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A limited liability partnership formed in the State of Delaware

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12 Attorneys for Defendants  
 GLAXO GROUP LIMITED,  
 13 GLAXOSMITHKLINE LLC, and  
 GLAXOSMITHKLINE HOLDINGS  
 14 (AMERICAS) INC.

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA

17  
 18 XENOPORT, INC., a Delaware corporation,  
 Plaintiff,

19 vs.

20  
 21 GLAXO GROUP LIMITED, a U.K. corporation,  
 and GLAXOSMITHKLINE, LLC, a Delaware  
 22 limited liability company, and  
 GLAXOSMITHKLINE HOLDINGS  
 23 (AMERICAS) INC., a Delaware corporation,  
 24 Defendants.

Case No. 5:12-cv-01544-EJD-PSG

**STIPULATED PROTECTIVE ORDER**

Compl. Filed: February 24, 2012

1     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures  
7 or responses to discovery and that the protection it affords from public disclosure and use extends  
8 only to the limited information or items that are entitled to confidential treatment under the  
9 applicable legal principles. The parties further acknowledge, as set forth in Section 12.4, below, that  
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
11 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the  
12 standards that will be applied when a party seeks permission from the court to file material under  
13 seal.

14     DEFINITIONS

15           2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
16 information or items under this Order.

17           2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
19 Civil Procedure 26(c).

20           2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
21 as their support staff).

22           2.4     Designated House Counsel: House Counsel who seek access to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24           2.5     Designating Party: a Party or Non-Party that designates information or items that it  
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

27           2.6     Disclosure or Discovery Material: all items or information, regardless of the medium  
28 or manner in which it is generated, stored, or maintained (including, among other things, testimony,

1 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
2 discovery in this matter.

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

8 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
9 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or  
10 Non-Party would create a substantial risk of serious harm that could not be avoided by less  
11 restrictive means.

12 2.9 House Counsel: attorneys and supporting paralegals who are employees of a party to  
13 this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
15 entity not named as a Party to this action.

16 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action  
17 but are retained to represent or advise a party to this action and have appeared in this action on  
18 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

19 2.12 Party: any party to this action, including all of its officers, directors, employees,  
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
22 Material in this action.

23 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
24 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
25 storing, or retrieving data in any form or medium) and their employees and subcontractors.

26 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
27 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
28

1           2.16   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
2 Producing Party.

3           3.       SCOPE

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

16          4.       DURATION

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

23          5.       DESIGNATING PROTECTED MATERIAL

24          5.1       Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
25 Non Party that designates information or items for protection under this Order must take care to limit  
26 any such designation to specific material that qualifies under the appropriate standards. To the extent  
27 it is practical to do so, the Designating Party must designate for protection only those parts of  
28 material, documents, items, or oral or written communications that qualify – so that other portions of

1 the material, documents, items, or communications for which protection is not warranted are not  
2 swept unjustifiably within the ambit of this Order.

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

7 If it comes to a Designating Party's attention that information or items that it designated for  
8 protection do not qualify for protection at all or do not qualify for the level of protection initially  
9 asserted, that Designating 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 (see,  
12 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
13 Discovery Material that qualifies for protection under this Order must be clearly so designated  
14 before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but  
17 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
18 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
19 ONLY" to each page that contains protected material. If only a portion or portions of the material on  
20 a page qualifies for protection, the Producing Party also must 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.

23 A Party or Non-Party that makes original documents or materials available for inspection  
24 need not designate them for protection until after the inspecting Party has indicated which material it  
25 would like copied and produced. During the inspection and before the designation, all of the material  
26 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'  
27 EYES ONLY." After the inspecting Party has identified the documents it wants copied and  
28 produced, the Producing Party must determine which documents, or portions thereof, qualify for

1 protection under this Order. Then, before producing the specified documents, the Producing Party  
2 must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a portion or  
4 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
5 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must  
6 specify, for each portion, the level of protection being asserted.

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

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

25 Transcripts containing Protected Material shall have an obvious legend on the title page that  
26 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
27 (including line numbers as appropriate) that have been designated as Protected Material and the level  
28 of protection being asserted by the Designating Party. The Designating Party shall inform the court

1 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day  
2 period for designation shall be treated during that period as if it had been designated “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
4 expiration of that period, the transcript shall be treated only as actually designated.

5 (c) for information produced in some form other than documentary and for any other  
6 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
7 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of the information  
9 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
10 portion(s) and specify the level of protection being asserted.

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
12 designate qualified information or items does not, standing alone, waive the Designating Party’s  
13 right to secure protection under this Order for such material. Upon timely correction of a  
14 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
15 accordance with the provisions of this 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  
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
20 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
21 confidentiality designation by electing not to mount a challenge promptly after the original  
22 designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
24 by providing written notice of each designation it is challenging and describing the basis for each  
25 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
26 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
27 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
28 begin the process by conferring directly (in voice to voice dialogue; other forms of communication

1 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
2 Party must explain the basis for its belief that the confidentiality designation was not proper and  
3 must give the Designating Party an opportunity to review the designated material, to reconsider the  
4 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
5 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
6 has engaged in this meet and confer process first or establishes that the Designating Party is  
7 unwilling to participate in the meet and confer process in a timely manner.

8         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
9 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
10 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)  
11 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the  
12 meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must  
13 be accompanied by a competent declaration affirming that the movant has complied with the meet  
14 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
15 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
16 shall automatically waive the confidentiality designation for each challenged designation. In  
17 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
18 time if there is good cause for doing so, including a challenge to the designation of a deposition  
19 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
20 accompanied by a competent declaration affirming that the movant has complied with the meet and  
21 confer requirements imposed by the preceding paragraph.

