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 17 STRYKER SALES CORPORATION

18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA

20 JOHN HOPKINS, BRODY  
 21 PUCKETT, on behalf of themselves,  
 22 individually, and all other similarly  
 situated,

23 Plaintiffs,

24 v.

25 STRYKER SALES CORPORATION,  
 26 a Michigan Corporation; and DOES 1  
 to 100, inclusive,

27 Defendants.  
28

Case No. CV-11-02786 LHK

**STIPULATED PROTECTIVE  
 ORDER FOR LITIGATION  
 INVOLVING PATENTS, HIGHLY  
 SENSITIVE CONFIDENTIAL  
 INFORMATION AND/OR TRADE  
 SECRETS**

(MODIFIED BY THE COURT)

[Re: Docket No. 17]

1           1.    PURPOSES AND LIMITATIONS

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

15           2.    DEFINITIONS

16           2.1    Challenging Party: a Party or Non-Party that challenges the  
17 designation of information or items under this Order.

18           2.2    “CONFIDENTIAL” Information or Items: information  
19 (regardless of how it is generated, stored or maintained) or tangible things that qualify  
20 for protection under Federal Rule of Civil Procedure 26(c)

21           2.3    Counsel (without qualifier): Outside Counsel of Record and  
22 House Counsel (as well as their support staff).

23           2.4    Designated House Counsel: House Counsel who seek access to  
24 “HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY” information in this matter.

25           2.5    Designating Party: a Party or Non-Party that designates  
26 information or items that it produces in disclosures or in responses to discovery as  
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS” EYES  
28 ONLY”

1           2.6 Disclosure or Discovery Material: all items or information,  
2 regardless of the medium or manner in which it is generated, stored, or maintained  
3 (including, among other things, testimony, transcripts, and tangible things), that are  
4 produced or generated in disclosures or responses to discovery in this matter.

5           2.7 Expert: a person with specialized knowledge or experience in a  
6 matter pertinent to the litigation who (1) has been retained by a Party or its counsel to  
7 serve as an expert witness or as a consultant in this action, (2) is not a past or current  
8 employee of a Party or of a Party's competitor, and (3) at the time of retention, is not  
9 anticipated to become an employee of a Party or of a Party's competitor.

10           2.8 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
11 ONLY” Information or Items: extremely sensitive “Confidential Information or  
12 Items,” disclosure of which to another Party or Non-Party would create a substantial  
13 risk of serious harm that could not be avoided by less restrictive means.

14           2.9 House Counsel: attorneys who are employees of a party to this  
15 action. House Counsel does not include Outside Counsel of Record or any other  
16 outside counsel.

17           2.10 Non-Party: any natural person, partnership, corporation,  
18 association, or other legal entity not named as a Party to this action.

19           2.11 Outside Counsel of Record: attorneys who are not employees of a  
20 party to this action but are retained to represent or advise a party to this action and have  
21 appeared in this action on behalf of that party or are affiliated with a law firm which  
22 has appeared on behalf of that party.

23           2.12 Party: any party to this action, including all of its officers,  
24 directors, employees, consultants, retained experts, and Outside Counsel of Record  
25 (and their support staffs).

26           2.13 Producing Party: a Party or Non-Party that produces  
27 Disclosure or Discovery Material in this action.

28           2.14 Professional Vendors: persons or entities that provide litigation

1 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
2 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
3 and their employees and subcontractors.

4 2.15 Protected Material: any Disclosure or Discovery Material that  
5 is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL —  
6 ATTORNEYS' EYES ONLY.”

7 2.16 Receiving Party: a Party that receives Disclosure or Discovery  
8 Material from a Producing Party.

9 3. SCOPE

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

24 4. DURATION

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

1 with or without prejudice; and (2) final judgment herein after the completion and  
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
3 including the time limits for filing any motions or applications for extension of time  
4 pursuant to applicable law. **For a period of six months after final disposition of this  
litigation, this court will retain jurisdiction to enforce the terms of this order.**

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for**  
7 **Protection.**

8 Each Party or Non-Party that designates information or items for protection  
9 under this Order must take care to limit any such designation to specific material that  
10 qualifies under the appropriate standards. To the extent it is practical to do so, the  
11 Designating Party must designate for protection only those parts of material,  
12 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.  
16 Designations that are shown to be clearly unjustified or that have been made for an  
17 improper purpose (e.g., to unnecessarily encumber or retard the case development  
18 process or to impose unnecessary expenses and burdens on other parties) expose the  
19 Designating Party to sanctions.

