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10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**
 13

14 ALLCELLS, LLC, a California limited
 15 liability company,

16 Plaintiff,

17 v.

18 JACK ZHAI, an individual, JAMES LEE, an
 19 individual, and CEPHEUS BIOSCIENCES,
 INC., a Delaware Corporation,

20 Defendants.
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Case No. 3:16-cv-07323-EMC

**[STIPULATED] AMENDED
 PROTECTIVE ORDER FOR
 LITIGATION INVOLVING PATENTS,
 HIGHLY SENSITIVE CONFIDENTIAL
 INFORMATION AND TRADE
 SECRETS**

1 **1. PURPOSES AND LIMITATIONS OF AMENDED STIPULATED PROTECTIVE**
2 **ORDER**

3 The parties previously filed a Stipulated Protective Order with this Court on January 13,
4 2017 (Doc. No. 33). With the addition of new counsel for defendants in this action, the parties
5 believe it is now necessary to have a prosecution bar and have amended the previously filed
6 Stipulated Protective Order accordingly.

7 The parties now stipulate to and petition the court to enter the following Amended
8 Stipulated Protective Order, which will supersede the Protective Order entered by this Court on
9 January 18, 2017 (Doc. No. 35).

10 Disclosure and discovery activity in this action are likely to involve production of
11 confidential, proprietary, or private information for which special protection from public
12 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
13 Accordingly, the parties hereby stipulate to and petition the court to enter the following Amended
14 Stipulated Protective Order, which will dispose of the Protective Order entered by this Court on
15 January 18, 2017 (Doc. No. 35). The parties acknowledge that this Order does not confer blanket
16 protections on all disclosures or responses to discovery and that the protection it affords from
17 public disclosure and use extends only to the limited information or items that are entitled to
18 confidential treatment under the applicable legal principles. The parties further acknowledge, as
19 set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file
20 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
21 followed and the standards that will be applied when a party seeks permission from the court to
22 file material under seal.

23 **2. DEFINITIONS**

24 3.1. Challenging Party: a Party or Non-Party that challenges the designation of
25 information or items under this Order.

26 3.2. “CONFIDENTIAL” Information or Items: information (regardless of how it is
27 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
28 of Civil Procedure 26(c).

1 3.3. Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
2 well as their support staff).

3 3.4. Designated House Counsel: House Counsel who seek access to “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

5 3.5. Designating Party: a Party or Non-Party that designates information or items that it
6 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

8 3.6. Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 3.7. Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
14 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
15 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
16 or of a Party’s competitor.

17 3.8. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
18 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
19 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
20 less restrictive means.

21 3.9. House Counsel: attorneys who are employees of a party to this action. House
22 Counsel does not include Outside Counsel of Record or any other outside counsel.

23 3.10. Non-Party: any natural person, partnership, corporation, association, or other legal
24 entity not named as a Party to this action.

25 3.11. Outside Counsel of Record: attorneys who are not employees of a party to this
26 action but are retained to represent or advise a party to this action and have appeared in this action
27 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

28 3.12. Party: any party to this action, including all of its officers, directors, employees,

1 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2 3.13. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
3 Material in this action.

4 3.14. Professional Vendors: persons or entities that provide litigation support services
5 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
6 organizing, storing, or retrieving data in any form or medium) and their employees and
7 subcontractors.

8 3.15. Protected Material: any Disclosure or Discovery Material that is designated as
9 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 3.16. Receiving Party: a Party that receives Disclosure or Discovery Material from a
11 Producing Party.

