

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

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

12 THE REGENTS OF THE UNIVERSITY  
13 OF CALIFORNIA; and BECTON,  
14 DICKINSON and COMPANY,

15 Plaintiffs,

16 v.

17 AFFYMETRIX, INC.; and LIFE  
18 TECHNOLOGIES CORP.,

19 Defendants.

Case No.: 17-cv-01394-H-NLS

**ORDER GRANTING JOINT  
MOTION FOR A PROTECTIVE  
ORDER**

[Doc. No. 78.]

19 On December 13, 2017, the parties filed a joint motion for entry of a protective order.  
20 (Doc. No. 78.) For good cause shown, the Court grants the parties' joint motion and enters  
21 the following protective order:

22 The Court recognizes that at least some of the documents and information  
23 ("materials") being sought through discovery in the above-captioned action are, for  
24 competitive reasons, normally kept confidential by the parties. The Regents of the  
25 University of California ("Regents"), Becton Dickinson and Company ("BD"),  
26 Affymetrix, Inc. ("Affymetrix"), and Life Technologies Corp. ("Life Technologies")  
27  
28

1 (collectively, “the parties”) have agreed to be bound by the terms of this Protective Order  
2 (“Order”) in this action.

3 The materials to be exchanged throughout the course of the litigation between the  
4 parties, and expected to be produced by third parties, may contain trade secret or other  
5 confidential research, technical, cost, price, marketing or other commercial information, as  
6 is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this Order is  
7 to protect the confidentiality of such materials as much as practical during the litigation.

8 THEREFORE:

9 **DEFINITIONS**

10 1. The term “Confidential Information” will mean information, documents,  
11 discovery responses, or testimony designated by any party or third party as  
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”  
13 pursuant to the terms of this Order, including summaries, compilations, and any and all  
14 reproductions thereof.

15 2. The term “outside counsel” will mean outside counsel of record, and other  
16 attorneys, non-attorney technical specialists, paralegals, secretaries, and other support staff  
17 employed by the law firms of counsel of record. The term “outside counsel” shall not  
18 include any in-house attorneys or other legal personnel employed by the parties.

19 3. The term “designated in-house counsel” will mean in-house counsel who have  
20 been designated by the receiving party and approved by the producing party to have access  
21 to information or documents designated “CONFIDENTIAL” or “HIGHLY  
22 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” subject to the provisions of this  
23 Protective Order.

24 A. Each party may identify one designated in-house counsel. For purposes of  
25 this paragraph 3A, parties under common ownership shall be considered a  
26 single party.

27 B. The ability of proposed designated in-house counsel to receive any  
28 Confidential Information will be subject to the advance approval by the

1 producing party or by permission of the Court. The party seeking approval of  
2 designated in-house counsel to receive Confidential Information must provide  
3 the producing party with the name and summary of job responsibilities for  
4 proposed designated in-house counsel, and an executed copy of the  
5 undertaking attached hereto as Attachment A, in advance of providing any  
6 Confidential Information of the producing party to designated in-house  
7 counsel. The summary of job responsibilities must identify, at minimum, the  
8 proposed designated in-house counsel's: 1) title; 2) primary job  
9 responsibilities; 3) place within the business's organization; 4) responsibilities  
10 (if any) with respect to U.S. or foreign patent prosecution; 5) responsibilities  
11 (if any) with respect to post-grant proceedings, including claim amendments,  
12 in any patent office; and 6) responsibilities (if any) related to competitive  
13 decision-making (including decisions about pricing, business strategy, or  
14 product design or development).

