



1 use extends only to the limited Disclosure or Discovery Material (defined below) that is entitled  
2 to confidential treatment under the applicable legal principles. The Parties further acknowledge,  
3 as set forth in Section 13.3 below, that this Stipulated Protective Order does not entitle them to  
4 file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the  
5 procedures that must be followed and the standards that will be applied when a Party seeks  
6 permission from the Court to file material under seal.

7 **2. DEFINITIONS**

8 **2.1 Challenging Party:** a Party or Non-Party that challenges the designation of  
9 Disclosure or Discovery Material (defined below) under this Order.

10 **2.2 “CONFIDENTIAL” Disclosure or Discovery Material:** Disclosure or Discovery  
11 Material (defined below), regardless of how it is generated, stored or maintained, or tangible  
12 things that qualify for protection under Federal Rule of Civil Procedure 26(c).

13 **2.3 Counsel:** Outside Counsel of Record and House Counsel (as well as their support  
14 staff).

15 **2.4 Designated House Counsel:** House Counsel who seek access to “HIGHLY  
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

17 **2.5 Designating Party:** a Party or Non-Party that may designate Disclosure or  
18 Discovery Material (defined below) that it produces in disclosures or in responses to discovery as  
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

20 **2.6 Disclosure or Discovery Material:** all items or information, regardless of the  
21 medium or manner in which it is generated, stored, or maintained (including, among other things,  
22 testimony, transcripts, and tangible things) that are produced or generated in disclosures or  
23 responses to discovery in this matter.

24 **2.7 Expert:** a person with specialized knowledge or experience in a matter pertinent to  
25 the Litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
26 consultant in the Litigation.

27  
28

1           **2.8**    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (and “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY B/C”) Disclosure or Discovery Material:  
3 extremely sensitive Disclosure or Discovery Material, disclosure of which to another Party or  
4 Non-Party would create a substantial risk of serious harm that could not be avoided by less  
5 restrictive means.

6           **2.9**    House Counsel: attorneys who are employees of a Party to the Litigation. House  
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8           **2.10** Litigation: that certain litigation pending in the United States District Court in the  
9 Northern District of California, identified as Civil Action No. CV12-01535 (YGR) and entitled  
10 Former Shareholders of CardioSpectra, Inc. v. Volcano Corporation, a Delaware corporation; and  
11 DOES 1-10.

12           **2.11** Non-Party: any natural person, partnership, corporation, association, or other legal  
13 entity not named as a Party to the Litigation.

14           **2.12** Outside Counsel of Record: attorneys who are not employees of a Party to the  
15 Litigation but are retained to represent or advise a Party to the Litigation and have appeared in the  
16 Litigation on behalf of that Party or are affiliated with a law firm which has appeared on behalf of  
17 that Party.

18           **2.13** Party: (1) Plaintiffs Christopher E. Banas and Paul Castella in their respective  
19 capacities as Shareholder Representatives for the Former Shareholders of CardioSpectra, Inc.,  
20 including consultants, retained experts, and Outside Counsel of Record (and their support staffs),  
21 and (2) Volcano Corporation, including all of its officers, directors, employees, consultants,  
22 retained experts, and Outside Counsel of Record (and their support staffs).

23           **2.14** Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
24 Material in the Litigation.

25           **2.15** Professional Vendors: persons or entities that provide litigation support services  
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
27

28

1 organizing, storing, or retrieving data in any form or medium) and their employees and  
2 subcontractors.

3           **2.16** Protected Material: any Disclosure or Discovery Material that is designated as  
4 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY B/C,” or as  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6           **2.17** Receiving Party: a Party that receives Disclosure or Discovery Material from a  
7 Producing Party.

8 **3.**     SCOPE

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

21 **4.**     DURATION

22           Even after final disposition of the Litigation, the confidentiality obligations imposed by  
23 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
24 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
25 claims and defenses in the Litigation, with or without prejudice; and (2) final judgment herein  
26 after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of the  
27  
28

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

3 **5. DESIGNATION OF PROTECTED MATERIAL**

4 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party  
5 or Non-Party that designates Disclosure or Discovery Material for protection under this Order  
6 must take care to limit any such designation to specific material that qualifies under the  
7 appropriate standards. The Designating Party must designate for protection only those parts of  
8 material, documents, items, or oral or written communications that qualify – so that other portions  
9 of the material, documents, items, or communications for which protection is not warranted are  
10 not swept 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 Disclosure or Discovery Material that it  
16 designated for protection do not qualify for protection at all or do not qualify for the level of  
17 protection initially asserted, that Designating Party must promptly notify all other Parties that it is  
18 withdrawing the mistaken designation.

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

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,  
25 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
26 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
27 EYES ONLY B/C,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each  
28

1 page that contains protected material. If only a portion or portions of the material on a page  
2 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
3 (e.g., by making appropriate markings in the margins).

