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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AAT BIOQUEST, INC., a Delaware corporation,
Plaintiff,
v.
TEXAS FLUORESCENCE LABORATORIES, INC., a Texas corporation,
Defendant.

Case No. 4:14-cv-3909 (DMR)
~~PROPOSED~~ STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. As set forth in Section 12.4 below, this Protective Order does not entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or

1 items under this Order.

2 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
3 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
4 26(c).

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

7 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

9 2.5 Designating Party: a Party or Non-Party that designates information or items that it
10 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
13 manner in which it is generated, stored, or maintained (including, among other things, testimony,
14 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in
15 this matter.

16 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
17 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
18 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3)
19 at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

20 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
21 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-
22 Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

23 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel
24 does not include Outside Counsel of Record or any other outside counsel.

25 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity
26 not named as a Party to this action.

27 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but
28 are retained to represent or advise a party to this action and have appeared in this action on behalf of that

1 party or are affiliated with a law firm which has appeared on behalf of that party.

2 2.12 Party: any party to this action, including all of its officers, directors, employees,
3 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

4 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
5 this action.

6 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
7 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
8 retrieving data in any form or medium) and their employees and subcontractors.

9 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

11 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
12 Party.

13 3. SCOPE

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

25 4. DURATION

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

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

4 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
26 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that
28 contains protected material.

1 A Party or Non-Party that makes original documents or materials available for inspection need not
2 designate them for protection until after the inspecting Party has indicated which material it would like
3 copied and produced. During the inspection and before the designation, all of the material made available
4 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
5 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
6 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
7 producing the specified documents, the Producing Party must affix the appropriate legend
8 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that
9 contains Protected Material.

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

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

27 Transcripts containing Protected Material shall have an obvious legend on the title page that the
28 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including

1 line numbers as appropriate) that have been designated as Protected Material and the level of protection
2 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
3 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
4 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript
6 shall be treated only as actually designated.

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

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

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

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

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

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

28 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or

1 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
2 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
3 persons and under the conditions described in this Order. When the litigation has been terminated, a
4 Receiving Party must comply with the provisions of Section 13 below (FINAL DISPOSITION).

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

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

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

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

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

20 (d) the court and its personnel;

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

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

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

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
4 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
5 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY” only to:

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

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

15 (c) 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 (3)
17 as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

18 (d) the court and its personnel;

19 (e) 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 (f) the author or recipient of a document containing the information or a custodian or other
23 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” Information or Items to Designated House Counsel or Experts.

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28 ¹ This Order contemplates that Designated House Counsel shall not have access to any information or items
designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

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

9 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
10 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been
11 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
12 first must make a written request to the Designating Party that (1) identifies the general categories of
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks
14 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his
15 or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s
16 current employer(s), (5) identifies each person or entity from whom the Expert has received compensation
17 or funding for work in his or her areas of expertise or to whom the expert has provided professional
18 services, including in connection with a litigation, at any time during the preceding five years,² and (6)
19 identifies (by name and number of the case, filing date, and location of court) any litigation in connection
20 with which the Expert has offered expert testimony, including through a declaration, report, or testimony
21 at a deposition or trial, during 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 identified Designated House
24 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection
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27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the
28 Expert should provide whatever information the Expert 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 from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

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

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

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
18 LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that compels
20 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
21 CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

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

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

27 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
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1 Designating Party whose Protected Material may be affected.³

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

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

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

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

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

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

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

25 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
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27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to
28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from
which the subpoena or order issued.

1 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's
 2 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
 3 order, the Receiving Party shall not produce any information in its possession or control that is subject to
 4 the confidentiality agreement with the Non-Party before a determination by the court.⁴ Absent a court
 5 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court
 6 of its Protected Material.

7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 16 MATERIAL

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

25 12. MISCELLANEOUS

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 28 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
2 modification by the court in the future.

3 12.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to
4 object to disclosing or producing any information or item on any ground not addressed in this Protective
5 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the
6 material covered by this Protective Order.

7 12.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws
8 and regulations relating to the export of technical data contained in such Protected Material, including the
9 release of such technical data to foreign persons or nationals in the United States or elsewhere. The
10 Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving
11 Party shall take measures necessary to ensure compliance.

12 12.4 Filing Protected Material. Without written permission from the Designating Party or a
13 court order secured after appropriate notice to all interested persons, a Party may not file in the public
14 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
15 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
16 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule
17 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is
18 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving
19 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the
20 court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
21 Rule 79-5(e)(2) unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

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

1 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
2 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
3 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
4 entitled to 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 product, and
6 consultant and expert work product, even if such materials contain Protected Material. Any such archival
7 copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in
8 Section 4 (DURATION).

9 IT IS SO ORDERED.

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11 DATED: December 3, 2014



12 Honorable Magistrate Judge Donna M. Ryu
13 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of AAT Bioquest, Inc. v. Texas Fluorescence Laboratories, Inc., Case No. 4:14-3909 (DMR). I agree to comply with and to be bound by all the terms of this 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 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 Protective Order, even if such enforcement proceedings occur after termination of this action.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]