- 15 C. Any objection by the producing party to designated in-house counsel  
16 receiving Confidential Information must be made in writing within 7 calendar  
17 days following receipt of the identification of proposed designated in-house  
18 counsel. Confidential Information may be disclosed to designated in-house  
19 counsel if the 7-day period has passed and no objection has been made. The  
20 approval of designated in-house counsel must not be unreasonably withheld.
- 21 D. If a producing party objects in writing to proposed designated in-house  
22 counsel, the producing party will have 7 calendar days from the date of that  
23 objection to file a motion with the court seeking an order to prevent disclosure  
24 of its Confidential Information to proposed designated in-house counsel of the  
25 receiving party. Confidential Information may be disclosed to designated in-  
26 house counsel if the 7-day period has passed and no motion has been filed.
- 27 E. A party may substitute designated in-house counsel should the need arise  
28 during the pendency of the case. Proposed substitute designated in-house

1 counsel shall be qualified pursuant to the same procedure described in  
2 paragraphs B-D above. Upon completion of the qualification process, prior  
3 designated in-house counsel shall no longer qualify as designated in-house  
4 counsel and must transfer to substitute designated in-house counsel, or  
5 destroy, all Confidential Information in his or her possession that under this  
6 Order may only be in the possession of designated in-house counsel.

7 **GENERAL PROVISIONS**

8 4. Each party to this litigation and any third party subpoenaed pursuant to Fed.  
9 R. Civ. P. 45 that produces or discloses any documents or information that the producing  
10 party believes should be subject to this Protective Order may designate the same as  
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY.”

12 A. Designation as “CONFIDENTIAL”: Any party may designate  
13 information as “CONFIDENTIAL” if, in the good faith belief of such party  
14 and its outside counsel or designated in-house counsel, the unrestricted  
15 disclosure of such information could be potentially prejudicial to the business  
16 or operations of such party or if the document is subject to confidentiality  
17 obligations owed to a third party.

18 B. Designation as “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL  
19 ONLY”: Any producing party may designate information as “HIGHLY  
20 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” if, in the good faith belief  
21 of such party and its outside counsel or designated in-house counsel,  
22 disclosure of the information is likely to cause competitive harm to the  
23 disclosing party, and embodies, contains, or reflects:

- 24 (a) confidential commercial contracts and licenses with a third party,  
25 including documents relating thereto;  
26 (b) customer lists;  
27 (c) highly sensitive plans for future market or future  
28 commercialization;

- 1 (d) highly sensitive financial or competitive information;
- 2 (e) trade secret information reflecting the chemical structure of
- 3 products, or manufacturing procedures;
- 4 (f) other trade secret or other information that concerns product
- 5 design, research, development, testing, or manufacturing.

6 5. In the event the producing party elects to produce materials for inspection, no  
7 marking need be made by the producing party in advance of the initial inspection. For  
8 purposes of the initial inspection, all materials produced, or photographs or other  
9 recordings of items provided for inspection, will be considered as “HIGHLY  
10 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” and must be treated as such pursuant  
11 to the terms of this Order. Thereafter, upon selection of specified materials for copying by  
12 the inspecting party, the producing party must, within a reasonable time prior to producing  
13 those materials to the inspecting party, mark the copies of those materials that contain  
14 Confidential Information with the appropriate confidentiality marking or communicate its  
15 designation of any photographs or recordings of items provided for inspection.

16 6. Whenever a deposition taken on behalf of any party involves a disclosure of  
17 Confidential Information of any party:

18 a. the deposition or portions of the deposition must be designated as  
19 containing Confidential Information subject to the provisions of this Order; such  
20 designation may be made on the record where practicable, but a party may designate  
21 portions of depositions as containing Confidential Information after transcription of  
22 the proceedings. A producing party will have until 30 calendar days after receipt of  
23 a final certified copy of the deposition transcript to inform the other party or parties  
24 to the action of the portions of the transcript, identified by page and line number, to  
25 be designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE  
26 COUNSEL ONLY.” For depositions occurring prior to the date of this order, a  
27 producing party will have until 30 days after the entry of this order to make such  
28 designations.

1           b.     the producing party will have the right to exclude from attendance at  
2 the deposition, during such time as any Confidential Information is to be disclosed,  
3 any person other than the deponent, to whom disclosure of such Confidential  
4 Information is not permitted under this Order; and

5           c.     the originals of the deposition transcripts and all copies of the  
6 deposition must bear the legend “CONFIDENTIAL” or “HIGHLY  
7 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” as appropriate, and the original  
8 or any copy ultimately presented to a court for filing must not be filed unless it can  
9 be accomplished under seal, identified as being subject to this Order, and protected  
10 from being opened except by order of this Court.

