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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAQING (JACKIE) ZHANG,
Plaintiff,
vs.
JOHNSON & JOHNSON, INC.; JOHNSON
& JOHNSON INTERNATIONAL and
DOES I-X,
Defendants.

Case No. CV10-1717 JW-~~XXX~~PSG

STIPULATED PROTECTIVE ORDER
FOR STANDARD LITIGATION

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. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that 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. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be

1 followed and the standards that will be applied when a party seeks permission from the court to
2 file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
7 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
8 Rule of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and House
10 Counsel (as well as their support staff).

11 2.4 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

13 2.5 Disclosure or Discovery Material: all items or information, regardless of
14 the medium or manner in which it is generated, stored, or maintained (including, among other
15 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
16 or responses to discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
19 witness or as a consultant in this action.

20 2.7 House Counsel: attorneys who are employees of a party to this action.
21 House Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or
23 other legal entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
25 this action but are retained to represent or advise a party to this action and have appeared in this
26 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
27 that party.

28 2.10 Party: any party to this action, including all of its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their support
2 staffs).

3 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
4 Discovery Material in this action.

5 2.12 Professional Vendors: persons or entities that provide litigation support
6 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
7 organizing, storing, or retrieving data in any form or medium) and their employees and
8 subcontractors.

9 2.13 Protected Material: any Disclosure or Discovery Material that is
10 designated as "CONFIDENTIAL."

11 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
12 from a Producing Party.

13 3. SCOPE

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

27 4. DURATION

28 Even after final disposition of this litigation, the confidentiality obligations

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

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or Non-Party that designates information or items for protection under this Order
10 must take care to limit any such designation to specific material that qualifies under the
11 appropriate standards. The Designating Party must designate for protection only those parts of
12 material, documents, items, or oral or written communications that qualify. - so that other
13 portions of the material, documents, items, or communications for which protection is not
14 warranted are not swept unjustifiably within the ambit of this Order.

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

19 If it comes to a Designating Party's attention that information or items that it
20 designated for protection do not qualify for protection, that Designating Party must promptly
21 notify all other Parties that it is withdrawing the mistaken designation.

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

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but
28 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing

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

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

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
17 the Designating Party identify on the record, before the close of the deposition, hearing, or other
18 proceeding, all protected testimony.

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

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive the
26 Designating Party's right to secure protection under this Order for such material. Upon timely
27 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
28 material is treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
5 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
6 right to challenge a confidentiality designation by electing not to mount a challenge promptly
7 after the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process by providing written notice of each designation it is challenging and
10 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been
11 made, the written notice must recite that the challenge to confidentiality is being made in
12 accordance with this specific paragraph of the Protective Order. The parties shall attempt to
13 resolve each challenge in good faith and must begin the process by conferring directly (in voice
14 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
15 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
16 confidentiality designation was not proper and must give the Designating Party an opportunity to
17 review the designated material, to reconsider the circumstances, and, if no change in designation
18 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
19 the next stage of the challenge process only if it has engaged in this meet and confer process first
20 or establishes that the Designating Party is unwilling to participate in the meet and confer process
21 in a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
23 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
24 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
25 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
26 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
27 accompanied by a competent declaration affirming that the movant has complied with the meet
28 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to

1 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
2 shall automatically waive the confidentiality designation for each challenged designation. In
3 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
4 time if there is good cause for doing so, including a challenge to the designation of a deposition
5 transcript or any portions thereof. Any motion brought pursuant to this provision must be
6 accompanied by a competent declaration affirming that the movant has complied with the meet
7 and confer requirements imposed by the preceding paragraph.

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

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this case only for
18 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
19 disclosed only to the categories of persons and under the conditions described in this Order.
20 When the litigation has been terminated, a Receiving Party must comply with the provisions of
21 section 13 below (FINAL DISPOSITION).

