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Jennifer Bennie and the Plaintiff Class
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11
 12 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

13 SARA WELLENS, KELLY JENSEN,
 14 JACQUELINE PENA, BERNICE
 GIOVANNI, LARA HOLLINGER,
 15 and JENNIFER BENNIE
 16 on behalf of themselves and all others
 similarly situated,

17 **PLAINTIFFS,**

18 v.

19 **DAIICHI SANKYO, INC.**

20 **DEFENDANT.**
 21

Case No. C 13-00581-WHO

STIPULATED PROTECTIVE ORDER

22 1. PURPOSES AND LIMITATIONS

23 Disclosure and discovery activity in this action are likely to involve production of confidential,
 24 proprietary, or private information for which special protection from public disclosure and from use for
 25 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
 26 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
 27 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
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1 discovery and that the protection it affords from public disclosure and use extends only to the limited
2 information or items that are entitled to confidential treatment under the applicable legal principles. The
3 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
4 not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set
5 forth the procedures that must be followed and the standards that will be applied when a party seeks
6 permission from the court to file material under seal.

7 2. DEFINITIONS

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
9 items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: 1) non-public trade secret or non-public
11 commercially sensitive information; 2) medical records; 3) employee personnel information which may
12 include information related to employees’ compensation, leave, compliance, discipline, performance
13 evaluation (including sales ranking and/or applicant information; and 4) social security numbers.
14 (Regardless of how the above information is generated, stored or maintained).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
16 their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or items that it
18 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

19 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
20 manner in which it is generated, stored, or maintained (including, among other things, testimony,
21 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in
22 this matter.

23 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
24 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in
25 this action.

26 2.7 House Counsel: attorneys who are employees or in-house designated legal representatives
27 of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside
28 counsel.

1 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity
2 not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but
4 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
5 party or are affiliated with a law firm which has appeared on behalf of that party.

6 2.10 Party: any party to this action, including opt-in Plaintiffs and putative class members
7 (“Plaintiffs”), and Daiichi Sankyo, Inc., including all of its officers, directors, employees, consultants,
8 (“Defendants”), retained experts, and Outside Counsel of Record (and their support staffs).

9 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
10 this action.

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

14 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
15 “CONFIDENTIAL.”

16 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
17 Party.

18 3. SCOPE

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

3 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
12 Party that designates information or items for protection under this Order must take care to limit any such
13 designation to specific material that qualifies under the appropriate standards.

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

18 If it comes to a Designating Party's attention that information or items that it designated for
19 protection do not qualify for protection, that Designating Party must promptly notify all other Parties that
20 it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
22 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
23 Discovery Material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents, but
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix
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1 the legend “CONFIDENTIAL” to each page that contains protected material.

2 A Party or Non-Party that makes original documents or materials available for inspection need not
3 designate them for protection until after the inspecting Party has indicated which material it would like
4 copied and produced. During the inspection and before the designation, all of the material made available
5 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the
6 documents it wants copied and produced, the Producing Party must determine which documents, or
7 portions thereof, qualify for protection under this Order. Then, before producing the specified documents,
8 the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected
9 Material.

10 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
11 Designating Party identify the protected testimony on the record, before the close of the
12 deposition/proceeding or identify the protected testimony within 30 days of the deposition/hearing, by
13 providing written notice to the non-designating party of the specific portions of the transcript
14 which have been designated Confidential. During the thirty (30) day window between giving the
15 testimony and the deadline for designating such testimony as “CONFIDENTIAL” the Parties
16 agree to meet-and-confer should the need arise for either party to disclose the testimony to any
17 non-party.

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

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
22 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
23 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
24 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
25 Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
28 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation

1 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
2 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
3 designation by electing not to mount a challenge promptly after the original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
5 providing written notice of each designation it is challenging and describing the basis for each challenge.
6 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
7 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
8 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
9 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14
10 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
11 belief that the confidentiality designation was not proper and must give the Designating Party an
12 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
13 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
14 the next stage of the challenge process only if it has engaged in this meet and confer process first or
15 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
16 manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
18 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and
19 in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the initial
20 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not
21 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent
22 declaration affirming that the movant has complied with the meet and confer requirements imposed in the
23 preceding paragraph. Failure by the Designating Party to make such a motion including the required
24 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
25 designation for each challenged designation. In addition, the Challenging Party may file a motion
26 challenging a confidentiality designation at any time if there is good cause for doing so, including a
27 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought
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1 pursuant to this provision must be accompanied by a competent declaration affirming that the movant has
2 complied with the meet and confer requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
4 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
5 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
6 Designating Party has waived the confidentiality designation by failing to file a motion to retain
7 confidentiality as described above, all parties shall continue to afford the material in question the level of
8 protection to which it is entitled under the Producing Party's designation until the court rules on the
9 challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
13 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
14 persons and under the conditions described in this Order. When the litigation has been terminated, a
15 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a location and in a
17 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 by the
19 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
20 item designated "CONFIDENTIAL" only to:

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

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

28 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is

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

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed
6 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
15 LITIGATION

16 If a Party is served with a subpoena or a court order issued in other litigation that compels
17 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

18 (a) promptly notify in writing the Designating Party. Such notification shall include a
19 copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
21 other litigation that some or all of the material covered by the subpoena or order is subject to this
22 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
24 Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
26 court order shall not produce any information designated in this action as “CONFIDENTIAL” before a
27 determination by the court from which the subpoena or order issued, unless the Party has obtained the
28 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material – and nothing in these provisions should be construed as
2 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
3 court.

4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
5 LITIGATION

6 (a) The terms of this Order are applicable to information produced by a Non-Party in
7 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
8 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in
9 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

13 (1) promptly notify in writing the Requesting Party and the Non-Party that
14 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

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

18 (3) make the information requested available for inspection by the Non-Party.

19 (c) If the Non-Party fails to object or seek a protective order from this court within 14
20 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-
21 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a
22 protective order, the Receiving Party shall not produce any information in its possession or control that is
23 subject to the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a
24 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
25 court of its Protected Material.

26 _____
27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

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

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

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material

1 must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed
2 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
3 Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request
4 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
5 entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal
6 pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party
7 may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
8 instructed by the court.

9 12.4 Prior to serving any Subpoena *duces tecum* on an employer or medical or health care
10 provider, the issuing Party shall serve a copy of the Subpoena and the information sought to the non-
11 issuing Party, pursuant to Federal Rule of Civil Procedure 45(b). The non-issuing Party shall have 20 days
12 to resolve any disputes regarding the scope of the documents sought before the Subpoena is served.

13 13. FINAL DISPOSITION

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 8/9/2013 /s/ Felicia Medina
Attorneys for Plaintiff

DATED: 8/9/2013 /s/ Sari M. Alamuddin
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 16, 2013 
[Name of Judge]
United States District/Magistrate 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 United States District Court for the Northern District of California on [date] in the case of Wellens v. Daiichi Sankyo, Inc. (No. 13-00581). 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 United States District Court for the Northern District of California 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: _____
[printed name]

Signature: _____
[signature]