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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MEDIMPACT HEALTHCARE
SYSTEMS, INC., a California
corporation; MEDIMPACT
INTERNATIONAL LLC, a California
limited liability company; and
MEDIMPACT INTERNATIONAL
HONG KONG LTD., a Hong Kong
company,

Plaintiffs,

v.

IQVIA INC., a Connecticut
corporation ; IQVIA Ltd., a UK
company; IQVIA AG, a Swiss
company; OMAR GHOSHEH,
individually; and AMIT SADANA,
individually, and DOES 1-20,

Defendants.

Case No. 19-cv-01865-GPC (DEB)

PROTECTIVE ORDER

1 The Court recognizes that at least some of the documents and information
2 (“materials”) being sought through discovery in the above-captioned action are, for
3 competitive reasons, normally kept confidential by the Parties. The Parties have
4 agreed to be bound by the terms of this Protective Order (“Order”) in this action.

5 The materials to be exchanged throughout the course of the litigation between
6 the parties may contain trade secret or other confidential research, technical, cost,
7 price, marketing or other commercial information, as is contemplated by Federal
8 Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the
9 confidentiality of such materials as much as practical during the litigation.

10 THEREFORE:

11 **DEFINITIONS**

12 1. The term “confidential information” will mean and include information
13 contained or disclosed in any materials, including documents, portions of documents,
14 answers to interrogatories, responses to requests for admissions, trial testimony,
15 deposition testimony, and transcripts of trial testimony and depositions, including
16 data, summaries, and compilations derived therefrom that is deemed to be
17 confidential information by any Party or subpoenaed non-party to which it belongs.

18 2. The term “materials” will include, but is not be limited to: documents;
19 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or
20 other material that identify customers or potential customers; price lists or schedules
21 or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled
22 checks; contracts; invoices; drafts; books of account; worksheets; notes of
23 conversations; desk diaries; appointment books; expense accounts; recordings;
24 photographs; motion pictures; compilations from which information can be obtained
25 and translated into reasonably usable form through detection devices; sketches;

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1 drawings; notes (including laboratory notebooks and records); reports; instructions;
2 disclosures; other writings; models and prototypes and other physical objects.

3 3. The term “counsel” will mean (a) outside counsel of record (including
4 other attorneys, paralegals, secretaries, and other support staff employed in the law
5 firms identified herein: Jones Day, Dentons US LLP, Klinedinst PC, Pillsbury
6 Winthrop Shaw Pittman LLP, Quinn Emanuel Urquhart & Sullivan, LLP, and Baker
7 & McKenzie LLP); (b) in-house litigation counsel; (c) other in-house counsel whose
8 responsibilities do not include operational business or competitive decision-making
9 authority, provided disclosure to counsel covered by subparagraphs (b) and (c) hereof
10 is reasonably necessary for the prosecution or defense and conduct of this litigation,
11 and (d) Court-approved in-house counsel for Defendants—currently Laura Kibbe,
12 Lisa Katz, and Maureen Nakly—pursuant to the Court’s February 4, 2021 Order at
13 ECF No. 173.

14 **GENERAL RULES**

15 4. Each Party or subpoenaed non-party to this litigation that produces or
16 discloses any materials, answers to interrogatories, responses to requests for
17 admission, trial testimony, deposition testimony, and transcripts of trial testimony
18 and depositions, or information that the producing party believes should be subject
19 to this Protective Order (hereinafter, the “Producing Party”) may designate the same
20 as “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “OUTSIDE COUNSEL
21 AND COURT APPROVED IN-HOUSE COUNSEL ONLY.”

22 (a) **Designation as “CONFIDENTIAL”:** Any Producing Party may
23 designate information as “CONFIDENTIAL” only if, in the good faith
24 belief of such Producing Party and its counsel, the unrestricted
25 disclosure of such information could be potentially prejudicial to the
26 business or operations of such designating party.

27 (b) **Designation as “ATTORNEYS’ EYES ONLY”:** Any Producing Party
28 may designate information as “ATTORNEYS’ EYES ONLY” only if,

1 in the good faith belief of such Producing Party and its counsel, the
2 information is among that considered to be highly sensitive by the
3 designating party, including but not limited to research, technical,
4 commercial, financial, or pricing information, or such other proprietary
5 or sensitive business and commercial information that is not publicly
6 available, disclosure of which could reasonably result in commercial,
7 financial, or business harm.

8 (c) **Designation as “OUTSIDE COUNSEL AND COURT APPROVED**
9 **IN-HOUSE COUNSEL ONLY”**: Any Producing Party may designate
10 information as “OUTSIDE COUNSEL AND COURT APPROVED IN-
11 HOUSE COUNSEL ONLY” only if, in the good faith belief of such
12 Producing Party and its counsel, the information would disclose trade
13 secrets or Source Code.