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

16 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
17 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
18 other proceeding, all protected testimony and specify the level of protection being asserted.  
19 When it is impractical to identify separately each portion of testimony that is entitled to protection  
20 and it appears that substantial portions of the testimony may qualify for protection, the  
21 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding  
22 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to  
23 which protection is sought and to specify the level of protection being asserted. Only those  
24 portions of the testimony that are appropriately designated for protection within the 21 days shall  
25 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating  
26 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked,  
27 that the entire transcript shall be treated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
28

1 ATTORNEYS' EYES ONLY B/C," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
2 ONLY."

3 Parties shall give the other Parties notice if they reasonably expect a deposition, hearing or  
4 other proceeding to include Protected Material so that the other Parties can ensure that only  
5 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," "HIGHLY CONFIDENTIAL –  
8 ATTORNEYS' EYES ONLY B/C," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
9 ONLY."

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

19 (c) for information produced in some form other than documentary and for any  
20 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
21 container or containers in which the information or item is stored the legend "CONFIDENTIAL,"  
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY B/C" or "HIGHLY  
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions of the  
24 information or item warrant protection, the Producing Party, to the extent practicable, shall  
25 identify the protected portion(s).

26 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to  
27 designate qualified Disclosure or Discovery Material does not, standing alone, waive the  
28

1 Designating Party's right to secure protection under this Order for such material. Upon timely  
2 correction of a designation, the Receiving Party must make reasonable efforts to assure that the  
3 material is treated in accordance with the provisions of this Order.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of  
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
8 burdens, or a significant disruption or delay of the Litigation, a Party does not waive its right to  
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
10 original designation is disclosed.

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

25 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without court  
26 intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding  
27 Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining  
28

1 confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties  
2 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
3 Failure by a Designating Party to file such discovery dispute letter within the applicable 21 or 14  
4 day period (set forth above) with the Court shall automatically waive the confidentiality  
5 designation for each challenged designation. If, after submitting a joint letter brief, the Court  
6 allows that a motion may be filed, any such motion must be accompanied by a competent  
7 declaration affirming that the movant has complied with the meet and confer requirements  
8 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the  
9 discovery matter to a Magistrate Judge.

10 In addition, the parties may file a joint letter brief regarding a challenge to a  
11 confidentiality designation at any time if there is good cause for doing so, including a challenge to  
12 the designation of a deposition transcript or any portions thereof. If, after submitting a joint letter  
13 brief, the Court allows that a motion may be filed, any motion brought pursuant to this provision  
14 must be accompanied by a competent declaration affirming that the movant has complied with the  
15 meet and confer requirements imposed by the preceding paragraph. The Court, in its discretion,  
16 may elect to transfer the discovery matter to a Magistrate Judge.

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

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

25 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed  
26 or produced by another Party or by a Non-Party in connection with this Litigation only for  
27 prosecuting, defending, or attempting to settle the claims, counterclaims, and or defenses asserted  
28

1 by, among, between, or against Plaintiffs on the one hand, and Defendant on the other hand.  
2 Such Protected Material may be disclosed only to the categories of persons and under the  
3 conditions described in this Order. When the litigation has been terminated, a Receiving Party  
4 must comply with the provisions of Section 14 below.

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

7 **7.2** Disclosure of “CONFIDENTIAL” Disclosure or Discovery Material. Unless  
8 otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving  
9 Party may disclose any information or item designated “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in the Litigation, as well  
11 as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose  
12 the information for this Litigation;

13 (b) the Receiving Parties and, if applicable, the officers, directors, and  
14 employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably  
15 necessary for this Litigation;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom  
17 disclosure is reasonably necessary for this Litigation and who have signed the “Acknowledgment  
18 and Agreement to Be Bound” (Exhibit A);

19 (d) this Court, or the United States District Court for the Northern District of  
20 California and the personnel of such courts;

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

24 (f) during their depositions, witnesses in the Litigation to whom disclosure is  
25 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
26 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of  
27 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
28

1 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
2 under this Stipulated Protective Order;

3 (g) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information and

5 (h) a mediator retained by the Parties, or appointed by the Court, to assist  
6 resolving the dispute, who has signed the Undertaking attached as Exhibit A.

7 **7.3** Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
8 Disclosure or Discovery Material. Unless otherwise ordered by the Court or permitted in writing  
9 by the Designating Party, a Receiving Party may disclose any information or item designated  
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this Litigation, as well  
12 as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose  
13 the information for this litigation;

14 (b) House Counsel of the Receiving Party to whom disclosure is reasonably  
15 necessary for this litigation;

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

20 (d) this Court, or the United States District Court for the Northern District of  
21 California and the personnel of such courts;

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

25 (f) the author or recipient of a document containing the information or a  
26 custodian or other person who otherwise possessed or knew the information; and  
27  
28

1 (g) a mediator retained by the Parties, or appointed by the Court, to assist  
2 resolving the dispute, who has signed the Undertaking attached as Exhibit A.