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

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
27 disclose any information or item designated "CONFIDENTIAL" only to:

28 (a) the Receiving Party's Counsel, as well as employees of said Counsel;

1 (b) other counsel retained by the Receiving Party, provided that such counsel has
2 signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A);

3 (c) the officers, directors, and employees of the Receiving Party or its subsidiaries
4 or affiliates to whom disclosure is reasonably necessary for this litigation;

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

8 (e) the court and its personnel;

9 (f) court reporters and their staff, professional jury or trial consultants, mock
10 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
11 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (g) witnesses in the action to whom disclosure is reasonably necessary and who
13 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
14 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
15 testimony or exhibits to depositions that reveal Protected Material must be separately bound by
16 the court reporter and may not be disclosed to anyone except as permitted under this Stipulated
17 Protective Order.

18 (h) the author or recipient of a document containing the information or a custodian
19 or other person who otherwise possessed or knew the information.

20 7.3. Nothing in this Protective Order restricts the use of disclosure by Plaintiff
21 or by Defendant or an affiliate or subsidiary of Defendant, of its own confidential information.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
23 OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that
25 compels disclosure of any information or items designated in this action as "CONFIDENTIAL,"
26 that Party must:

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

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

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

7 If the Designating Party timely seeks a protective order, the Party served with the
 8 subpoena or court order shall not produce any information designated in this action as
 9 "CONFIDENTIAL" before a determination by the court from which the subpoena or order
 10 issued, unless the Party has obtained the Designating Party's permission. The Designating Party
 11 shall bear the burden and expense of seeking protection in that court of its confidential material
 12 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
 13 Party in this action to disobey a lawful directive from another court.

14 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
 15 PRODUCED IN THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a Non-
 17 Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-
 18 Parties in connection with this litigation is protected by the remedies and relief provided by this
 19 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
 20 additional protections.

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

- 25 1. promptly notify in writing the Requesting Party and the Non-Party
- 26 that some or all of the information requested is subject to a confidentiality agreement with a Non-
- 27 Party;
- 28 2. promptly provide the Non-Party with a copy of the Stipulated

1 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
2 description of the information requested; and

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

5 (c) If the Non-Party fails to object or seek a protective order from this court
6 within 14 days of receiving the notice and accompanying information, the Receiving Party may
7 produce the Non-Party's confidential information responsive to the discovery request. If the
8 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
9 in its possession or control that is subject to the confidentiality agreement with the Non-Party
10 before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall
11 bear the burden and expense of seeking protection in this court of its Protected Material.

12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
21 PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other protection, the
24 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
25 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
26 an e-discovery order that provides for production without prior privilege review. Pursuant to
27

28 ¹ 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 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect
2 of disclosure of a communication or information covered by the attorney-client privilege or work
3 product protection, the parties may incorporate their agreement in the stipulated protective order
4 submitted to the court.

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
7 to seek its modification by the court in the future.

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

13 12.3 Filing Protected Material. Without written permission from the
14 Designating Party or a court order secured after appropriate notice to all interested persons, a
15 Party may not file in the public record in this action any Protected Material. A Party that seeks to
16 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
17 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
19 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
20 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
21 Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
22 the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-
23 5(e) unless otherwise instructed by the court.

24 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action,
25 as defined in paragraph 4, each Receiving Party must return all Protected Material to the
26 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
27 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
28 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,

1 the Receiving Party must submit a written certification to the Producing Party (and, if not the
 2 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
 3 category, where appropriate) all the Protected Material that was returned or destroyed and
 4 (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,
 5 summaries or any other format reproducing or capturing any of the Protected Material.
 6 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
 7 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
 8 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
 9 work product, even if such materials contain Protected Material. Any such archival copies that
 10 contain or constitute Protected Material remain subject to this Protective Order as set forth in
 11 Section 4 (DURATION).

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14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 DATED: 3/4/11 [Signature]
Attorneys for Plaintiff

16
17 DATED: [Signature]
Attorneys for Defendant

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19
20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21
22 DATED: March 11, 2011 Paul S. Grewal
23 ~~Director of Judge~~ Paul S. Grewal
United States ~~District~~ Magistrate Judge