11         7.     Confidential Information must not be disclosed by the receiving party to  
12 anyone other than those persons designated within this Order and must be handled in the  
13 manner set forth below and, in any event, must not be used for any purpose other than in  
14 connection with this litigation, unless and until such designation is removed either by  
15 agreement of the parties, or by order of the Court.

16         8.     Information designated “HIGHLY CONFIDENTIAL – OUTSIDE  
17 COUNSEL ONLY” may be viewed only by outside counsel (as defined in paragraph 2);  
18 designated in-house counsel (as defined in paragraph 3) and their clerical or support staff  
19 (including paralegals, secretaries, and discovery staff but excluding other in-house counsel)  
20 who are under a duty of confidentiality; the Court; independent stenographic reporters and  
21 videographers retained to record and transcribe testimony given in connection with this  
22 action; litigation support and other vendors and mock jurors qualified pursuant to  
23 paragraph 8(a); experts qualified pursuant to paragraph 8(b) and their clerical or support  
24 staff who are under a duty of confidentiality; and any person indicated on the face of the  
25 information to be its originator, author, or a recipient of such information.

26           a.     Information designated “HIGHLY CONFIDENTIAL – OUTSIDE  
27 COUNSEL ONLY” may also be viewed by any of the following as long as they are  
28 subject to a duty to keep information received in the course of their services

1 confidential: copying, scanning, technical support and electronic document hosting  
2 and processing services retained by outside counsel or designated in-house counsel  
3 in connection with this action; document review services (including contract  
4 attorneys but excluding in-house counsel) retained by outside counsel or designated  
5 in-house counsel; graphics, translation, or design services retained by outside  
6 counsel or designated in-house counsel for purposes of this action; jury or trial  
7 consulting services retained by outside counsel or designated in-house counsel in  
8 connection with this action; and mock jurors, provided, however, that any such mock  
9 juror has read this Order in advance of disclosure, and has executed a copy of the  
10 undertaking attached hereto as Attachment B.

11 b. Information designated “HIGHLY CONFIDENTIAL – OUTSIDE  
12 COUNSEL ONLY” may also be viewed by independent experts retained by outside  
13 counsel or retained by a party to this action under the conditions set forth in this  
14 Paragraph. The ability of any independent expert to receive any Confidential  
15 Information will be subject to the advance approval of such expert by the producing  
16 party or by permission of the Court. The party seeking approval of an independent  
17 expert must provide the producing party with the name and curriculum vitae of the  
18 proposed independent expert, and an executed copy of the undertaking attached  
19 hereto as Attachment B, in advance of providing any Confidential Information of  
20 the producing party to the expert. Any objection by the producing party to an  
21 independent expert receiving Confidential Information must be made in writing  
22 within 10 calendar days following receipt of the identification of the proposed  
23 expert. Confidential Information may be disclosed to an independent expert if the  
24 10 calendar day period has passed and no objection has been made. The approval  
25 of independent experts must not be unreasonably withheld. If a producing party  
26 objects in writing to a proposed independent expert, the producing party will have 7  
27 calendar days from the date of that objection to file a motion with the court seeking  
28 an order to prevent disclosure of its Confidential Information to a proposed

1 independent expert retained by the receiving party. Confidential Information may  
2 be disclosed to the proposed independent expert if the 7 day period has passed and  
3 no motion has been filed.

4 9. Information designated “CONFIDENTIAL” must be viewed only by persons  
5 identified in paragraph 8, and up to three (3) employees (in addition to designated in-house  
6 counsel) collectively for the parties of each side who have executed the undertaking  
7 attached as Attachment C, solely as necessary to assist outside counsel or designated in-  
8 house counsel in conducting this litigation and/or preparation for testimony at deposition,  
9 provided each such individual has read this Order in advance of disclosure and has agreed  
10 in writing to be bound by its terms.

11 10. Any person indicated on the face of the document to be its originator, its  
12 author, or a recipient of a copy of the document, may be shown the same notwithstanding  
13 the other provisions of this Order.