12 **3. SCOPE**

13 The protections conferred by this Stipulation and Order cover not only Protected Material
14 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
15 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
16 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

17 However, the protections conferred by this Stipulation and Order do not cover the
18 following information: (a) any information that is in the public domain at the time of disclosure to
19 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
20 as a result of publication not involving a violation of this Order, including becoming part of the
21 public record through trial or otherwise; and (b) any information known to the Receiving Party
22 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
23 obtained the information lawfully and under no obligation of confidentiality to the Designating
24 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

25 **4. DURATION**

26 Even after final disposition of this litigation, the confidentiality obligations imposed by
27 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
28 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all

1 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
2 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of time pursuant to
4 applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

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

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

17 If it comes to a Designating Party’s attention that information or items that it designated
18 for protection do not qualify for protection at all or do not qualify for the level of protection
19 initially asserted, that Designating Party must promptly notify all other parties that it is
20 withdrawing the mistaken designation.

21 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order
22 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
23 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
24 designated before the 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
28 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” to each page that contains protected material. If only a portion or portions of the
2 material on a page qualifies for protection, the Producing Party also must clearly identify the
3 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
4 each portion, the level of protection being asserted.

5 A Party or Non-Party that makes original documents or materials available for inspection
6 need not designate them for protection until after the inspecting Party has indicated which
7 material it would like copied and produced. During the inspection and before the designation, all
8 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
10 copied and produced, the Producing Party must determine which documents, or portions thereof,
11 qualify for protection under this Order. Then, before producing the specified documents, the
12 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected
14 Material. If only a portion or portions of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
16 markings in the margins) and must specify, for each portion, the level of protection being
17 asserted.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, the
19 Designating Party is provided 21 days from delivery of the final transcript to designate the level
20 of protection being asserted. Until such designations are due (after 21 days), the testimony shall
21 be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The Designating
22 Party’s designations should specify the protected portion of testimony, the level of protection, and
23 the reason for designation. If no designations are made after 21 days, then such testimony shall
24 be deemed public.

25 Only those portions of the testimony that are appropriately designated for protection
26 within the 21 days shall be covered by the provisions of this Stipulated Protective Order.
27 Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if
28 that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
3 other proceeding to include Protected Material so that the other parties can ensure that only
4 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
5 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
6 shall not in any way affect the document’s designation as “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

8 Transcripts containing Protected Material shall have an obvious legend on the title page
9 that the transcript contains Protected Material, and the title page shall be followed by a list of all
10 pages (including line numbers as appropriate) that have been designated as Protected Material and
11 the level of protection being asserted by the Designating Party. The Designating Party shall
12 inform the court reporter of these requirements. Any transcript that is prepared before the
13 expiration of a 21-day period for designation shall be treated during that period as if it had been
14 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
15 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
16 actually designated.

17 (c) for information produced in some form other than documentary and for any other
18 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
19 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of
21 the information or item warrant protection, the Producing Party, to the extent practicable, shall
22 identify the protected portion(s) and specify the level of protection being asserted.

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

28 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

1 7.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of
2 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
4 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
5 challenge a confidentiality designation by electing not to mount a challenge promptly after the
6 original designation is disclosed.

7 7.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution
8 process by providing written notice of each designation it is challenging and describing the basis
9 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
10 notice must recite that the challenge to confidentiality is being made in accordance with this
11 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
12 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
13 forms of communication are not sufficient) within 14 days of the date of service of notice. In
14 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
15 designation was not proper and must give the Designating Party an opportunity to review the
16 designated material, to reconsider the circumstances, and, if no change in designation is offered,
17 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
18 stage of the challenge process only if it has engaged in this meet and confer process first or
19 establishes that the Designating Party is unwilling to participate in the meet and confer process in
20 a timely manner.

21 7.3. Judicial Intervention. If the Parties cannot resolve a challenge without court
22 intervention, the Challenging Party shall file and serve a motion to challenge a confidentiality
23 designation under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
24 applicable) within 14 days of the parties agreeing that the meet and confer process will not
25 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
26 competent declaration affirming that the movant has complied with the meet and confer
27 requirements imposed in the preceding paragraph. Any motion brought pursuant to this provision
28 must be accompanied by a competent declaration affirming that the movant has complied with the

1 meet and confer requirements imposed by the preceding paragraph.