3 Unless otherwise ordered by the Court or permitted in writing by the Designating Party,  
4 Disclosure Information and Discovery Material designated “HIGHLY CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY B/C” shall be limited to such persons that qualify under  
6 Section 7.3 (a)- (g) above and Plaintiffs Christopher E. Banas and Paul Castella only. Disclosure  
7 Information or Discovery Material that may be required by law to be disclosed or produced in this  
8 Litigation by any Disclosing Party that may contain information alleged to be confidential by  
9 LightLab Imaging, Inc. or its parent(s), successor(s), or affiliate(s) (including without limitation  
10 St. Jude Medical, Inc.) shall not be disclosed to any employee, officer, or director of Volcano,  
11 notwithstanding any designation that may be placed upon it by the Producing Party pursuant to  
12 this Order.

13 **7.4** Requirements for Disclosure of “CONFIDENTIAL” “HIGHLY CONFIDENTIAL  
14 – ATTORNEYS’ EYES ONLY” Disclosure or Discovery Material to Experts.  
15 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY B/C,” or  
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items may be  
17 disclosed to an Expert without disclosure of the identity of the Expert as long as the Expert is not  
18 a current officer, director, or employee of a competitor of a Party or anticipated to become one.  
19 All Experts who are to receive “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
20 ATTORNEYS’ EYES ONLY B/C,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
21 ONLY” information or items must comply with Sections 7.2 (c) and 7.3 (c).

22 **8. PROSECUTION BAR**

23 Absent written consent from the Producing Party, any individual who receives access to  
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY B/C” information shall not be involved in the prosecution of  
26 patents or patent applications pertaining to Optical Coherence Tomography or any products,  
27 components, processes and technologies relating to Optical Coherence Tomography, including  
28

1 without limitation any patents pertinent to this Litigation and any patent or application claiming  
2 priority to or otherwise related to any patents pertinent to this Litigation, before any foreign or  
3 domestic agency, including the United States Patent and Trademark Office (the “Patent Office”).  
4 For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending,  
5 advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt,  
6 “prosecution” as used in this paragraph does not include representing a party challenging a patent  
7 before a domestic or foreign agency (including, but not limited to, a reissue protest, ex parte  
8 reexamination, or inter partes reexamination). This Prosecution Bar shall begin when access to  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by  
10 the affected individual and shall end two (2) years after final termination of this Litigation.

11 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
12 **LITIGATION**

13 If a Party is served with a subpoena or a court order issued in other litigation that compels  
14 disclosure of any Disclosure or Discovery Material designated in the Litigation as  
15 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY B/C,” or  
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

25 If the Designating Party timely seeks a protective order, the Party served with the  
26 subpoena or court order shall not produce any information designated in the Litigation as  
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a  
28

1 determination by the court from which the subpoena or order issued, unless the Party has obtained  
2 the Designating Party's permission. The Designating Party shall bear the burden and expense of  
3 seeking protection in that court of its confidential material and nothing in these provisions should  
4 be construed as authorizing or encouraging a Receiving Party in the Litigation to disobey a lawful  
5 directive from another court.

6 **10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THE**  
7 **LITIGATION**

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

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

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

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

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

25 (c) If the Non-Party fails to object or seek a protective order from this Court  
26 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
27 produce the Non-Party's confidential information responsive to the discovery request. If the  
28

1 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
2 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
3 before a determination by the Court. Absent a court order to the contrary, the Non-Party shall  
4 bear the burden and expense of seeking protection in this Court of its Protected Material.

5 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
16 produced material is subject to a claim of privilege or other protection, the obligations of the  
17 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to  
18 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of  
19 disclosure of a communication or information covered by the attorney-client privilege or work  
20 product protection, the parties may incorporate their agreement in the stipulated protective order  
21 submitted to the court.

22 **13. MISCELLANEOUS**

23 **13.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to  
24 seek its modification by the Court in the future.

25 **13.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective  
26 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
27 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
28

1 no Party waives any right to object on any ground to use in evidence of any of the material  
2 covered by this Protective Order.

3           **13.3** 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 the Litigation any Protected Material. A Party that seeks to file under seal  
6 any Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
7 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
8 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
9 sealing order will issue only upon a request establishing that the Protected Material at issue is  
10 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
11 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
12 5(d) and General Order 62 is denied by the Court, then the Receiving Party may file the  
13 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed  
14 by the Court.

15           **14.** FINAL DISPOSITION

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

product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

Dated: December 4, 2012

COOLEY LLP

/s/ Mark F. Lambert  
MARK F. LAMBERT (197410)  
Attorneys for Defendant Volcano Corporation

Dated: December 4, 2012

STANLEY • IOLA, LLP

/s/ Matthew J. Zevin  
MATTHEW J. ZEVIN  
Attorneys for Plaintiffs Former Shareholders of  
CardioSpectra, Inc.

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

**SUBMITTED BY:**

Dated: December 4, 2012

COOLEY LLP

/s/ Mark F. Lambert  
MARK F. LAMBERT (197410)

Attorneys for Defendant Volcano Corporation

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: January 3, 2013

  
\_\_\_\_\_  
Yvonne Gonzalez Rogers  
United States District Judge



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

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 Former Shareholders of CardioSpectra, Inc. v. Volcano Corporation, a Delaware corporation; and DOES 1-10, No. 12-cv-01535 (YGR). 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 the Litigation.

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 the Litigation or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_