14 11. Confidential Information must be retained in the custody of outside counsel  
15 or designated in-house counsel as defined in paragraphs 2 and 3, except that independent  
16 experts authorized to view such information under the terms of this Order may retain  
17 custody of copies as necessary for their participation in this litigation. In addition, outside  
18 vendors retained by the parties for the purpose of hosting document productions shall be  
19 permitted to retain custody of Confidential Information.

20 12. Filing Under Seal. Nothing shall be filed under seal, and the Court shall not  
21 be required to take any action, without separate prior order by the Judge before whom the  
22 hearing or proceeding will take place, after application by the affected party with  
23 appropriate notice to opposing counsel. The parties shall follow and abide by applicable  
24 law, including Civ. L.R. 79.2, ECF Administrative Policies and Procedures, Section II.j,  
25 and the chambers rules, with respect to filing documents under seal.

26 a. For the sake of clarity, submissions (other than those made for *ex parte*,  
27 *in camera* review) proposed to be filed under seal shall nevertheless be promptly  
28 served on all other parties prior to the Court’s order on the sealing request.



1           13. A party may object at any time to a designation of Confidential Information.  
2 The objecting party must notify, in writing, counsel for the producing party of the objected-  
3 to materials and the grounds for the objection. If the dispute is not resolved consensually  
4 between the parties within seven (7) calendar days of receipt of such a notice of objections,  
5 the objecting party may move the Court for a ruling on the objection. For so long as the  
6 Honorable Nita L. Stormes is the magistrate judge assigned to this Case, the discovery  
7 dispute resolution provisions in her Civil Case Procedures, Section VI including the forty-  
8 five (45) day rule regarding resolution of discovery disputes, shall apply. The materials at  
9 issue must be treated as Confidential Information, as designated by the designating party,  
10 until the Court has ruled on the objection or the matter has been otherwise resolved.

11           14. All Confidential Information must be held in confidence by those inspecting  
12 or receiving it, and must be used only for purposes of this action. Outside counsel for each  
13 party and each person receiving Confidential Information must take reasonable precautions  
14 to prevent the unauthorized or inadvertent disclosure of such information. If Confidential  
15 Information is disclosed to any person other than a person authorized by this Order, the  
16 party responsible for the unauthorized disclosure must immediately bring all pertinent facts  
17 relating to the unauthorized disclosure to the attention of the producing party and, without  
18 prejudice to any rights and remedies of the producing party, make best efforts to prevent  
19 further disclosure by the party and by the person(s) receiving the unauthorized disclosure  
20 and to retrieve or destroy any copies of the materials from the person(s) receiving the  
21 unauthorized disclosure.

22           15. Inadvertent disclosures by the producing party of Confidential Information,  
23 regardless of whether the material was so designated at the time of disclosure, shall not be  
24 deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the  
25 specific information disclosed or as to any other information relating to the same or related  
26 subject matter, provided that the producing party shall promptly upon discovery of the  
27 inadvertent disclosure notify the receiving party in writing that the information is  
28 Confidential Information and was inadvertently disclosed. Such notification shall

1 constitute a designation of the information as Confidential Information. Upon such  
2 notification, counsel shall reasonably cooperate to restore the confidentiality of the  
3 Confidential Information to the extent possible.

4 16. No party will be responsible to another party for disclosure of Confidential  
5 Information under this Order if the information in question is not labeled or otherwise  
6 identified as such in accordance with this Order.

7 17. Inadvertent production or disclosure of documents or information subject to  
8 the attorney-client privilege, work-product doctrine or any other applicable privilege or  
9 protection from disclosure shall not constitute a waiver of, nor a prejudice to, any claim  
10 that such or related material is privileged or protected by the work-product doctrine or any  
11 other applicable privilege or protection from disclosure. Such inadvertently produced  
12 documents or information, including all copies thereof, shall be returned to the producing  
13 party or destroyed immediately upon request. The receiving party shall confirm the  
14 destruction or return of inadvertently produced documents or information within 7 calendar  
15 days of receiving written notice from the producing party of the inadvertent production.  
16 No use shall be made of such documents or information subsequent to the request that they  
17 be returned including, but not limited to, during depositions, or at trial, nor shall such  
18 documents or information be shown to anyone who has not already been given access to  
19 them; provided, however, that the receiving party may move the Court for an Order  
20 compelling production of such information, but the motion shall not assert as a ground for  
21 production the fact of the inadvertent production or the contents thereof. The party  
22 requesting the document be returned and destroyed, as provided for above, shall provide a  
23 privilege log that satisfies the requirements of Federal Rule of Civil Procedure 26(b)(5)  
24 within 7 calendar days from providing notice to the producing part of the inadvertent  
25 production. This Protective Order shall constitute an order pursuant to Federal Rule of  
26 Evidence 502(d).

