

1 BONNIE ALLYN BARNETT  
 2 DRINKER BIDDLE & REATH LLP  
 One Logan Square, Ste. 2000  
 3 Philadelphia, PA 19103-6996  
 Telephone: (215) 988-2916  
 Facsimile: (215) 689-4257  
 Email: bonnie.barnett@dbr.com

4 ADAM J. THURSTON (SBN 162636)  
 5 DRINKER BIDDLE & REATH LLP  
 1800 Century Park East, Suite 1500  
 6 Los Angeles, CA 90067-1517  
 Telephone: (310) 203-4000  
 7 Facsimile: (310) 229-1285  
 Email: adam.thurston@dbr.com

8 KATHLEEN N. STRICKLAND (SBN 64816)  
 9 STEPHAN CHOO (SBN 284395)  
 ROPERS, MAJESKI, KOHN & BENTLEY  
 10 150 Spear Street, Suite 850  
 San Francisco, CA 94105  
 11 Telephone: (415) 543-4800  
 Facsimile: (415) 972-6301  
 12 Email: kathleen.strickland@rmkb.com  
 stephan.choo@rmkb.com

13 Attorneys for Defendant  
 14 VWR INTERNATIONAL, LLC.

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA

18 150 SPEAR STREET ASSOCIATES,  
 19 L.P.,

20 Plaintiff,

21 v.

22 VWR INTERNATIONAL, LLC;  
 23 UNIVAR USA INC.,

24 Defendants.

CASE NO. 3:17-cv-03246-JST

**STIPULATED PROTECTIVE ORDER**

Judge: Hon. Jon S. Tigar  
 Complaint Filed: June 6, 2017

1 **STIPULATED PROTECTIVE ORDER**

2 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, all parties have stipulated  
3 and agreed to the terms and entry of, and the Court hereby orders the parties to abide by this  
4 Protective Order. Information subject to this Protective Order may be used only for the purposes  
5 of this litigation.

6 1. **PURPOSES AND LIMITATIONS**

7 Disclosure and discovery activity in this action are likely to involve production of  
8 confidential, proprietary, or private information for which special protection from public  
9 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
10 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
11 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
12 all disclosures or responses to discovery and that the protection it affords from public disclosure  
13 and use extends only to the limited information or items that are entitled to confidential treatment  
14 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
15 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential  
16 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and  
17 the standards that will be applied when a party seeks permission from the court to file material  
18 under seal. The parties acknowledge that this Protective Order is not intended as a concession that  
19 any type or category of information is discoverable in this action.

20 The parties further acknowledge, as outlined in United States District Court Northern  
21 District of California – Guidelines for the Discovery of Electronically Stored Information (“ESI  
22 Guidelines”), that this Protective Order will govern discovery of electronically stored information  
23 (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure.

24 2. **DEFINITIONS**

25 2.1 **Challenging Party**: a Party or Non-Party that challenges the designation of  
26 information or items under this Order.

1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,  
2 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil  
3 Procedure 26(c) and the terms of this Protective Order.

4 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
5 well as their support staff).

6 2.4 Designating Party: a Party or Non-Party that designates information or items that  
7 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
10 medium or manner in which it is generated, stored, or maintained (including, among other things,  
11 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
12 responses to discovery in this matter.

13 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
15 consultant in this action.

16 2.7 House Counsel: attorneys who are employees of a party to this action. House  
17 Counsel 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 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this  
21 action but are retained to represent or advise a party to this action and have appeared in this action  
22 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

23 2.10 Party: any party to this action, including all of its officers, directors, employees,  
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
26 Material in this action.



1 including the time limits for filing any motions or applications for extension of time pursuant to  
2 applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
5 or Non-Party that designates information or items for protection under this Order must take care  
6 to limit any such designation to specific material that qualifies under the appropriate standards.  
7 The Designating Party must designate for protection only those parts of material, documents,  
8 items, or oral or written communications that qualify – so that other portions of the material,  
9 documents, items, or communications for which protection is not warranted are not swept  
10 unjustifiably within the ambit of this Order.

