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25
 26 IN THE UNITED STATES DISTRICT COURT
 27 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 28 OAKLAND DIVISION

DOMINION ASSETS LLC, a Delaware Limited Liability Company,)	Civil Action No. 4:12-02773 CW (NC)
Plaintiff/Counterdefendant)	Honorable Claudia Wilken
v.)	Magistrate Judge Nathanael Cousins
MASIMO CORPORATION, a Delaware Corporation, and CERCACOR LABORATORIES, INC. (f/k/a MASIMO LABORATORIES, INC.), a Delaware Corporation,)	STIPULATED PROTECTIVE ORDER PURSUANT TO PATENT LOCAL RULE 2-2
Defendants/Counterclaimants.)	
AND RELATED COUNTERCLAIMS.)	
)	

STIPULATED PROTECTIVE ORDER

Civil Action No. 4:12-02773 CW (NC)

1 Pursuant to Local Patent Rule 2-2, it is hereby stipulated, by and between Plaintiff
2 Dominion Assets LLC (hereinafter “Dominion”) and Defendants Masimo Corporation and
3 Cercacor Laboratories, Inc. (collectively “Defendants”), through their respective counsel of
4 record and pursuant to the approval of this Court, to enter the following Protective Order to
5 provide the parties, and potential non-parties, protection for proprietary information and
6 sensitive material produced.

7 1. **PURPOSES AND LIMITATIONS**

8 Disclosure and discovery activity in this action are likely to involve production of
9 confidential, proprietary, or private information for which special protection from public disclosure
10 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
11 the parties hereby stipulate and petition the Court to enter the following Stipulated Protective Order.
12 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
13 responses to discovery and that the protection it affords from public disclosure and use extends only to
14 the limited information or items that are entitled to confidential treatment under the applicable legal
15 principles. The parties further acknowledge, as set forth in Section 14.4 below, that this Stipulated
16 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-
17 5 and General Order 62 set forth the procedures that must be followed and the standards that will be
18 applied when a party seeks permission from the court to file material under seal.

19 2. **DEFINITIONS**

20 2.1 **Challenging Party**: a Party or Non-Party that challenges the designation of
21 information or items under this Order.

22 2.2 **“CONFIDENTIAL” Information or Items**: information (regardless of how it is
23 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
24 Civil Procedure 26(c).

25 2.3 **Counsel (without qualifier)**: Outside Counsel of Record (as well as their support
26 staff).

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1 2.4 Designating Party: a Party or Non-Party that designates information or items that it
2 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY
3 CONFIDENTIAL – ATTORNEYS' EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
4 CODE.”

5 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
6 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
7 transcripts, and tangible things), that are produced or generated in disclosures or responses to
8 discovery in this matter.

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

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

18 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
19 sensitive “Confidential Information or Items” representing computer code and associated comments
20 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
21 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
22 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
23 by less restrictive means.

24 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel
25 does not include Outside Counsel of Record or any other outside counsel.

26 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
27 entity not named as a Party to this action.

1 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action
2 but are retained to represent or advise a party to this action and have appeared in this action on behalf
3 of that party or are affiliated with a law firm which has appeared on behalf of that party.

4 2.12 Party: any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
7 in this action.

8 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
9 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
10 or retrieving data in any form or medium) and their employees and subcontractors.

11 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
13 CONFIDENTIAL – SOURCE CODE.”

14 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only Protected Material (as
18 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
19 copies, excerpts, summaries, or compilations of Protected Material; (3) any testimony, conversations,
20 or presentations by Parties or their Counsel that might reveal Protected Material; and (4) documents,
21 electronically stored information and things, and other information produced, disclosed or generated
22 based on confidential information.

23 However, the protections conferred by this Stipulation and Order do not cover the following
24 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
25 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
26 publication not involving a violation of this Order, including becoming part of the public record
27 through trial or otherwise; and (b) any information known to the Receiving Party prior to the

1 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
2 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
3 Protected Material at trial shall be governed by a separate agreement or order.

4 4. **DURATION**

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

11 5. **DESIGNATING PROTECTED MATERIAL**

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

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

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

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1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
2 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
3 Discovery Material that qualifies for protection under this Order must be clearly so designated before
4 the material is disclosed or produced.

5 Designation in conformity with this Order requires:

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

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

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

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

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

24 (c) for information produced in some form other than documentary and for any other tangible
25 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
26 in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE

1 CODE.” If only a portion or portions of the information or item warrant protection, the Producing
2 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of
3 protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items does not, standing alone, waive the Designating Party’s right
6 to secure protection under this Order for such material. Upon timely correction of a designation, the
7 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
8 the provisions of this Order.

9 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
13 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
14 confidentiality designation by electing not to mount a challenge promptly after the original
15 designation is disclosed.

