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**** E-filed May 5, 2011 ****

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 10 LISA C. BERRY

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**

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 16 SECURITIES AND EXCHANGE
 COMMISSION,
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 Plaintiff,
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 vs.
 19 LISA C. BERRY,
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 Defendant.

Case No. C 07-04431 RMW (HRL)
JOINT STIPULATION AND ~~PROPOSED~~
ORDER CONCERNING EXPERT
DISCOVERY PROTOCOLS
 [DISCOVERY MATTER]
 Judge: Magistrate Judge Howard R. Lloyd
 Ctrm: 2, 5th Floor

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 JOINT STIPULATION AND ~~PROPOSED~~ ORDER
 CONCERNING EXPERT DISCOVERY PROTOCOLS
 CASE NO. CV 07-04431-RMW (HRL)

1 WHEREAS, the parties have retained various expert witnesses to testify in the above-
2 captioned action (the "Expert" or "Experts");

3 WHEREAS, the period in which to conduct discovery in this action has commenced, and
4 the parties desire to establish the following protocol to govern Expert witness discovery in this
5 action pursuant to the Federal Rules of Civil Procedure, Local Rules of this Court, and any other
6 applicable rules;

7 WHEREAS, as part of the protocol, the parties agree to produce the following documents
8 and materials (collectively, the "Expert Materials") without need for service of subpoenae or
9 requests for production: the materials that the Experts considered in forming their opinions
10 (including, to the extent readily accessible, treatises and other source materials, even if publicly
11 available); transcripts of prior testimony, in deposition or at trial, (a) in matters concerning
12 employee stock options, or (b) in matters for which the Experts provided an opinion concerning
13 the element of materiality, and in which the Experts were retained to provide opinions; the
14 Experts' prior reports disclosed (a) in matters concerning employee stock options, or (b) in
15 matters for which the Experts provided an opinion concerning the element of materiality, and in
16 which the Experts were retained to provide opinions; and documents sufficient to determine the
17 amount of time for which the Experts have charged, or intend to charge, the parties for their work
18 in this matter during the period up to and including April 29, 2011; and

19 WHEREAS, to the extent that the Expert Materials are the subject to a protective order
20 entered in another matter, are otherwise precluded from disclosure, or are withheld from
21 production for some other reason, the parties shall identify each item, including a reasonable
22 description of the item, the caption of the other matter (and the case number, as applicable), and
23 the reason why it cannot be produced, on a production log along with the remaining Expert
24 Materials. Expert Materials shall not include items produced in the course of fact discovery in
25 this action.

26 IT IS HEREBY STIPULATED AS FOLLOWS:

27 1. For purposes of expert discovery, the parties agree to use Rules 26(a) and (b) of
28 the Federal Rules of Civil Procedure as effective December 1, 2010.

1 2. Each party shall provide a copy of all Expert Materials to the other party without
2 further notice, subpoena, or request. The deadline for a party to comply with the obligations of
3 this paragraph and to produce copies of Expert Materials is the close of business on Monday,
4 May 9, 2011.

5 3. By entering into this Stipulation, the parties agree to forgo the right to propound
6 discovery requests, by subpoena or otherwise, prior to deposition of the Experts, for additional
7 documents or materials to which the parties might be entitled under the Federal Rules of Civil
8 Procedure and the Local Rules. The parties, however, reserve the right to propound discovery
9 requests, by subpoena or otherwise, following deposition of each Expert to the extent permitted
10 by the Federal Rules of Civil Procedure and the Local Rules.

11 4. To the extent that a party's Expert Materials contain exhibits, information, or data
12 processed or modeled by computer at the direction of an Expert in the course of forming the
13 Expert's opinions, machine readable copies of the data along with the appropriate computer
14 programs and instructions shall be produced, provided, however, that the following need not be
15 produced: (a) computer programs that are reasonably commercially available; and (b) databases
16 and computer programs that are used in the ordinary course of the expert's or a party's business
17 and that are not practicable to copy, or are copyright protected, so long as reasonable access is
18 timely offered for purposes of, among other things, replication and analysis of disclosed results.

19 5. Documents required to be produced may be redacted to exclude all but
20 the materials required to be disclosed.

21 IT IS SO STIPULATED.

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SECURITIES AND EXCHANGE COMMISSION

/s/ Robert L. Tashjian

Dated: May 4, 2011

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Dated: May 4, 2011

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Attorneys for Defendant Lisa Berry


I, Nancy E. Harris, am the ECF User whose User ID and password are being used to file this Stipulation. In compliance with General Order 45, X.B., I hereby attest that the above-listed signatories have concurred in this filing.

* * *

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: May 5, 2011



Hon. Howard R. Lloyd
United States Magistrate Judge