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 behalf of herself and all others similarly situated

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

CRYSTAL KAO and NINA BARWICK,
 individually and on behalf of themselves and all
 others similarly situated,

 Plaintiffs,

 vs.

 ABBOTT LABORATORIES, INC. an Illinois
 corporation d/b/a Abbott Nutrition,

 Defendant.

) CASE NO. 3:17-CV-02790
)
) **[PROPOSED] STIPULATED**
) **PROTECTIVE ORDER**
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1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use
4 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
5 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal principles.
9 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
10 Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
11 the procedures that must be followed and the standards that will be applied when a party seeks
12 permission from the court to file material under seal.
13

14 **2. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
16 or items under this Order.
17

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
19 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
20 Civil Procedure 26(c).
21

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
23 their support staff).
24

25 2.4 Designating Party: a Party or Non-Party that designates information or items that it
26 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
28

1 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
2 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
3 transcripts, and tangible things), that are produced or generated in disclosures or responses to
4 discovery in this matter.

5 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
6 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
7 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor,
8 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
9 competitor.
10

11 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
12 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-
13 Party would create a substantial risk of serious harm that could not be avoided by less restrictive
14 means.
15

16 2.8. House Counsel: attorneys who are employees of a party to this action. House Counsel
17 does not include Outside Counsel of Record or any other outside counsel.

18 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
19 entity not named as a Party to this action.
20

21 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
22 but are retained to represent or advise a party to this action and have appeared in this action on behalf
23 of that party or are affiliated with a law firm which has appeared on behalf of that party.

24 2.10 Party: any party to this action, including all of its officers, directors, employees,
25 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

26 2.11 Privileged Material: communications, documents, or information protected by the
27 attorney-client privilege, work product doctrine, or any other privilege or protection from disclosure.
28

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
2 in this action.

3 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
4 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
5 or retrieving data in any form or medium) and their employees and subcontractors.

6 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
7 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

8 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.
10

11 **3. SCOPE**

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

26 **4. DURATION**
27
28

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

8 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
10 Non-Party that designates information or items for protection under this Order must take care to limit
11 any such designation to specific material that qualifies under the appropriate standards. To the extent
12 it is practical to do so, the Designating Party must designate for protection only those parts of material,
13 documents, items, or oral or written communications that qualify—so that other portions of the
14 material, documents, items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.
16

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
18 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
19 encumber or retard the case development process or to impose unnecessary expenses and burdens on
20 other parties) expose the Designating Party to sanctions.
21

22 If it comes to a Designating Party's attention that information or items that it designated for
23 protection do not qualify for protection at all or do not qualify for the level of protection initially
24 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
25 mistaken designation.
26

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
28 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or

1 Discovery Material that qualifies for protection under this Order must be clearly so designated before
2 the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
5 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
6 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each
7 page that contains protected material. If only a portion or portions of the material on a page qualifies
8 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
9 appropriate markings in the margins) and must specify, for each portion, the level of protection being
10 asserted.
11

12 A Party or Non-Party that makes original documents or materials available for inspection need
13 not designate them for protection until after the inspecting Party has indicated which material it would
14 like copied and produced. During the inspection and before the designation, all of the material made
15 available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the
17 Producing Party must determine which documents, or portions thereof, qualify for protection under
18 this Order. Then, before producing the specified documents, the Producing Party must affix the
19 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY”) to each page that contains Protected Material. If only a portion or portions of the material
21 on a page qualifies for protection, the Producing Party also must clearly identify the protected
22 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,
23 the level of protection being asserted.
24

25 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
26 Designating Party identify on the record, before the close of the deposition, hearing, or other
27
28

1 proceeding, all protected testimony and specify the level of protection being asserted. When it is
2 impractical to identify separately each portion of testimony that is entitled to protection and it appears
3 that substantial portions of the testimony may qualify for protection, the Designating Party may invoke
4 on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to
5 21 days to identify the specific portions of the testimony as to which protection is sought and to specify
6 the level of protection being asserted. Only those portions of the testimony that are appropriately
7 designated for protection within the 21 days shall be covered by the provisions of this Stipulated
8 Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days
9 afterwards if that period is properly invoked, that the entire transcript shall be treated as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
11

12 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
13 other proceeding to include Protected Material so that the other parties can ensure that only authorized
14 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are
15 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way
16 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY.”
18

19 Transcripts containing Protected Material shall have an obvious legend on the title page that
20 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
21 (including line numbers as appropriate) that have been designated as Protected Material and the level
22 of protection being asserted by the Designating Party. The Designating Party shall inform the court
23 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period
24 for designation shall be treated during that period as if it had been designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
26 expiration of that period, the transcript shall be treated only as actually designated.
27
28