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

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

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

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

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
25 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
27 categories of persons and under the conditions described in this Order. When the litigation has been
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1 terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
2 DISPOSITION).

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

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
6 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated “CONFIDENTIAL” only to:

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

12 (b) up to three (3) designated employees of Plaintiff Dominion Assets LLC and up to
13 three (3) designated employees of each Defendant, Masimo Corporation (“Masmio”) and Cercacor
14 Laboratories, Inc. (“Cercacor”), of the Receiving Party to whom Outside Counsel deems disclosure is
15 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to
16 Be Bound” (Exhibit A) (employees may include House Counsel);

17 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
18 reasonably necessary for this litigation and who have disclosed to the other parties and have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A) , and as to whom the procedures set
20 forth in paragraph 7.4(a)(2) below have been followed;

21 (d) the court and its personnel;

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

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

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

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
7 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by
8 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
9 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
10 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

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

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

18 (c) the court and its personnel;

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

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

24 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
26 Items to Experts.

27 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
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1 Party, a Party that seeks to disclose any information or item that has been designated “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.2 (c) or 7.3(b) first must
3 make a written request to the Designating Party that (1) sets forth the full name and the city and state
4 of his or her residence and (2) describes the current and reasonably foreseeable future primary job
5 duties and responsibilities in sufficient detail to determine if he or she is involved, or may become
6 involved, in any competitive decision-making.

7 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
8 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that
9 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
10 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.2(c) or 7.3(b) first must make a
11 written request to the Designating Party that (1) identifies the general categories of “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
13 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth
14 the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of
15 the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person
16 or entity from whom the Expert has received compensation or funding for work in his or her areas of
17 expertise or to whom the expert has provided professional services, including in connection with a
18 litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of the
19 case, filing date, and location of court) any litigation in connection with which the Expert has offered
20 expert testimony, including through a declaration, report, or testimony at a deposition or trial, during
21 the preceding five years.

22 (b) A Party that makes a request and provides the information specified in the preceding
23 respective paragraphs may disclose the subject Protected Material to the Expert unless, within 14 days
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26 ¹ If the Expert believes any of this information is subject to a confidentiality
27 obligation to a third-party, then the Expert should provide whatever information the Expert
28 believes can be disclosed without violating any confidentiality agreements, and the Party
seeking to disclose to the Expert shall be available to meet and confer with the Designating
Party regarding any such engagement.

1 of delivering the request, the Party receives a written objection from the Designating Party. Any such
2 objection must set forth in detail the grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and confer with the
4 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
5 within seven days of the written objection. If no agreement is reached, the Party seeking to make the
6 disclosure the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
7 Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the court to do so.
8 Any such motion must describe the circumstances with specificity, set forth in detail the reasons why
9 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
10 entail, and suggest any additional means that could be used to reduce that risk. In addition, any such
11 motion must be accompanied by a competent declaration describing the parties' efforts to resolve the
12 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting
13 forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

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

17 8. **SOURCE CODE**

18 (a) To the extent production of source code becomes necessary in this case, a Producing
19 Party may designate source code as "HIGHLY CONFIDENTIAL – SOURCE CODE" if it comprises
20 or includes confidential, proprietary or trade secret source code.

21 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"
22 shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS'
23 EYES ONLY" information, including the Prosecution Bar set forth in Paragraph 8, and may be
24 disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
25 ONLY" information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

26 (c) Any source code produced in discovery shall be made available for inspection, in a
27 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
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1 mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed
2 upon location. The source code shall be made available for inspection on a secured computer in a
3 secured room without Internet access or network access to other computers, and the Receiving Party
4 shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable
5 media or recordable device. The Producing Party may visually monitor the activities of the Receiving
6 Party’s representatives during any source code review, but only to ensure that there is no unauthorized
7 recording, copying, or transmission of the source code.

8 (d) The Receiving Party may request paper copies of limited portions of source code that
9 are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers,
10 or for deposition or trial, but shall not request paper copies for the purpose of reviewing the source
11 code other than electronically as set forth in paragraph (c) in the first instance. The Producing Party
12 shall provide all such source code in paper form, including bates numbers and the label “HIGHLY
13 CONFIDENTIAL – SOURCE CODE.” The Producing Party may challenge the amount of source
14 code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set
15 forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving Party
16 is the “Designating Party” for purposes of dispute resolution.

17 (e) The Receiving Party shall maintain a record of any individual who has inspected any
18 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
19 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall
20 not create any electronic or other images of the paper copies and shall not convert any of the
21 information contained in the paper copies into any electronic format. The Receiving Party shall only
22 make additional paper copies if such additional copies are (1) necessary to prepare court filings,
23 pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for deposition,
24 or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition
25 shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a
26 court reporter or any other unauthorized individual.

