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14 **UNITED STATES DISTRICT COURT**
 15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 WHITNEY BOUCHARD,
 17
 18 Plaintiff,
 19
 20 v.
 21 STRYKER CORPORATION and
 22 DOES 1-20, inclusive,
 23
 24 Defendants.

CASE NO. 3:09-cv-01989-DMS-NLS

**ORDER GRANTING JOINT MOTION FOR
 STIPULATED PROTECTIVE ORDER RE
 CONFIDENTIAL DISCOVERY
 MATERIALS**

[Doc. No. 16]

25 For good cause shown, the court **GRANTS** the parties' joint motion for a protective
 26 order, with the addition of paragraph no. 20.

27 1. Irrespective of the form in which discovery materials are produced, including
 28 printed or electronically recorded documents, in connection with the discovery process in the
 above-entitled case, including but not limited to, deposition testimony, answers to
 interrogatories, documents produced in response to requests for production, responses to requests
 for admissions, medical records and any documents recorded on computer disks, the parties may
 designate any such materials as "confidential" or "confidential discovery material", under the
 terms of this stipulated order.

2. The parties to this order may designate as "Confidential" or "Trade Secret,"
 pursuant to the terms of this order, documents or other discovery material to the extent they

1 consist of or include trade secret or confidential research, development, or commercial
2 information and may include financial information, information relating to ownership or control
3 of any non-public company, and any information protected from disclosure by any privacy law,
4 as well as any other type of information given confidential status by the court.

5 3. Any person subject to this order who receives any confidential discovery material
6 in the course of discovery in this action shall not disclose such confidential discovery material to
7 anyone else except as expressly permitted by this order.

8 4. With respect to the confidential or trade secret portion of any documents or
9 material, other than deposition transcripts and exhibits, the producing party may designate the
10 portion as confidential discovery material by stamping or otherwise clearly marking the
11 protected page, passage, or item as “**Confidential**” or “**Trade Secret**” in such a manner that will
12 not interfere with legibility or audibility.

13 5. With respect to deposition transcripts and exhibits, a party may indicate on the
14 record that a question calls for confidential discovery material, in which case the text in the
15 transcript where these questions or answers occur shall be specially marked as a separate page
16 stamped “**Confidential Information Governed By Protective Order**” by the court reporter.
17 For convenience, the parties may agree that entire deposition transcripts shall be treated as
18 confidential discovery material.

19 6. If at any time prior to the trial of this action a party realizes that previously
20 undesignated documents or other material should be designated as confidential discovery
21 material, the party may so designate by advising all other parties in writing. The designated
22 documents or material will thereafter be treated as confidential discovery material pursuant to
23 this order. However, no party shall be penalized in any way for disclosing such materials prior to
24 receiving notice of this belated realization.

25 7. No person subject to this order other than the designating party shall disclose any
26 confidential discovery material to any other person, except as follows:
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28

- 1 (a.) Counsel for the parties in this action, including any paralegal, clerical, consulting,
2 professional and other staff employed or retained by counsel for work on this
3 action;
- 4 (b.) With respect to a specific document, the document's author, addressees, and any
5 other person shown on the face of the document as having received a copy;
- 6 (c.) Any person retained by a party to serve as an expert consultant or witness or
7 otherwise provide specialized advice to counsel in connection with this action,
8 provided such person has first executed a non-disclosure agreement in the form
9 attached;
- 10 (d.) Official court reporters;
- 11 (e.) The court, mediators, and support personnel; and
- 12 (f.) Insurers and indemnitors to the extent reasonably necessary to defend and
13 evaluate plaintiff's claim.

14 8. Prior to any disclosure of confidential discovery material to any person referred to
15 in subparagraphs (b) and (c) of paragraph 7 above, the person shall be provided by counsel with
16 a copy of this protective order and shall sign a non-disclosure agreement in the form attached as
17 Exhibit 1 hereto. The non-disclosure agreement will state that the person has read this order and
18 agrees to be bound by its terms. All non-disclosure agreements will be maintained through out
19 this action by the attorneys obtaining them. At the conclusion of this action, upon a showing of
20 good cause and necessity, any party may seek an order requiring production of non-disclosure
21 agreements, but nothing in this order is intended to modify or shift any burden of proof or
22 privilege relating to the motion.