14 “Source Code” includes extremely sensitive information or items
15 representing computer code and associated comments and revision
16 histories, formulas, engineering specifications, or schematics that define
17 or otherwise describe in detail the algorithms or structure of software or
18 hardware designs, disclosure of which to another Party or non-party
19 would create a substantial risk of serious harm that could not be avoided
20 by less restrictive means. To the extent production of Source Code
21 becomes necessary in this case, a Producing Party may designate Source
22 Code as “OUTSIDE COUNSEL AND COURT APPROVED IN-
23 HOUSE COUNSEL ONLY” if it comprises or includes confidential,
24 proprietary or trade secret Source Code.

25 (d) If a Producing Party chooses to designate material “ATTORNEYS’
26 EYES ONLY” or “OUTSIDE COUNSEL AND COURT APPROVED
27 IN-HOUSE COUNSEL ONLY” it must mark those documents
28 provisionally with that designation to give the receiving party

1 (hereinafter, the “Receiving Party”) a reasonable opportunity to review
2 and evaluate whether the Receiving Party agrees with the designation.
3 The Producing Party will also identify in a cover letter to the production,
4 by bates numbers, all documents that have been so marked. If the
5 Receiving Party has questions about and/or objections to any of the
6 provisional designations it may proceed to address any such questions
7 and/or objections according to the provision of Paragraph 17 hereof. In
8 the absence of notice by the Receiving Party of questions about and/or
9 objections to the designations “ATTORNEYS’ EYES ONLY” or
10 “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE
11 COUNSEL ONLY,” the designation will be considered final for
12 purposes of any use of such documents in the matter.

13 5. In the event the Producing Party elects to produce materials for
14 inspection, no marking need be made by the Producing Party in advance of the initial
15 inspection. For purposes of the initial inspection, all materials produced will be
16 considered as “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE
17 COUNSEL ONLY,” and must be treated as such pursuant to the terms of this Order.
18 Thereafter, upon selection of specified materials for copying by the inspecting party,
19 the Producing Party must, within a reasonable time prior to producing those materials
20 to the inspecting party, mark the copies of those materials that contain confidential
21 information with the appropriate confidentiality marking.

22 6. Whenever a deposition taken on behalf of any Party involves a
23 disclosure of confidential information of any Party or subpoenaed non-party:

- 24 (a) the deposition or portions of the deposition must be designated as
25 containing confidential information subject to the provisions of this
26 Order; such designation must be made on the record whenever possible,
27 but a Party or subpoenaed non-party may designate portions of
28 depositions as containing confidential information after transcription of

1 the proceedings; a Party or subpoenaed non-party will have until
2 fourteen (14) days after receipt of the deposition transcript to inform the
3 other Party or Parties to the action of the portions of the transcript to be
4 designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” or
5 “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE
6 COUNSEL ONLY.”

7 (b) the disclosing Party or subpoenaed non-party will have the right to
8 exclude from attendance at the deposition, during such time as the
9 confidential information is to be disclosed, any person other than the
10 deponent, counsel (including their staff and associates), the court
11 reporter, and the person(s) agreed upon pursuant to Paragraphs 8-9 (for
12 “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE
13 COUNSEL ONLY” information), Paragraph 10 (for “ATTORNEYS’
14 EYES ONLY” information), Paragraph 11 (for “CONFIDENTIAL”
15 information) below;

16 (c) the originals of the deposition transcripts and all copies of the deposition
17 must bear the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES
18 ONLY” or “OUTSIDE COUNSEL AND COURT APPROVED IN-
19 HOUSE COUNSEL ONLY” as appropriate, and the original or any
20 copy ultimately presented to a court for filing must not be filed unless it
21 can be accomplished under seal, identified as being subject to this Order,
22 and protected from being opened except by order of this Court.

23 7. All confidential information designated as “CONFIDENTIAL” or
24 “ATTORNEYS’ EYES ONLY” or “OUTSIDE COUNSEL AND COURT
25 APPROVED IN-HOUSE COUNSEL ONLY” must not be disclosed by the
26 Receiving Party to anyone other than those persons designated within this Order and
27 must be handled in the manner set forth below and, in any event, must not be used
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1 for any purpose other than in connection with this litigation, unless and until such
2 designation is removed either by agreement of the Parties, or by order of the Court.

3 8. Information designated “OUTSIDE COUNSEL AND COURT
4 APPROVED IN-HOUSE COUNSEL ONLY” may only be viewed by outside
5 counsel of the Receiving Party as defined in Paragraph 3(a); Court-approved in-house
6 counsel as defined in Paragraph 3(d); witnesses (pursuant to the terms of Paragraph
7 8(a)-(b)); independent experts (pursuant to the terms of Paragraph 8(c)); employees
8 of a party’s insurer (pursuant to the terms of Paragraph 8(d)); and the individuals
9 described in Paragraphs 8(e)-(i), under the conditions set forth in this Paragraph and
10 Subparagraphs.

