

1 2.3 “Confidential” Information or Items: information (regardless of how generated, stored
2 or maintained) or tangible things that qualify for protection under standards developed under Fed. R.
3 Civ. P. 26(c).

4 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
5 sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would
6 create a substantial risk of serious injury that could not be avoided by less restrictive means.
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8 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material
11 in this action.

12 2.7 Designating Party: a Party or non-party that designates information or items that it
13 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential –
14 Attorneys’ Eyes Only.”
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16 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
17 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

18 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to
19 represent or advise a Party in this action.
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21 2.10 House Counsel: attorneys who are employees of a Party.

22 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
23 support staffs).

24 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the
25 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
26 consultant in this action and who is not a past or a current employee of a Party or of a competitor of
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1 a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a
2 competitor of a Party's. This definition includes a professional jury or trial consultant retained in
3 connection with this litigation.

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

8 **3. SCOPE**

9 The protections conferred by this Stipulation and Order cover not only Protected Material (as
10 defined above), but also any information copied or extracted therefrom, as well as all copies,
11 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
12 parties or counsel to or in court or in other settings that might reveal Protected Material.

13 **4. DURATION**

14 Even after the termination of this litigation, the confidentiality obligations imposed by this
15 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
16 otherwise directs.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
19 non-party that designates information or items for protection under this Order must take reasonable
20 care to limit any such designation to specific material that qualifies under the appropriate standards.
21 Given the complexity of this litigation and the potential that a party or non-party will be required to
22 produce significant amounts of documents, in order to expedite production of those documents, the
23 Parties may in good faith liberally designate material for protection. Nonetheless, a Designating
24 Party should take care to designate for protection only those parts of material, documents, items, or
25 oral or written communications that qualify – so that other portions of the material, documents,
26 items, or communications for which protection is not warranted are not swept unjustifiably within
27 the ambit of this Order.

1 Mass, indiscriminate, or routinized designations should be avoided. Designations that are
2 shown to be clearly unjustified, or that have been made for an improper purpose (*e.g.*, to
3 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses
4 and burdens on other parties), expose the Designating Party to sanctions. Objections to designations
5 solely on grounds that such designations do not comply with this section 5.1 shall be made in good
6 faith and only if such designations are clearly unjustified and made for an improper purpose.

7 If it comes to a Party's or a non-party's attention that information or items that it designated
8 for protection do not qualify for protection at all, or do not qualify for the level of protection initially
9 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
10 mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
12 (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
13 that qualifies for protection under this Order must be clearly so designated before the material is
14 disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (apart from transcripts of depositions or
17 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in the margin of each page that
19 contains protected material. If only a portion or portions of the material on a page qualifies for
20 protection, the Producing Party also must reasonably and clearly identify the protected portion(s)
21 (*e.g.*, by making appropriate markings in the margins) and must specify, for each portion, the level
22 of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
23 ATTORNEYS' EYES ONLY"). A Party or non-party that makes original documents or materials
24 available for inspection need not designate them for protection until after the inspecting Party has
25 indicated which material it would like copied and produced. During the inspection and before the
26 designation, all of the material made available for inspection shall be deemed "HIGHLY
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1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
2 documents it wants copied and produced, the Producing Party must determine which documents, or
3 portions thereof, qualify for protection under this Order, then, before producing the specified
4 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) in the margin of each page that
6 contains Protected Material. If only a portion or portions of the material on a page qualifies for
7 protection, the Producing Party also must reasonably and clearly identify the protected portion(s)
8 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level
9 of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY”).

11 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
12 the Party or non-party offering or sponsoring the testimony identify on the record, before the close of
13 the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
14 of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
15 When it is impractical to identify separately each portion of testimony that is entitled to protection,
16 and when it appears that substantial portions of the testimony may qualify for protection, the Party or
17 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
18 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions
19 of the testimony as to which protection is sought and to specify the level of protection being asserted
20 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only
21 those portions of the testimony that are appropriately designated for protection within the days shall
22 be covered by the provisions of this Stipulated Protective Order. Transcript pages containing
23 Protected Material must be separately bound by the court reporter, who must affix to the top of each
24 such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
25 ONLY,” as instructed by the Party or non-party offering or sponsoring the witness or presenting the
26 testimony.