1 (c) for information produced in some form other than documentary and for any other tangible
2 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
3 in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information
5 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
6 portion(s) and specify the level of protection being asserted.
7

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the Designating Party’s right
10 to secure protection under this Order for such material. Upon timely correction of a designation, the
11 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
12 the provisions of this Order.
13

14 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
18 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
19 confidentiality designation by electing not to mount a challenge promptly after the original designation
20 is disclosed.
21

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
23 by providing written notice of each designation it is challenging and describing the basis for each
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
25 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
26 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
27 process by conferring directly (in voice to voice dialogue; other forms of communication are not
28

1 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
2 explain the basis for its belief that the confidentiality designation was not proper and must give the
3 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
4 and, if no change in designation is offered, to explain the basis for the chosen designation. A
5 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
6 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
7 meet and confer process in a timely manner.
8

9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
10 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
11 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial
12 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not
13 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent
14 declaration affirming that the movant has complied with the meet and confer requirements imposed in
15 the preceding paragraph. Failure by the Designating Party to make such a motion including the
16 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
17 confidentiality designation for each challenged designation. In addition, the Challenging Party may
18 file a motion challenging a confidentiality designation at any time if there is good cause for doing so,
19 including a challenge to the designation of a deposition transcript or any portions thereof. Any motion
20 brought pursuant to this provision must be accompanied by a competent declaration affirming that the
21 movant has complied with the meet and confer requirements imposed by the preceding paragraph.
22
23

24 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
25 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
26 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
27 Designating Party has waived the confidentiality designation by failing to file a motion to retain
28

1 confidentiality as described above, all parties shall continue to afford the material in question the level
2 of protection to which it is entitled under the Producing Party’s designation until the court rules on the
3 challenge.

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

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
8 categories of persons and under the conditions described in this Order. When the litigation has been
9 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and in a
12 secure manner that ensures that access is limited to the persons authorized under this Order.
13

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
15 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated “CONFIDENTIAL” only to:

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

22 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
23 whom disclosure is reasonably necessary for this litigation and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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26
27
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1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A);

4 (d) the court and its personnel;

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

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
9 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
10 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
11 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the
12 court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective
13 Order;
14

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

17
18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating
20 Party, a Receiving Party may disclose any information or item designated “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
23 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
24 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached
25 hereto as Exhibit A;
26
27
28

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

5
6 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
7 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and
8 (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

9 (d) the court and its personnel;

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

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

16 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

18 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
19 a Party that seeks to disclose to Designated House Counsel any information or item that has been
20 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
21 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the
22 Designated House Counsel and the city and state of his or her residence, and (2) describes the
23 Designated House Counsel’s current and reasonably foreseeable future primary job duties and
24 responsibilities in sufficient detail to determine if House Counsel is involved, or may become
25 involved, in any competitive decision-making.
26
27
28

1 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
2 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
3 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
4 7.3(c) first must make a written request to the Designating Party that (1) identifies the general
5 categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the
6 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert
7 and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current
8 resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom
9 the Expert has received compensation or funding for work in his or her areas of expertise or to whom
10 the expert has provided professional services, including in connection with a litigation, at any time
11 during the preceding five years, and (6) identifies (by name and number of the case, filing date, and
12 location of court) any litigation in connection with which the Expert has offered expert testimony,
13 including through a declaration, report, or testimony at a deposition or trial, during the preceding five
14 years.
15

16
17 (b) A Party that makes a request and provides the information specified in the preceding
18 respective paragraphs may disclose the subject Protected Material to the identified Designated House
19 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written
20 objection from the Designating Party. Any such objection must set forth in detail the grounds on
21 which it is based.
22

23 (c) A Party that receives a timely written objection must meet and confer with the Designating
24 Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven
25 days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to
26 Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in
27 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any
28

1 such motion must describe the circumstances with specificity, set forth in detail the reasons why the
2 disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm
3 that the disclosure would entail, and suggest any additional means that could be used to reduce that
4 risk. In addition, any such motion must be accompanied by a competent declaration describing the
5 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
6 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
7 approve the disclosure.
8

9 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
10 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
11 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to
12 its Designated House Counsel or Expert.
13

14 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
15 **OTHER 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" or "HIGHLY
18 CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

21 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
22 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
23 Order. Such notification shall include a copy of this Stipulated Protective Order; and
24

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

27 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
28 court order shall not produce any information designated in this action as "CONFIDENTIAL" or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court
2 from which the subpoena or order issued, unless the Party has obtained the Designating Party’s
3 permission. The Designating Party shall bear the burden and expense of seeking protection in that
4 court of its confidential material—and nothing in these provisions should be construed as authorizing
5 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.
6

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

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

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

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

19 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
20 this litigation, the relevant discovery request(s), and a reasonably specific description of the
21 information requested; and
22

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

24 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
25 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s
26 confidential information responsive to the discovery request. If the Non-Party timely seeks a
27 protective order, the Receiving Party shall not produce any information in its possession or control
28

1 that is subject to the confidentiality agreement with the Non-Party before a determination by the court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
3 protection in this court of its Protected Material.