27 18. Outside counsel and designated in-house counsel who receive and/or review  
28 Confidential Information designated as **HIGHLY CONFIDENTIAL – OUTSIDE**

1 COUNSEL ONLY shall be subject to a “Competitive Use and Prosecution Bar” and thus  
2 shall not participate in any way (including, but limited to, participating in a supervisory  
3 capacity) in the “prohibited activities” listed below in the field of reagent products intended  
4 for use in flow cytometry (the “barred field”) from the time of receipt of Confidential  
5 Information designated HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
6 through the complete termination of this action by (i) entry of a final, non-appealable  
7 judgment or order, (ii) the complete settlement of all claims in this action, or (iii) any other  
8 means, and for one year after the complete termination of this action.

9 19. The prohibited activities are:

10 (a) competitive decision-making (including decisions about pricing, or  
11 product design or development) concerning the barred field on behalf of the parties  
12 to this action or any person or entity related to any party to this action;

13 (b) preparing or prosecuting patent applications anywhere in the world in the  
14 barred field on behalf of the parties to this action or any person or entity related to  
15 any party to this action; and

16 (c) providing advice to the parties to this action or any person or entity related  
17 to any party to this action concerning strategies for obtaining or preserving patent  
18 rights in the barred field, whether as counsel of record before the U.S. Patent and  
19 Trademark Office or any foreign patent office or as an advisor regarding claiming  
20 strategies

21 20. The Competitive Use and Prosecution Bar is personal to the person receiving  
22 Confidential Information designated as HIGHLY CONFIDENTIAL – OUTSIDE  
23 COUNSEL ONLY and shall not be imputed to any person who did not receive or review  
24 such information (including, e.g., other employees or attorneys of the law firm by which  
25 the person subject to the bar is employed or otherwise is associated).

26 21. The Competitive Use and Prosecution Bar shall not apply to any post-issuance  
27 review proceedings (including ex parte reexamination, inter partes review, post grant  
28 review, and covered business method review) with respect to the patents-in-suit, except

1 that outside counsel or designated in-house counsel receiving or reviewing Confidential  
2 Information designated HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY shall  
3 not participate in any way in the drafting, revising, amending, or proposing of claims,  
4 including, but not limited to, verbal discussions, suggestions, or comments regarding  
5 drafts, in connection with the aforementioned post-issuance review proceedings.

6 22. Nothing within this Order will prejudice the right of any party to object to the  
7 production of any discovery material on the grounds that the material is protected as  
8 privileged or as attorney work product.

9 23. Nothing in this Order will bar counsel from rendering advice to their clients  
10 with respect to this litigation and, in the course thereof, relying upon any information  
11 designated as Confidential Information, provided that the contents of the information must  
12 not be disclosed to any person not authorized to receive such information under this Order.

13 24. This Order will be without prejudice to the right of any party to oppose  
14 production of any information for lack of relevance or any other ground other than the mere  
15 presence of Confidential Information. The existence of this Order must not be used by  
16 either party as a basis for discovery that is otherwise improper under the Federal Rules of  
17 Civil Procedure.

18 25. Nothing within this order will be construed to prevent disclosure of  
19 Confidential Information if such disclosure is required by law or by Court order.