2 The burden of persuasion in any such challenge proceeding shall be on the Designating
3 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
4 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
5 sanctions. All parties shall continue to afford the material in question the level of protection to
6 which it is entitled under the Producing Party's designation until the court rules on the challenge.

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

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
9 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
10 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
11 the categories of persons and under the conditions described in this Order. When the litigation has
12 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
13 DISPOSITION).

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

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
17 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
18 information or item designated "CONFIDENTIAL" only to:

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

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

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
27 reasonably necessary for this litigation and who have signed the "Acknowledgment and
28 Agreement to Be Bound" (Exhibit A);

1 (d) the court and its personnel;

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

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

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

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
14 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
15 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
18 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
19 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that
20 is attached hereto as Exhibit A;

21 (b) One Designated House Counsel¹ of the Receiving Party (1) who has no involvement in
22 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,
23 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to
24 whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

25 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this

26 _____
27 ¹ Pursuant to the Court’s January 13, 2017 Order (D.I. 27), AllCells agrees to this provision at
28 this juncture. As specifically contemplated by the Order, AllCells reserves its right to bring a
motion seeking leave to amend this provision (and the provisions associated with it) to include
one executive officer of AllCells (Dr. Jay Tong).

1 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
2 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

3 (d) the court and its personnel;

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

7 (f) the author or recipient of a document containing the information or a custodian or other
8 person who otherwise possessed or knew the information.

9 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
10 – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

11 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
12 Party, a Party that seeks to disclose to One Designated House Counsel any information or item
13 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
14 to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth
15 the full name of the One Designated House Counsel and the city and state of his or her residence,
16 and (2) describes the One Designated House Counsel’s current and reasonably foreseeable future
17 primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or
18 may become involved, in any competitive decision-making.

19 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
20 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
21 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
22 to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies
23 the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
24 information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the
25 full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy
26 of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each
27 person or entity from whom the Expert has received compensation or funding for work in his or
28 her areas of expertise or to whom the expert has provided professional services, including in

1 connection with a litigation, at any time during the preceding five years, and (6) identifies (by
2 name and number of the case, filing date, and location of court) any litigation in connection with
3 which the Expert has offered expert testimony, including through a declaration, report, or
4 testimony at a deposition or trial, during the preceding five years.

5 (b) A Party that makes a request and provides the information specified in the preceding
6 respective paragraphs may disclose the subject Protected Material to the identified One
7 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
8 receives a written objection from the Designating Party. Any such objection must set forth in
9 detail the grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer with the
11 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
12 agreement within seven days of the written objection. If no agreement is reached, the Party
13 seeking to make the disclosure to the One Designated House Counsel or the Expert may file a
14 motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
15 applicable) seeking permission from the court to do so. Any such motion must describe the
16 circumstances with specificity, set forth in detail the reasons why the disclosure to the One
17 Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the
18 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
19 In addition, any such motion must be accompanied by a competent declaration describing the
20 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
21 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
22 to approve the disclosure.

23 In any such proceeding, the Party opposing disclosure to the One Designated House
24 Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure
25 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose
26 the Protected Material to its the One Designated House Counsel or Expert.

27 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
28 **OTHER LITIGATION**

1 If a Party is served with a subpoena or a court order issued in other litigation that compels
2 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

11 If the Designating Party timely seeks a protective order, the Party served with the
12 subpoena or court order shall not produce any information designated in this action as
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
14 determination by the court from which the subpoena or order issued, unless the Party has obtained
15 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
16 seeking protection in that court of its confidential material – and nothing in these provisions
17 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a
18 lawful directive from another court.

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

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

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

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

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

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

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

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

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

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**

24 When a Producing Party gives notice to Receiving Parties that certain inadvertently
25 produced material is subject to a claim of privilege or other protection, the obligations of the
26 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
27 provision is not intended to modify whatever procedure may be established in an e-discovery
28 order that provides for production without prior privilege review. Pursuant to Federal Rule of

1 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
2 communication or information covered by the attorney-client privilege or work product
3 protection, the parties may incorporate their agreement in the stipulated protective order
4 submitted to the court.