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

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

28 Designation in conformity with this Order requires:

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

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

23 (b) for testimony given in deposition or in other pretrial or trial  
24 proceedings, that the Designating Party identify on the record, before the close of the  
25 deposition, hearing, or other proceeding, all protected testimony and specify the level of  
26 protection being asserted. When it is impractical to identify separately each portion of  
27 testimony that is entitled to protection and it appears that substantial portions of the  
28 testimony may qualify for protection, the Designating Party may invoke on the record

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

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

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

27 (c) for information produced in some form other than documentary and for  
28 any other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information or item is stored the  
2 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
3 ONLY”. If only a portion or portions of the information or item warrant protection, the  
4 Producing Party, to the extent practicable, shall identify the protected portion(s) and  
5 specify the level of protection being asserted.

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

## 12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

19 6.2 Meet and Confer. The Challenging Party shall initiate the  
20 dispute resolution process by providing written notice of each designation it is  
21 challenging and describing the basis for each challenge. To avoid ambiguity as to whether  
22 a challenge has been made, the written notice must recite that the challenge to  
23 confidentiality is being made in accordance with this specific paragraph of the  
24 Protective Order. The parties shall attempt to resolve each challenge in good faith and  
25 must begin the process by conferring directly (in voice to voice dialogue; other forms of  
26 communication are not sufficient) within 14 days of the date of service of notice. In  
27 conferring, the Challenging Party must explain the basis for its belief that the  
28 confidentiality designation was not proper and must give the Designating Party an



1 opportunity to review the designated material, to reconsider the circumstances, and, if no  
2 change in designation is offered, to explain the basis for the chosen designation. A  
3 Challenging Party may proceed to the next stage of the challenge process only if it has  
4 engaged in this meet and confer process first or establishes that the Designating Party is  
5 unwilling to participate in the meet and confer process in a timely manner.

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

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

1           7.    ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

11          7.2   Disclosure of “CONFIDENTIAL” Information or Items. Unless  
12 otherwise ordered by the court or permitted in writing by the Designating Party, a  
13 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
14 only to:

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

19           (b) the officers directors, and employees (including House Counsel) of  
20 the Receiving Party to whom disclosure is reasonably necessary for this litigation and  
21 who have signed the ‘Acknowledgement and Agreement to Be Bound’ (Exhibit A);

22           (c) Experts (as defined in this Order) of the Receiving Party to whom  
23 disclosure is reasonably for this litigation and who have signed the Acknowledgement  
24 and Agreement to Be Bound’ (Exhibit A);

25           (d) the court and its personnel;

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

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

7 (g) the author or recipient of a document containing the information or a  
8 custodian or other personal who otherwise possessed or knew the information.

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’  
10 EYES ONLY” Unless otherwise ordered by the court or permitted in writing by the  
11 Designating Party, a Receiving Party may disclose any information or item designated  
12 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”:

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

17 (b) Designated House Counsel of the Receiving Party (1) who has no  
18 involvement in competitive decision-making, (2) to whom disclosure is reasonably  
19 necessary for this litigation, (3) who has signed the "Acknowledgment and Agreement  
20 to Be Bound" (Exhibit A), and (4) as to whom the procedures set forth in paragraph  
21 7.4(a)(1), below, have been followed;

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial  
28 consultants, and Professional Vendors to whom disclosure is reasonably necessary

1 for this litigation and who have signed the "Acknowledgment and Agreement to Be  
2 Bound" (Exhibit A); and

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

5 7.4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" –  
6 ATTORNEYS' EYES ONLY" information or items may be disclosed to an Expert  
7 without disclosure of the identity of the Expert as long as the Expert is not a current  
8 officer, director, or employee of a competitor of a Party or anticipated to become one.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
10 PRODUCED IN OTHER LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation  
12 that compels disclosure of any information or items designated in this action as  
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY"  
14 that Party must:

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served with  
24 the subpoena or court order shall not produce any information designated in this  
25 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS'  
26 EYES ONLY" before a determination by the court from which the subpoena or order  
27 issued, unless the Party has obtained the Designating Party's permission. The  
28 Designating Party shall bear the burden and expense of seeking protection in that court

1 of its confidential material — and nothing in these provisions should be construed as  
2 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive  
3 from another court.