11 (a) **Witnesses:** A witness who has been subpoenaed or noticed for
12 deposition, trial testimony, or other court proceeding in the above-
13 captioned case not otherwise authorized to view the information
14 designated “OUTSIDE COUNSEL AND COURT APPROVED IN-
15 HOUSE COUNSEL ONLY” in question, has the right to review such
16 information during that witness’ testimony at a deposition, hearing, or
17 trial in the above-captioned case, or in preparation for the same;
18 provided that:

- 19 (1) the name of the witness appears on the document either as an
20 author or recipient thereof or in the body of the document;
- 21 (2) the witness is a current employee of the Producing Party;
- 22 (3) the witness is a former employee of the Producing Party who was
23 employed at the time the document was created (provided the
24 former employee is not currently employed by a competitor of the
25 Producing Party or is or was a Defendant in this matter); or
- 26 (4) counsel for the Producing Party expressly authorizes in writing
27 disclosure of the information to the witness prior to its disclosure.
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1 (b) Any witness authorized pursuant to subparagraphs (2, 3, or 4) of
2 paragraph 8(a) to review information designated “OUTSIDE
3 COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL
4 ONLY” may only review such information provided that:

5 (1) the disclosure is made for the purpose of advancing the disclosing
6 Party’s claims or defenses, and for no other purposes;

7 (2) the witness is not permitted to retain the information designated
8 “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE
9 COUNSEL ONLY” after the witness is examined regarding the
10 Protected Material, unless the witness was previously authorized
11 to possess the information prior to the examination;

12 (3) the witness signs the Exhibit A; and

13 (4) the witness is explicitly informed by counsel for the Party seeking
14 to use the information designated “OUTSIDE COUNSEL AND
15 COURT APPROVED IN-HOUSE COUNSEL ONLY” that
16 signing Exhibit A means that the witness is forbidden from
17 disclosing the information designated “OUTSIDE COUNSEL
18 AND COURT APPROVED IN-HOUSE COUNSEL ONLY”
19 except as permitted under this Order and that he or she is subject
20 to the Court’s jurisdiction for the purposes of enforcing this
21 Order.

22 (c) **Independent Experts:** Any independent expert (testifying or
23 otherwise) who is to receive or review confidential information must
24 sign a copy of the form attached hereto as Exhibit A in advance of seeing
25 or receiving such confidential information. The right of any independent
26 expert, including support staff employed by such expert, to receive
27 confidential information designated “OUTSIDE COUNSEL AND
28 COURT APPROVED IN-HOUSE COUNSEL ONLY” will be subject

1 to the advance approval of such expert by the Producing Party or by
2 permission of the Court. The Party seeking approval of an independent
3 expert to access such confidential information must provide the
4 Producing Party with the name and curriculum vitae of the independent
5 expert. Any objection by the Producing Party to an independent expert
6 receiving confidential information designated “OUTSIDE COUNSEL
7 AND COURT APPROVED IN-HOUSE COUNSEL ONLY” must be
8 made in writing within fourteen (14) days following receipt of the
9 identification of the expert to whom access is proposed. “OUTSIDE
10 COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL
11 ONLY” information may be disclosed to an independent expert if the
12 fourteen (14) day period has passed and no objection has been made.
13 The approval of independent experts’ access to “OUTSIDE COUNSEL
14 AND COURT APPROVED IN-HOUSE COUNSEL ONLY”
15 information must not be unreasonably withheld;

- 16 (d) **Employees of a Party’s Insurer:** Relevant employees of any insurer to
17 a Party may review information designated “OUTSIDE COUNSEL
18 AND COURT APPROVED IN-HOUSE COUNSEL ONLY” to the
19 extent that such disclosure is reasonably necessary for the prosecution
20 or defense of that Party in this action and who have signed Exhibit A;
- 21 (e) Special masters, mediators, or other third parties who are appointed by
22 the Court or retained by the Parties for settlement purposes or resolution
23 of discovery or other disputes and their necessary personnel and, in the
24 case of persons retained by the Parties, who have signed Exhibit A;
- 25 (f) Any other person agreed to by the designating party in writing;
- 26 (g) Persons engaged by a Party’s counsel to furnish litigation support
27 services, such as, but not limited to, E-discovery vendors, technological
28 support staff, graphic consultants, jury consultants, jury research

1 participants, and office support staff, in this action, but not including the
2 Party receiving the information, or any director, officer, agent or
3 employee of the Party;

4 (h) Pursuant to the restrictions set forth in Paragraphs 8 and 9 of this Order,
5 officers of the Court, members of the jury; and

6 (i) Any other person to whom the Court compels disclosure of the
7 designated “OUTSIDE COUNSEL AND COURT APPROVED IN-
8 HOUSE COUNSEL ONLY” or to whom disclosure is required by law.

