 09-00233-SI. I agree to comply with and to be bound by all the terms of this Confidentiality Agreement and Stipulation and 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 Confidentiality Agreement and Stipulation and Protective 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 United States District Court for the Northern District of California for the purpose of enforcing the terms of this Confidentiality Agreement and Stipulation and Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]