1 (c) for information produced in some form other than documentary, and for any
2 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
3 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information
5 or item warrant protection, the Producing Party, to the extent practicable, shall reasonably identify
6 the protected portions, specifying whether they qualify as “Confidential” or as “Highly Confidential
7 – Attorneys’ Eyes Only.”

8 (d) any document which contains “Confidential” or “Highly Confidential –
9 Attorneys’ Eyes Only” information that is filed with the Court pursuant to permission properly
10 obtained under Civil Local Rule 79-5, shall be placed in a sealed envelope, which shall be marked
11 with the caption of this action, the title of the document to be filed, and a legend substantially similar
12 to the following:

13 *DOCUMENT SUBMITTED UNDER SEAL*

14 CONFIDENTIAL – Subject to Protective Order

15 This envelope is sealed pursuant to an Order of the Court, contains Confidential information
16 and is not to be opened or the contents revealed, except by the Order of the Court or
agreement by the parties.

17 No documents containing “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”
18 information shall be filed on the Court’s Electronic Case Filing System without the prior written
19 consent of the Producing Party.
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21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
22 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
23 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
24 this Order for such material. If material is appropriately designated as “Confidential” or “Highly
25 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
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1 on timely notification of the designation, must make reasonable efforts to assure that the material is
2 treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. If any party objects to a designation of information as
5 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only,” the party shall so state the
6 objection on the record at a deposition in which such designation was made or by giving written
7 notice to the Producing Party identifying the information to which the objection is directed. The
8 parties shall meet and confer in good faith to attempt to resolve all objections by agreement. If any
9 objections cannot be resolved by agreement within ten (10) business days from when they are first
10 made, the party objecting to the designation may file a motion with the court no later than ten (10)
11 business day from the expiration of such earlier ten-day period challenging the designation. The
12 proponent of the “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” designation shall
13 bear the burden of persuasion that there is good cause for the information to have such protection.
14 Disputed information shall remain “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”
15 information under the terms of this Stipulation and Order until the Court rules on such motion or the
16 Producing Party withdraws such designation in writing.

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
18 confidentiality designation, including any challenge to the scope of the designations under section
19 5.1 hereto, must do so in good faith and must begin the process by conferring directly (in voice to
20 voice dialogue; other forms of communication are not sufficient) with counsel for the Designating
21 Party. In conferring, the challenging Party must explain the basis for its belief that the
22 confidentiality designation was not proper and must give the Designating Party an opportunity to
23 review the designated material, to reconsider the circumstances, and, if no change in designation is
24 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next
25 stage of the challenge process pursuant to section 6.1 hereto only if it has engaged in this meet and
26 confer process first.

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1 6.3 Judicial Intervention. A Party that elects to challenge a confidentiality designation
2 after considering the justification offered by the Designating Party may file and serve a motion under
3 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the
4 challenged material and sets forth in detail the basis for the challenge. Each such motion must be
5 accompanied by a competent declaration that affirms that the movant has complied with the meet
6 and confer requirements imposed in the preceding sections 6.1 and 6.2 and that sets forth with
7 specificity the justification for the confidentiality designation that was given by the Designating
8 Party in the meet and confer dialogue. The burden of persuasion in any such challenge proceeding
9 shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to
10 afford the material in question the level of protection to which it is entitled under the Producing
11 Party’s designation.

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

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
14 produced by another Party or by a non-party in connection with this case only for prosecuting,
15 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
16 the categories of persons and under the conditions described in this Order. When the litigation has
17 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
18 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons authorized under
20 this Order.

21 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
22 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated CONFIDENTIAL only to:

- 24 (a) the Receiving Party’s Outside Counsel of record in this action, including all
25 employees of said Counsel;

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1 (b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
3 the “Agreement to Be Bound by Protective Order” (Exhibit A);

4 (c) Experts of the Receiving Party to whom disclosure is reasonably necessary for
5 this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters, their staffs, and Professional Vendors to whom disclosure is
8 reasonably necessary for this litigation;

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

14 (g) the author of the document or the original source of the information.