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

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
6 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
7 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
8 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
9 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
10 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
11 Bound” that is attached hereto as Exhibit A.
12

13 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
14 **PROTECTED MATERIAL**

15 The production of Privileged Material, whether inadvertent or otherwise, is not a
16 waiver of the privilege or protection from discovery in this case or in any other federal or state
17 proceeding.
18

19 11.1 Upon written notification from the Producing Party to the Receiving Party identifying
20 disclosed Privileged Material, the Receiving Party shall not review the disclosed Privileged Material
21 in any respect; shall within seven days return, sequester, delete or destroy all copies of the disclosed
22 Privileged Material (including any and all work-product containing such Privileged Material); shall
23 take reasonable steps to retrieve such Privileged Material if the Receiving Party disclosed it before
24 being notified; and shall make no further use of such Privileged Material (or work product containing
25 such Privileged Material).
26

27 11.2 If the Receiving Party receives documents, ESI, or other forms of information from the
28 Producing Party that, upon inspection or review, appears in any respect to contain or constitute

1 potentially Privileged Material, the Receiving Party shall immediately stop review of such
2 information, promptly sequester the potentially Privileged Material, and immediately identify the
3 potentially Privileged Material to the Producing Party.

4 11.3 The Receiving Party may object to the Producing Party's designation of disclosed
5 information as Privileged Material by providing written notice of such objection within seven days of
6 its receipt of a written demand for the return of the disclosed Privileged Material. Any such objection
7 shall be resolved by the Court after an in camera review of the disclosed Privileged Material. Pending
8 resolution of any such dispute by the Court, the Receiving Party shall not review and shall not use the
9 disclosed Privileged Material in any respect.

10
11 11.4 This Order shall be interpreted to provide the maximum protection allowed by Federal
12 Rule of Evidence 502(d).

13
14 11.5 Nothing contained herein is intended to or shall serve to limit a party's right to conduct
15 a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or
16 segregation of privileged and/or protected information before production.

17 11.6 Voluntary and Subject Matter Waiver. This Order does not preclude a party from
18 voluntarily waiving any applicable privilege and/or protection.

19 **12. MISCELLANEOUS**

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
21 its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
23 no Party waives any right it otherwise would have to object to disclosing or producing any information
24 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives
25 any right to object on any ground to use in evidence of any of the material covered by this Protective
26 Order.
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1 12.3 Filing Protected Material. Without written permission from the Designating Party or a
2 court order secured after appropriate notice to all interested persons, a Party may not file in the public
3 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
4 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to
5 a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
6 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at
7 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
8 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is
9 denied by the court, then the Receiving Party may file the Protected Material in the public record
10 pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.
11

12 **13. FINAL DISPOSITION**

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

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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1 DATED: March 25, 2019

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15 Attorneys for Plaintiff
16 Crystal Kao and Nina Barwick, individually and on
17 behalf of herself and all others similarly situated

18 DATED: March 25, 2019

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ATTESTATION

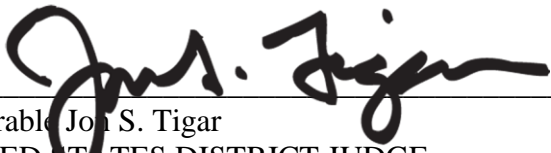
Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the filing of this document has been obtained from the other signatories.

DATED: March 25, 2019

/s/ Anders P. Fjellstedt
Anders P. Fjellstedt

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 25, 2019



Honorable Jon S. Tigar
UNITED STATES DISTRICT JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States District Court for the Northern District of California on [date] in
7 the case of Crystal Kao, et al. v. Abbott Laboratories, Inc., Case No. 3:17-CV-02790. I agree to
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of
10 contempt. I solemnly promise that I will not disclose in any manner any information or item that is
11 subject to this Stipulated Protective Order to any person or entity except in strict compliance with the
12 provisions of this Order.
13

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

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

22
23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27 Signature: _____
28