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

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

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
19 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
20 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
21 designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but  
24 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
25 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
26 ONLY” to each page that contains protected material. If only a portion or portions of the material  
27 on a page qualifies for protection, the Producing Party also must clearly identify the protected

1 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
2 portion, the level of protection being asserted.

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

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
17 Designating Party identify on the record, before the close of the deposition, hearing, or other  
18 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
19 impractical to identify separately each portion of testimony that is entitled to protection and it  
20 appears that substantial portions of the testimony may qualify for protection, the Designating  
21 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
22 a right to have up to 21 days from the date the deposition is completed or from the date the  
23 deponent or party reviews and corrects the transcript to identify the specific portions of the  
24 testimony as to which protection is sought and to specify the level of protection being asserted.  
25 Only those portions of the testimony that are appropriately designated for protection within the 21  
26 days shall be covered by the provisions of this Protective Order. Alternatively, a Designating  
27 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked,

1 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
2 ATTORNEYS’ EYES ONLY.”

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

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

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  
20 or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of  
22 the information or item warrant protection, the Producing Party, to the extent practicable, shall  
23 identify the protected portion(s) and specify the level of protection being asserted. During the  
24 inspection and before the designation, all of the material made available for inspection shall be  
25 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” until a different  
26 designation is provided by the Producing Party. Should Producing Party object to the production,  
27 prior to production the Producing Party shall have fourteen (14) days to request judicial

1 intervention of the objection as set forth below in section 7.3, or withdraw its objection and  
2 produce the requested information.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the Designating Party's  
5 right to secure protection under this Order for such material. In the event a Designating Party  
6 inadvertently fails to designate qualified material as "CONFIDENTIAL" or "HIGHLY  
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY" in accordance with the foregoing procedures,  
8 the Designating Party shall provide supplemental written notice designating the material under the  
9 appropriate confidentiality designation as soon as practicable and shall also transmit to the  
10 Receiving Party the qualified material with the appropriate designation as soon as practicable.  
11 Upon receipt of such supplemental written notice, the Receiving Party must make reasonable  
12 efforts to assure that the material is treated in accordance with the provisions of this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
15 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
17 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
19 original designation is disclosed.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
21 process by providing written notice of each designation it is challenging and describing the basis  
22 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
23 notice must recite that the challenge to confidentiality is being made in accordance with this  
24 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
25 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
26 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
27 conferring, the Challenging Party must explain the basis for its belief that the confidentiality





1 material in question the level of protection to which it is entitled under the Producing Party's  
2 designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
7 the categories of persons and under the conditions described in this Order. When the litigation has  
8 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
9 DISPOSITION).

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

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
13 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
14 information or item designated "CONFIDENTIAL" only to:

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

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

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

25 (d) the court and its personnel;

26 ///

27 ///

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

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

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

12 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
13 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the  
14 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

20 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for  
21 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
22 A), and (3) as to whom the procedures set forth in paragraph 7.4(b), below, have been followed;

23 (c) the Court and its personnel;

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

27 ///

1 (e) the author or recipient of a document containing the information or a custodian or  
2 other person who otherwise possessed or knew the information.

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Counsel or Experts.

5 (a) Unless otherwise ordered by the Court or agreed to in writing by the Designating  
6 Party, a Party that seeks to disclose to House Counsel of the Receiving Party any information or  
7 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first  
8 must make a written request to the Designating Party that (1) sets forth the full name of the House  
9 Counsel and the city and state of his or her residence, (2) describes the House Counsel’s current  
10 and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to  
11 determine if House Counsel is involved, or may become involved, in any competitive decision-  
12 making, (3) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’  
13 EYES ONLY” information that the Receiving Party seeks permission to disclose to House  
14 Counsel, and (4) the reason why such disclosure is reasonably necessary for the litigation. The  
15 notice must be provided to the Designating Party seven (7) days prior to the disclosure of the  
16 designated material.

17 (b) Unless otherwise ordered by the Court or agreed to in writing by the Designating  
18 Party, a Party that seeks to disclose to an Expert (as defined in this Protective Order) any  
19 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
20 EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating  
21 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’  
22 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert,  
23 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)  
24 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)  
25 identifies each person or entity from whom the Expert has received compensation or funding for  
26 work in his or her areas of expertise or to whom the expert has provided professional services,  
27 including in connection with a litigation, at any time during the preceding five years, and (6)

1 identifies (by name and number of the case, filing date, and location of court) any litigation in  
2 connection with which the Expert has offered expert testimony, including through a declaration,  
3 report, or testimony at a deposition or trial, during the preceding five (5) years. The notice must  
4 be provided to the Designating Party seven (7) days prior to the disclosure of the designated  
5 material.