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

19 (a) the Receiving Party’s Outside Counsel of record in this action, including all
20 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
21 litigation;

22 (b) Experts of the Receiving Party to whom disclosure is reasonably necessary for
23 this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

24 (c) the Court and its personnel;

25 (d) court reporters, their staffs, and Professional Vendors to whom disclosure is
26 reasonably necessary for this litigation; and

1 (e) the author of the document or the original source of the information.

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

4 If a Receiving Party is served with a subpoena or an order issued in other litigation that
5 would compel disclosure of any information or items designated in this action as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
7 Receiving Party must so notify the Designating Party, in writing (by fax or electronic mail, if
8 possible) immediately and in no event more than three business days after receiving the subpoena or
9 order. Such notification must include a copy of the subpoena or court order. The Receiving Party
10 also must immediately inform in writing the Party who caused the subpoena or order to issue in the
11 other litigation that some or all the material covered by the subpoena or order is the subject of this
12 Protective Order and deliver a copy of this Stipulated Protective Order promptly to the Party in the
13 other action that caused the subpoena or order to issue. The purpose of imposing these duties is to
14 alert the interested parties to the existence of this Protective Order and to afford the Designating
15 Party in this case an opportunity to protect its confidentiality interests in the court from which the
16 subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking
17 protection in that court of its confidential material - and nothing in these provisions should be
18 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
19 from another court.

20 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

1 that is attached hereto as Exhibit A, and (e) request that such person or persons return all copies of
2 the Protected Material.

3 **10. FILING PROTECTED MATERIAL**

4 Without written permission from the Designating Party or a court order secured after
5 appropriate notice to all interested persons, a Party other than the Designating Party may not file in
6 the public record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5.

8 **11. FINAL DISPOSITION**

9 Unless otherwise ordered or agreed in writing by the Producing Party, within 120 days after
10 the final termination of this action, each Receiving Party must return all Protected Material to the
11 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
12 compilations, summaries or any other form of reproducing or capturing any of the Protected
13 Material. With permission in writing from the Designating Party, the Receiving Party may destroy
14 some or all of the Protected Material instead of returning it. Whether the Protected Material is
15 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party
16 (and, if not the same person or entity, to the Designating Party) by the 120 day deadline that
17 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed
18 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,
19 summaries or other forms of reproducing or capturing any of the Protected Material.
20 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
21 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such
22 materials contain Protected Material. Any such archival copies that contain or constitute Protected
23 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

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1 **12. MISCELLANEOUS**

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

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

9 The parties to the above-captioned matter, through their respective counsel, expressly agree
10 to the terms of this Stipulation and Order and consent to its form and entry.

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12 Dated: November ____, 2008

13 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:**

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[SIGNATURE PAGE TO FOLLOW]

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Counsel for Defendants

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19 **PURSUANT TO STIPULATION, IT IS SO ORDERED** in accordance with the foregoing
20 stipulation.

21 11/24/08
22 Date



~~James Ware~~
~~United States District Judge~~

Richard Seeborg
United States Magistrate Judge

1 **EXHIBIT A**

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3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4 I _____ of _____, declare
5 under penalty of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Northern District of California on
7 _____ [date] in the case of *In re Impax Laboratories, Inc. Securities Litigation*, Master File No.
8 C-04-4802-JW. I agree to comply with and to be bound by all the terms of this Stipulated Protective
9 Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
11 information or item that is subject to this Stipulated Protective Order to any person or entity except
12 in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action. I hereby
16 appoint _____ [print or type full name] of _____
17 [print or type full address and telephone number] as my California agent for service of process in
18 connection with this action or any proceedings related to enforcement of this Stipulated Protective
19 Order.

20 Date: _____

21 City and State where sworn and signed:)
22 Printed name:)
23 [printed name])

24 Signature:

25 By: _____