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1 **9. 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,” “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
6 CODE,” that Party must:

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

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

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
13 Designating Party who’s Protected Material may be affected.²

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

22 **10. 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 this
25 action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

26 ² The purpose of imposing these duties is to alert the interested parties to the existence
27 of this Protective Order and to afford the Designating Party in this case an opportunity to try
28 to protect its confidentiality interests in the court from which the subpoena or order issued.

1 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-
2 Parties in connection with this litigation is protected by the remedies and relief provided by this Order.
3 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
4 protections.

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

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

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

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

14 (c) If the Non-Party fails to object or seek a protective order from this court within 14
15 days of receiving the notice and accompanying information, the Receiving Party may produce the
16 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
17 seeks a protective order, the Receiving Party shall not produce any information in its possession or
18 control that is subject to the confidentiality agreement with the Non-Party before a determination by
19 the court.³ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
20 seeking protection in this court of its Protected Material.

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

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
23 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
24 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
25

26 ³ The purpose of this provision is to alert the interested parties to the existence of
27 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its
28 confidentiality interests in this court.

1 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
2 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
3 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
4 Bound” that is attached hereto as Exhibit A.

5 12. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
6 **MATERIAL**

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

15 13. **MISCELLANEOUS**

16 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
17 its modification by the court in the future.

18 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
19 no Party waives any right it otherwise would have to object to disclosing or producing any
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
21 Party waives any right to object on any ground to use in evidence of any of the material covered by
22 this Protective Order.

23 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
24 laws and regulations relating to the export of technical data contained in such Protected Material,
25 including the release of such technical data to foreign persons or nationals in the United States or
26 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical data,
27 and the Receiving Party shall take measures necessary to ensure compliance.

28 ///

1 13.4 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
4 Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only
5 be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material
6 at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon
7 a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
8 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material
9 under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the
10 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-
11 5(e) unless otherwise instructed by the court.

12 14. **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. As
15 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
25 such materials contain Protected Material. Any such archival copies that contain or constitute
26 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 8, 2013

By: /s/ Irfan A. Lateef

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Dated: January 8, 2013

By: /s/ Bruce J. Wecker


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Attorneys for Plaintiff Dominion Assets LLC

ORDER

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

Dated: 1/14/2013

By: 
HON. CLAUDIA WILKEN
UNITED STATES DISTRICT CHIEF JUDGE

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ECF CERTIFICATION

Pursuant to Civil Local Rule No. 5-1(i)(3), the filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to the document.

Dated: January 8, 2013

By: /s/ Irfan A. Lateef

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Attorneys for Defendants, Masimo Corporation
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4 _____)
5 DOMINION ASSETS LLC, a Delaware Limited) Civil Action No. 4:12-02773 CW (NC)
6 Liability Company,)
7) Honorable Claudia Wilken
8 Plaintiff/Counterdefendant,) Magistrate Judge Nathanael Cousins
9 v.)
10) **ACKNOWLEDGMENT AND**
11 MASIMO CORPORATION, a Delaware) **AGREEMENT TO BE BOUND -**
12 Corporation, and CERCACOR) **EXHIBIT A**
13 LABORATORIES, INC. (f/k/a MASIMO)
14 LABORATORIES, INC.), a Delaware)
15 Corporation,)
16 Defendants/Counterclaimants.)
17 _____)
18 AND RELATED COUNTERCLAIMS.)
19 _____)

20 I, _____ [print or type full name], of _____ [print
21 or type full address], declare under penalty of perjury that I have read in its entirety and understand
22 the Stipulated Protective Order that was issued by the United States District Court for the Northern
23 District of California on _____ [date] in the case of _____ [**insert formal name of the case**
24 **and the number and initials assigned to it by the court**]. I agree to comply with and to be bound by
25 all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so
26 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
27 that I will not disclose in any manner any information or item that is subject to this Stipulated
28 Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND - EXHIBIT A

CASE NO.: 4:12-cv-02773-CW (NC)

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

5
6 Date: _____

7 City and State where sworn and signed: _____

8 Printed name: _____
9 [printed name]

10 Signature: _____
11 [signature]

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28 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND -
EXHIBIT A**

CASE NO.: 4:12-cv-02773-CW (NC)

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CERTIFICATE OF CM/ECF SERVICE

I hereby certify that on January 8, 2013, I caused the **STIPULATED PROTECTIVE ORDER PURSUANT TO PATENT LOCAL RULE 2-2** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all attorneys of record.

I certify and declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the forgoing is true and correct.

Executed on January 8, 2013, at Irvine, California.

/s/ Claudia P. Watson
Claudia P. Watson

14455776
01/08/2013