6 (c) Unless otherwise ordered by the Court or agreed to in writing by the Designating  
7 Party, a Party that seeks to disclose “HIGHLY CONFIDENTIAL ATTORNEY – EYES ONLY”  
8 material to an officer or director of the Receiving Party first must make a written request to the  
9 Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose  
11 to the officer or director, (2) sets forth the full name of the officer or director and the city and state  
12 of his or her primary residence, (3) identifies the officer’s or director’s current employer(s) and  
13 any other boards upon which he or she sits, (4) identifies each person or entity from whom the  
14 officer or director has received compensation at any time during the preceding five years, and (5)  
15 the reason why such disclosure is reasonably necessary for the litigation. Further, counsel for the  
16 Receiving Party must provide confirmation that the officer or director has signed the  
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A) with agreement to limit the use of  
18 this information to discussion with their counsel and for no other purpose. The notice must be  
19 provided to the Designating Party seven (7) days prior to the disclosure of the designated  
20 material. Furthermore, the number of officers and directors of the Receiving Party to whom  
21 disclosure is reasonably necessary for this litigation will not exceed three (3) individuals, and the  
22 information will not be disseminated or transmitted within the organization either directly or  
23 indirectly.

24 (d) A Party that makes a request and provides the information specified in the  
25 preceding respective paragraphs may disclose the subject Protected Material to the identified  
26 officer or director, House Counsel, or Expert unless, within seven (7) days of delivering the  
27 request, the Party receives a written objection from the Designating Party. Any such objection

1 must set forth in detail the grounds on which it is based.

2 (e) A Party that receives a timely written objection must meet and confer with the  
3 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
4 agreement within seven (7) days of the written objection. If no agreement is reached, the Party  
5 seeking to make the disclosure to the officer or director, House Counsel, or the Expert may file a  
6 motion as provided in Civil L.R. 7 (and in compliance with Civil L.R. 79-5, if applicable) and in  
7 accordance with the Judge's Standing Order, if applicable, seeking permission from the Court to  
8 do so. Any such motion must describe the circumstances with specificity, set forth in detail the  
9 reasons why the disclosure to officer or director, House Counsel, or the Expert is reasonably  
10 necessary, assess the risk of harm that the disclosure would entail, and suggest any additional  
11 means that could be used to reduce that risk. In addition, any such motion must be accompanied  
12 by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e.,  
13 the extent and the content of the meet and confer discussions) and should set forth the reasons  
14 advanced by the Designating Party for its refusal to approve the disclosure.

15 In any such proceeding, the Party opposing disclosure to an officer or director, House  
16 Counsel, or Expert shall bear the burden of proving that the risk of harm that the disclosure would  
17 entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the  
18 Protected Material to its officer or director, House Counsel, or Expert.

19 Failure to object to access to an officer or director, House Counsel, or an Expert shall not  
20 preclude any party from later objecting to continued access by that officer or director, House  
21 Counsel, or Expert where facts suggest a basis for objecting could not have been discovered by  
22 the objecting party within the time for making timely objection. If a later objection is made, no  
23 further Protected Matter shall be disclosed to the officer or director, House Counsel, or Expert  
24 until the matter is resolved by the parties through the meet and confer process, by the Court, or  
25 the objecting Party withdraws its objection.

26 ///

27 ///

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2 LITIGATION

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

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

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

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

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

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

24 (a) The terms of this Order are applicable to information produced by a Non-Party in  
25 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with  
27 this litigation is protected by the remedies and relief provided by this Order. Nothing in these

1 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

26 ///

27 ///



1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2 MATERIAL

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

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
14 seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
16 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
18 Party waives any right to object on any ground to use in evidence any of the material covered by  
19 this Protective Order.