4 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 10. INADVERTENT PRODUCTION OF PRIVILEGED OR  
14 OTHERWISE PROTECTED MATERIAL

15 “If information is produced in discovery that is subject to a claim of privilege  
16 or of protection as a trial-preparation material, the party making the claim may notify  
17 any party that received the information of the claim and the basis for it. After being  
18 notified, a party must promptly return or destroy the specified information and any  
19 copies it has and may not sequester, use or disclose the information until the claim is  
20 resolved. This includes a restriction against presenting the information to the court  
21 for a determination of the claim. This provision is not intended to modify whatever  
22 procedure may be established in an e-discovery order that provides for production  
23 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),  
24 insofar as the parties reach an agreement on the effect of disclosure of a communication  
25 or information covered by the attorney-client privilege or work product protection, the  
26 parties may incorporate their agreement in the stipulated protective order submitted to  
27 the court.  
28

1           11.    MISCELLANEOUS

2                   11.1 Right to Further Relief. Nothing in this Order abridges the right  
3 of any person to seek its modification by the court in the future.

4                   11.2 Right to Assert Other Objections. By stipulating to the entry of  
5 this Protective Order no Party waives any right it otherwise would have to object to  
6 disclosing or producing any information or item on any ground not addressed in this  
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
8 ground to use in evidence of any of the material covered by this Protective Order.

9                   11.3 Filing Protected Material. Without written permission from the  
10 Designating Party or a court order secured after appropriate notice to all interested  
11 persons, a Party may not file in the public record in this action any Protected Material. A  
12 Party that seeks to file under seal any Protected Material must comply with Civil  
13 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court  
14 order authorizing the sealing of the specific Protected Material at issue. Pursuant to  
15 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the  
16 Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
17 entitled to protection under the law. If a Receiving Party's request to file Protected  
18 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the  
19 Receiving Party may file the Protected Material in the public record pursuant to Civil  
20 Local Rule 79-5(e) unless otherwise instructed by the court.

21           12.    FINAL DISPOSITION

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

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

11  
12 DATED: October 18, 2011 MARLIN & SALTZMAN, LLP

13  
14 By: /s/ Dale A. Anderson  
15 LOUIS M. MARLIN,  
16 DALE A. ANDERSON  
LYNN P. WHITLOCK

17 Attorneys for Plaintiffs  
18 JOHN HOPKINS AND BRODY  
PUCKETT

19 DATED: October 18, 2011 LITTLER MENDELSON  
20 A Professional Corporation

21 By: /s/ Lena K. Sims  
22 THEODORA R. LEE  
23 LENA K. SIMS

24 Attorneys for Defendant  
25 STRYKER SALES CORPORATION

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1 AS MODIFIED BY THE COURT,  
2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

3 DATED: October 19, 2011

4   
5 HONORABLE ~~LUCY H. LOH~~ HOWARD R. LLOYD  
6 UNITED STATES ~~DISTRICT~~ JUDGE  
7 MAGISTRATE  
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**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

1  
2 I, \_\_\_\_\_ of [print or type full name],  
3 of \_\_\_\_\_  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read  
5 in its entirety and understand the Stipulated Protective Order that was issued by the United  
6 States District Court for the Northern District of California on \_\_\_\_\_ in the  
7 case of *John Hopkins and Brody Puckett, et al. v. Stryker Sales Corporation*, U.S.  
8 District Court Case No. CV-11-02786-LHK. I agree to comply with and to be bound  
9 by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
10 failure to so comply could expose me to sanctions and punishment in the nature of  
11 contempt. I solemnly promise that I will not disclose in any manner any information or  
12 item that is subject to this Stipulated Protective Order to any person or entity except in  
13 strict compliance with the provisions of this Order.

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

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

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_  
25 [printed name]

26 Signature: \_\_\_\_\_  
27 [signature]

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