20 26. Within 60 calendar days from final termination of this action, including any  
21 and all appeals, outside counsel for each party, designated in-house counsel, and any expert  
22 retaining Confidential Information, must destroy or return all Confidential Information to  
23 the producing party, including any copies, excerpts, and summaries of that information,  
24 and must purge all such information from all machine-readable media on which it resides.  
25 Notwithstanding the foregoing, outside counsel for each party may retain all pleadings,  
26 briefs, memoranda, motions, and other documents filed with the Court that refer to or  
27 incorporate Confidential Information, and will continue to be bound by this Order with  
28 respect to all such retained information. Further, attorney work product materials that

1 contain Confidential Information need not be destroyed, but, if they are not destroyed, the  
2 person in possession of the attorney work product will continue to be bound by this Order  
3 with respect to all such retained information.

4 27. The restrictions and obligations set forth within this order will not apply to  
5 any information that: (a) the parties agree should not be designated Confidential  
6 Information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the  
7 parties agree, or the Court rules, has become public knowledge other than as a result of  
8 disclosure by the receiving party, its employees, or its agents in violation of this Order; or  
9 (d) has come or will come into the receiving party's legitimate knowledge independently  
10 of the production by the designating party. Prior knowledge must be established by pre-  
11 production documentation.

12 28. The restrictions and obligations within this Order will not be deemed to  
13 prohibit discussions of any Confidential Information with anyone if that person already has  
14 or obtains legitimate possession of that information.

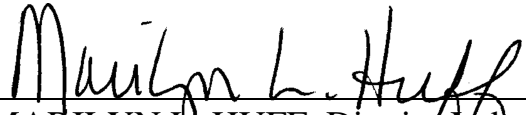
15 29. Transmission by electronic mail is acceptable for all notification purposes  
16 within this Order.

17 30. This Order may be modified by agreement of the parties, subject to approval  
18 by the Court.

19 31. Modifications. The Court grants the parties' request for a protective order  
20 without prejudice to the Court modifying this order at a later time. The Court may  
21 modify the terms and conditions of this Order for good cause, or in the interest of justice,  
22 or on its own order at any time in these proceedings.

23 **IT IS SO ORDERED.**

24 DATED: December 15, 2017

25   
26 MARILYN L. HUFF, District Judge  
27 UNITED STATES DISTRICT COURT  
28

**ATTACHMENT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA and  
BECTON, DICKINSON AND  
COMPANY,

Plaintiffs,

v.

AFFYMETRIX, INC. and LIFE  
TECHNOLOGIES CORP.,

Defendants.

**Case No. 3:17-cv-01394-H-NLS**

**UNDERTAKING**

1. I understand that I may be provided information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” by another party in the above action (“Protected Information”).
2. Having read the Protective Order, I agree that I will hold Protected Information in confidence and use it solely for purposes of this action. I agree to take reasonable precautions to prevent the unauthorized or inadvertent disclosure of Protected Information.
3. I agree that I will not disclose or discuss Protected Information with anyone other than persons authorized to access such Protected Information under the Protective Order.
4. I agree that if I inadvertently disclose Protected Information to any person not listed in paragraph 3, I will immediately bring all pertinent facts relating to the

1 disclosure to the attention of outside counsel and will make every effort to prevent  
2 further disclosure or use by the person(s) receiving the unauthorized disclosure.

3 5. I agree that if I am provided or otherwise have access to Confidential  
4 Information designated by another party in the above action to be “HIGHLY  
5 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” then during the pendency  
6 of this action and for a period of 1 year from the termination of this action  
7 (including any appeals) I will abide by the Competitive Use and Prosecution  
8 Bar set forth in paragraphs 18-21 of the Protective Order. I understand that this  
9 provision only limits my activities on behalf of the parties to this action or any  
10 person or entity related to any party to this action.

11 6. I agree that this agreement will terminate, and I will immediately cease use of  
12 and will return or destroy all Protected Information in my possession if my  
13 employment or other relationship with a party that allowed me to obtain  
14 Protected Information terminates. I agree that my obligations to maintain  
15 confidentiality of information received prior to the termination of this  
16 agreement survives termination.

17 7. I agree to subject myself to the jurisdiction of the United States District Court  
18 for the Southern District of California, or to the courts of the State of California  
19 if the federal court lacks subject matter jurisdiction, with respect to enforcement  
20 of this Agreement.