20 12.3 Privilege Logs. Counsel for a party may withhold documents from production as  
21 exempt from discovery because such documents are protected from disclosure under the attorney-  
22 client privilege or work product doctrine of Fed. R. Civ. P. 26(b), or any other applicable  
23 privilege or immunity. For documents so withheld, the party withholding the documents shall  
24 prepare a log consistent with Fed. R. Civ. P. 26(b)(5) identifying each document withheld, the  
25 protection claimed, and the basis for the protection, which shall be produced within fourteen (14)  
26 days of the date responses to Request for Production are required by Fed. R. Civ. P. 34. Counsel  
27

1 for either party need not list in any such log any privileged documents or communications  
2 between their firm and their client created after the filing of this action.

3 12.4 Filing Protected Material. Without written permission from the Designating Party  
4 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
5 the public record in this action any Protected Material. A Party that seeks to file under seal any  
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
7 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
8 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
9 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
10 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
11 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the  
12 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)  
13 unless otherwise instructed by the court.

14 12.5 This Protective Order shall be binding upon the parties and their attorneys,  
15 successors, executors, personal representatives, administrators, heirs, legal representatives,  
16 assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or  
17 organizations over which they have control.

18 12.6 The party or parties receiving Protected Material shall not under any circumstances  
19 sell, offer for sale, advertise, or publicize Protected Material or any information contained therein.

20 13. FINAL DISPOSITION

21 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
22 Receiving Party must return all Protected Material to the Producing Party or destroy such  
23 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
24 compilations, summaries, and any other format reproducing or capturing any of the Protected  
25 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
26 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
27 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all

1 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
2 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
4 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
5 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
6 product, and consultant and expert work product, even if such materials contain Protected  
7 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
8 this Protective Order as set forth in Section 4 (DURATION).

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 ///

11 ///

12 ///

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: December 19, 2017

DRINKER BIDDLE & REATH LLP

By: /s/ Bonnie Barnett

BONNIE BARNETT  
ADAM J. THURSTON  
Attorneys for Defendant  
VWR INTERNATIONAL, LLC

Dated: December 19, 2017

ROPERS, MAJESKI, KOHN & BENTLEY

By: /s/ Kathleen Strickland

KATHLEEN STRICKLAND  
STEPHAN CHOO  
Attorneys for Defendant  
VWR INTERNATIONAL, LLC

Dated: December 19, 2017

VERIS LAW GROUP PLLC

By: /s/ Michelle Rosenthal

MICHELLE ROSENTHAL  
GREGORY HIXSON  
Attorneys for Defendant  
UNIVAR USA INC.

Dated: December 19, 2017

NIXON PEABODY LLP

By: /s/ Jennifer Kuenster

JENNIFER KUENSTER  
ANTHONY BARRON  
Attorneys for Defendant  
UNIVAR USA INC.

1 Dated: December 19, 2017

PILLSBURY WINTHROP SHAW PITTMAN  
LLP

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

By: /s/ Philip S. Warden

PHILIP S. WARDEN  
VIJAY K. TOKE  
Attorneys for Plaintiff  
150 SPEAR STREET ASSOCIATES,  
L.P.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: December 19, 2017

  
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 \_\_\_\_\_ [print or  
4 type full address], declare under penalty of perjury that I have read in its entirety and understand  
5 the Stipulated Protective Order that was issued by the United States District Court for the  
6 Northern District of California on \_\_\_\_\_ in the case of 150 Spear Street Associates, L.P. v. VWR  
7 International, LLC, et al, CASE NO. 3:17-cv-03246-JST. I agree to comply with and to be bound  
8 by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure  
9 to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
10 promise that I will not disclose in any manner any information or item that is subject to this  
11 Stipulated Protective Order to any person or entity except in strict compliance with the provisions  
12 of this Order.

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

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

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23  
24 Printed name: \_\_\_\_\_

25  
26 Signature: \_\_\_\_\_

**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

I, N. Kathleen Strickland, am the ECF user whose identification and password are being used to file the foregoing Stipulated Protective Order. I hereby attest that the above-referenced signatories to this Stipulated Protective Order have concurred in this filing.

Dated: December 19, 2017

By: /s/N. Kathleen Strickland  
N. KATHLEEN STRICKLAND

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28