22         The burden of persuasion in any such challenge proceeding shall be on the Designating  
23 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
24 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
25 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to  
26 retain confidentiality as described above, all parties shall continue to afford the material in question  
27 the level of 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 that is disclosed or  
3 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
5 the categories of persons and under the conditions described in this Order. When the litigation has  
6 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
7 DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
11 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
12 information or item designated “CONFIDENTIAL” only to:

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

17 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
18 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
21 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
22 to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

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

27 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
28 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

1 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
2 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
3 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
4 Stipulated Protective Order.

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

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
8 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
9 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

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

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

22 (d) the court and its personnel;

23 (e) court reporters and their staff, professional jury or trial consultants,<sup>1</sup> and Professional  
24 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and  
26

27 <sup>1</sup> The parties may wish to allow disclosure of information not only to professional jury or trial consultants, but also to  
28 mock jurors, to further trial preparation. In that situation, the parties may wish to draft a simplified, precisely tailored  
Undertaking for mock jurors to sign.

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

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL  
4 – ATTORNEYS’ EYES ONLY”.

5 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,  
6 a Party that seeks to disclose to Designated House Counsel any information or item that has been  
7 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph  
8 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of  
9 the Designated House Counsel and the city and state of his or her residence, and (2) describes the  
10 Designated House Counsel’s current and reasonably foreseeable future primary job duties and  
11 responsibilities in sufficient detail to determine if House Counsel is involved, or may become  
12 involved, in any competitive decision-making. Any Designated House Counsel who receives  
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this Order  
14 shall be required to disclose any relevant changes in job duties or responsibilities prior to final  
15 disposition of the litigation to allow the Designating Party to evaluate any later-arising competitive  
16 decision-making responsibilities.

17 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,  
18 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has  
19 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
20 paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the  
21 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information  
22 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the  
23 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s  
24 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity  
25 from whom the Expert has received compensation or funding for work in his or her areas of  
26 expertise or to whom the expert has provided professional services, including in connection with a  
27 litigation, at any time during the preceding five years,<sup>2</sup> and (6) identifies (by name and number of

28 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert

1 the case, filing date, and location of court) any litigation in connection with which the Expert has  
2 offered expert testimony, including through a declaration, report, or testimony at a deposition or  
3 trial, during the preceding five years.<sup>3</sup>

4 (b) A Party that makes a request and provides the information specified in the preceding  
5 respective paragraphs may disclose the subject Protected Material to the identified Designated House  
6 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written  
7 objection from the Designating Party. Any such objection must set forth in detail the grounds on  
8 which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with the  
10 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
11 within seven days of the written objection. If no agreement is reached, the Party seeking to make the  
12 disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local  
13 Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking  
14 permission from the court to do so. Any such motion must describe the circumstances with  
15 specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the  
16 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest  
17 any additional means that could be used to reduce that risk. In addition, any such motion must be  
18 accompanied by a competent declaration describing the parties' efforts to resolve the matter by  
19 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the  
20 reasons advanced by the Designating Party for its refusal to approve the disclosure.

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

25 \_\_\_\_\_  
26 should provide whatever information the Expert believes can be disclosed without violating any confidentiality  
27 agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating  
28 Party regarding any such engagement.

3 It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the  
termination of the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY  
CONFIDENTIAL – ATTORNEYS' EYES ONLY" information.

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

3 If a Party is served with a subpoena or a court order issued in other litigation that compels  
4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

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

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

23 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
24 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
25 EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is  
26 protected by the remedies and relief provided by this Order. Nothing in these provisions should be  
27 construed as prohibiting a Non-Party from seeking additional protections.  
28

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

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

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

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

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

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
26 MATERIAL

27 If information is produced in discovery that is subject to a claim of privilege or of protection  
28 as trial-preparation material, the party making the claim may notify any party that received the

1 information of the claim and the basis for it. After being notified, a party must promptly return or  
2 destroy the specified information and any copies it has and may not sequester, use or disclose the  
3 information until the claim is resolved. This includes a restriction against presenting the information  
4 to the court for a determination of the claim. This provision is not intended to modify whatever  
5 procedure may be established in an e-discovery order that provides for production without prior  
6 privilege review. The parties also agree that pursuant to Federal Rule of Evidence 502(d) and (e),  
7 any inadvertently disclosed communication or information covered by the attorney-client privilege  
8 or work-product protection is not waived in connection with this proceeding, and does not operate as  
9 a waiver in any other federal or state proceeding.

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
12 its modification by the court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
14 no Party waives any right it otherwise would have to object to disclosing or producing any  
15 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
16 Party waives any right to object on any ground to use in evidence of any of the material covered by  
17 this Protective Order.

18 12.4 Filing Protected Material. Without written permission from the Designating Party or a  
19 court order secured after appropriate notice to all interested persons, a Party may not file in the  
20 public record in this action any Protected Material. A Party that seeks to file under seal any Protected  
21 Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may  
22 only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected  
23 Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue  
24 only upon a request establishing that the

25 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
26 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant  
27 to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party  
28

1 may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless  
2 otherwise instructed by the court.

3 13. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
5 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
6 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
7 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
8 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
9 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
10 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
11 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
12 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
13 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
14 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
15 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
16 and expert work product, even if such materials contain Protected Material. Any such archival copies  
17 that contain or constitute Protected Material remain subject to this Protective Order as set forth in  
18 Section 4 (DURATION).





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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 Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of XenoPort, Inc. v. Glaxo Group Limited, GlaxoSmithKline LLC and GlaxoSmithKline Holdings (Americas) Inc., Case No. 5:12-cv-01544-EJD-PSG. I agree to comply with and to be bound by all the terms of this Stipulated 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 Stipulated 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 Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ 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 Stipulated Protective Order.

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

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

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

Signature: \_\_\_\_\_  
[signature]