21 8. I agree that a party disclosing Protected Information will suffer irreparable harm  
22 if I disclose or use it in any manner contrary to the provisions of this Agreement.

23  
24 Date: \_\_\_\_\_ By: \_\_\_\_\_  
25  
26  
27  
28

**ATTACHMENT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA and  
BECTON, DICKINSON AND  
COMPANY,

Plaintiffs,

v.

AFFYMETRIX, INC. and LIFE  
TECHNOLOGIES CORP.,

Defendants.

**Case No. 3:17-cv-01394-H-NLS**

**UNDERTAKING**

1. I understand that I may be provided information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” by a party in the above action (“Protected Information”).
2. Having read the Protective Order, I agree that I will hold Protected Information in confidence and use it solely for purposes of this action. I agree to take reasonable precautions to prevent the unauthorized or inadvertent disclosure of Protected Information.
3. I agree that I will not disclose or discuss Protected Information with anyone other than persons authorized to access such Protected Information under the Protective Order.
4. I agree that if I inadvertently disclose Protected Information to any person not listed in paragraph 3, I will immediately bring all pertinent facts relating to the



1 disclosure to the attention of outside counsel or the party that retained me and  
2 will make every effort to prevent further disclosure or use by the person(s)  
3 receiving the unauthorized disclosure.

4 I agree that this agreement will terminate, and I will immediately cease use of and  
5 will return or destroy all Protected Information in my possession or in the  
6 possession of my staff if my employment, consulting, expert, or other relationship  
7 with a party that allowed me to obtain Protected Information terminates. I agree  
8 that my obligations to maintain confidentiality of information received prior to the  
9 termination of this agreement survives termination.

10 5. I agree to subject myself to the jurisdiction of the United States District Court  
11 for the Southern District of California, or to the courts of the State of  
12 California if the federal court lacks subject matter jurisdiction, with respect  
13 to enforcement of this Agreement.

14 6. I agree that a party disclosing Protected Information will suffer irreparable  
15 harm if I disclose or use it in any manner contrary to the provisions of this  
16 Agreement.

17  
18 Date: \_\_\_\_\_ By: \_\_\_\_\_  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ATTACHMENT C**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA and  
BECTON, DICKINSON AND  
COMPANY,

Plaintiffs,

v.

AFFYMETRIX, INC. and LIFE  
TECHNOLOGIES CORP.,

Defendants.

**Case No. 3:17-cv-01394-H-NLS**

**UNDERTAKING**

1. I understand that I may be provided information designated as “CONFIDENTIAL” by a party in the above action (“Protected Information”). I understand that I am NOT designated as a person who may have access to information designated as “HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY,” as that term is defined in that Protective Order.

2. Having read the Protective Order, I agree that I will hold Protected Information in confidence and use it solely for purposes of this action. I agree to take reasonable precautions to prevent the unauthorized or inadvertent disclosure of Protected Information.

3. I agree that I will not disclose or discuss Protected Information with anyone other than other than persons authorized to access such Protected Information under the Protective Order.

1           4.       I agree that if I inadvertently disclose Protected Information to any person  
2 not listed in paragraph 3, I will immediately bring all pertinent facts relating to the  
3 disclosure to the attention of outside counsel that retained me and will make every effort to  
4 prevent further disclosure or use by the person(s) receiving the unauthorized disclosure.

5           5.       I agree that this agreement will terminate, and I will immediately cease use  
6 of and will return or destroy all Protected Information in my possession if my employment  
7 or other relationship with a party that allowed me to obtain Protected Information  
8 terminates. I agree that my obligations to maintain confidentiality of information received  
9 prior to the termination of this agreement survives termination.

10          6.       I agree to subject myself to the jurisdiction of the United States District  
11 Court for the Southern District of California, or to the courts of the State of California if  
12 the federal court lacks subject matter jurisdiction, with respect to enforcement of this  
13 Agreement.

14          7.       I agree that a party disclosing Protected Information will suffer irreparable  
15 harm if I disclose or use it in any manner contrary to the provisions of this Agreement.

16  
17 Date: \_\_\_\_\_ By: \_\_\_\_\_  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28