23 9. To the extent allowed by applicable law, the parties will file a motion to have all
24 confidential discovery material filed under seal, including any portion of a court paper that
25 discloses confidential discovery material. When filing the motion, the parties will cite to the
26 court the legal grounds for filing the confidential discovery material under seal. The parties
27 agree that any motion will be narrow in scope to ensure that the only information withheld from
28 public inspection is information expressly authorized by law.

1 10. If any attorney files with or submits to the court any confidential (a) documents,
2 responses, transcripts or things as defined by this order, or information derived there from, or (b)
3 any affidavits, memoranda, exhibits or other papers containing or making reference to any such
4 confidential documents, responses, transcripts or things, or any information contained therein,
5 then such attorney shall first consider whether redacting portions of such materials that contain
6 or refer to confidential information is practical and will protect the confidential information
7 while leaving other non-confidential information meaningful. If so, redacted versions of such
8 material shall be filed with the court according to the standard filing procedures.

9 11. Any party objecting to any designation of confidentiality or trade secret, or
10 requesting further limits on disclosure (such as “attorney eyes only” in extraordinary
11 circumstances), may at any time prior to the trial of this action serve upon counsel for interested
12 parties a written notice stating with particularity the reasons for the objection or request. If
13 agreement cannot promptly be reached, the dispute will be submitted to the court. Until a
14 dispute is resolved, the material designated as “**Confidential**” or “**Trade Secret**” shall remain as
15 confidential discovery material pursuant to this order. The party requesting confidentiality shall
16 have the burden of establishing entitlement to protection and confidentiality.

17 12. The court retains discretion to deny confidential treatment to any documents or
18 discovery material submitted in connection with any motion, application, proceeding or paper
19 that may result in an order or decision by the court.

20 13. Each person who has access to confidential discovery materials shall take all due
21 precautions to prevent the unauthorized or inadvertent disclosure of the material.

22 14. This order shall survive the termination of this action. Within 30 days of the final
23 disposition of this action, all confidential discovery material, and all copies, shall promptly be
24 returned to the producing party or, with the permission of the producing party, destroyed;
25 however, if objections to confidentiality are then asserted, return of the confidential discovery
26 material shall depend upon final resolution of the objections. Attorney-client privileged and
27 work product materials need not be disclosed to other parties after termination of this action.
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1 15. The court shall retain jurisdiction over all persons and parties subject to this order
2 to the extent necessary to modify this order, enforce its obligations, or to impose sanctions for
3 any violation.

4 16. Nothing in this order shall prevent any party from seeking further or additional
5 protection, or removing protection, for confidential discovery material.

6 17. Additional parties may be added to this action as allowed under the Federal Rules
7 of Civil Procedure. Before receiving confidential discovery material, a new party must agree to
8 be bound by the terms of this order as if the party had stipulated to it at the time of entry. No
9 newly added party shall have access to confidential discovery material until the party is subject
10 to the terms of this order.


11 18. Information of any kind obtained by parties subject to this order from any source
12 outside of discovery in this action shall not be subject to the terms of this order, notwithstanding
13 that the same information has been produced in this action and designated as confidential
14 discovery material.

15 19. This order shall not apply to, or restrict confidential discovery material used at the
16 time of trial as evidence. Protection of confidential discovery material at trial may be addressed
17 by the court as a separate matter upon the motion of any party. The provisions of this order shall
18 not prejudice the rights of the parties with respect to the use or protection of confidential
19 discovery material at trial.

20 20. The Court may modify the protective order in the interests of justice or for public
21 policy reasons.

22 **IT IS SO ORDERED.**

23 DATED: May 13, 2010



Hon. Nita L. Stormes
U.S. Magistrate Judge