5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
7 seek its modification by the court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
9 Order no Party waives any right it otherwise would have to object to disclosing or producing any
10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
11 Party waives any right to object on any ground to use in evidence of any of the material covered
12 by this Protective Order.

13 12.3 Filing Protected Material. Without written permission from the Designating Party
14 or a court order secured after appropriate notice to all interested persons, a Party may not file in
15 the public record in this action any Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
17 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
18 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
19 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
20 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
21 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
22 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
23 79-5(e)(2) unless otherwise instructed by the court.

24 **13. FINAL DISPOSITION**

25 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
26 Receiving Party must return all Protected Material to the Producing Party or destroy such
27 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
28 compilations, summaries, and any other format reproducing or capturing any of the Protected

1 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
2 submit a written certification to the Producing Party (and, if not the same person or entity, to the
3 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
4 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
5 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
6 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
7 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
8 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
9 product, and consultant and expert work product, even if such materials contain Protected
10 Material. Any such archival copies that contain or constitute Protected Material remain subject to
11 this Protective Order as set forth in Section 4 (DURATION). Each Party must also inform their
12 expert witnesses to destroy all Confidential or Highly Confidential Materials in the expert
13 witnesses' possession, custody, or control within 60 days after the final disposition of this action.

14 **14. PROSECUTION BAR**

15 Absent written consent from the Producing Party, any individual who receives access to
16 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall not be involved
17 in the prosecution of patents or patent applications relating to primary cell culture,
18 cryopreservation media, including quality control procedures, protocols and information related
19 thereto, including without limitation any of the technology that is the subject of this action. For
20 purposes of this paragraph, "prosecution" includes directly or indirectly drafting, amending,
21 advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt,
22 "prosecution" as used in this paragraph does not include representing a party challenging a patent
23 before a domestic or foreign agency (including, but not limited to, a reissue protest, ex parte
24 reexamination or inter partes reexamination). This Prosecution Bar shall begin when access to
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information is first received by
26 the affected individual and shall end two (2) years after final termination of this action.

27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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Dated: February 9, 2017

ORRICK, HERRINGTON & SUTCLIFFE LLP,

By: /s/ Robert S. Shwarts
Robert S. Shwarts
Attorneys for Plaintiff AllCells, LLC

Dated: February 9, 2017

FINNEGAN, HENDERSON, FARABOW,
GARRETT, DUNNER, LLP,

By: /s/ Lily Lim
Lily Lim
Attorneys for Defendant Cepheus Biosciences, Inc.

Dated: February 9, 2017

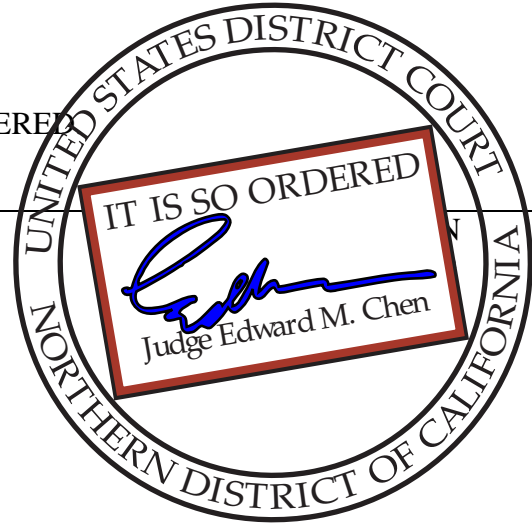
MARK ZHAI, ESQ.,

By: /s/ Mark Zhai
Mark Zhai
Attorney for Defendants Jack Zhai and James Lee

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: February ~~9~~¹⁰, 2017

By: _____



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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 AllCells, LLC v. Jack Zhai et al., Case No. 3:16-cv-07323-EMC. 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]