9 9. Disclosure of Source Code information is subject to the following terms:

10 (a) To the extent production of Source Code becomes necessary to the
11 prosecution or defense of the case, a Producing Party may designate
12 Source Code as “OUTSIDE COUNSEL AND COURT APPROVED
13 IN-HOUSE COUNSEL ONLY” if it comprises or includes confidential,
14 proprietary, and/or trade secret Source Code. Nothing in this Protective
15 Order shall be construed as a representation or admission that Source
16 Code is properly discoverable, or to obligate any Party to produce any
17 Source Code. Source Code includes human-readable programming
18 language text that defines software. Text files containing Source Code
19 shall hereinafter be referred to as “Source Code files.” Source Code files
20 shall include, but are not limited to, files containing Source Code in “C,”
21 “C++,” BREW, Java ME, J2ME, assembler programming languages,
22 and other human readable text programming languages. Source Code
23 files further include “.include files,” “make” files, “link” files, and other
24 human-readable text files used in the generation and/or building of
25 software directly executed on a microprocessor or micro-controller.
26 Unless otherwise ordered by the Court or permitted in writing by the
27 Producing Party, discovery information designated as “OUTSIDE
28 COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL

1 ONLY” shall be subject to the provisions set forth herein, and may be
2 disclosed, subject to the provisions set forth below, solely to:

3 (1) the Receiving Party’s outside counsel in this Action, as well as
4 such of immediate paralegals and staff and any copying or clerical
5 litigation support services working at the direction of such
6 counsel, paralegals, and staff (1) who are not involved in
7 competitive decision-making, as defined by *Brown Bag Software*
8 *v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992), (as
9 opposed to legal advice) on behalf of a Party or a competitor of a
10 Party; and (2) to whom it is reasonably necessary to disclose the
11 information for this litigation;

12 (2) Court-approved in-house counsel as defined in Paragraph 3(d);

13 (3) experts of the Receiving Party, retained for this matter, provided
14 that disclosure is only to the extent necessary to perform such
15 work and provided that: (1) such Expert has agreed to be bound
16 by the provisions of the Protective Order by signing a copy of
17 Exhibit A; (2) such Expert is not involved in competitive
18 decision-making, as defined by *Brown Bag Software v. Symantec*
19 *Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992), on behalf of a Party
20 or a competitor of a Party; (3) to the extent required by U.S.
21 government export control and economic sanctions laws,
22 including the U.S. Export Administration Regulations, such
23 Expert accesses the Source Code in the United States only, and
24 does not transport such Source Code to or access it from any
25 foreign jurisdiction; and (4) no unresolved objections to such
26 disclosure exist after proper notice has been given to all Parties;

27 (4) professional vendors to whom disclosure is reasonably necessary
28 for this litigation and who have signed Exhibit A;

- 1 (5) the Court and its personnel;
- 2 (6) court reporters and their staff who have signed Exhibit A, with
- 3 the exception that printouts of Source Code used as exhibits in a
- 4 deposition shall not be provided to the court reporter or their staff;
- 5 (7) any mediator who is assigned to hear this matter, and his or her
- 6 staff, subject to their agreement to maintain confidentiality to the
- 7 same degree as required by this Protective Order; and
- 8 (8) any other person with the prior written consent of the Producing
- 9 Party.
- 10 (b) Any Source Code produced by the Producing Party shall be made
- 11 available for inspection in electronic format at a designated facility of
- 12 the Producing Party's vendor, or any other location mutually agreed by
- 13 the Parties. Any Source Code files that are produced by the Producing
- 14 Party will be made available for inspection at the San Diego office of
- 15 their outside counsel, Pillsbury Winthrop Shaw Pittman LLP, or any
- 16 other location agreed by the Parties. Source Code will be made available
- 17 for inspection between the hours of 9 a.m. and 4:30 p.m. on business
- 18 days (i.e., weekdays that are not Federal holidays), although the Parties
- 19 will be reasonable in accommodating reasonable requests to conduct
- 20 inspections at other times.
- 21 (c) Prior to the first inspection of Source Code, the Receiving Party shall
- 22 provide thirty (30) days' notice of the Source Code that it wishes to
- 23 inspect. Plaintiffs made their first request to inspect Source Code on
- 24 November 3, 2020. Subsequent requests by the Receiving Party for
- 25 additional Source Code may be made on twenty (20) days' notice and
- 26 the Parties will work together to accommodate the Requesting Party's
- 27 request and the Responding Party's needs in making the requested
- 28 Source Code available in a timely manner.

- 1 (d) For Source Code that has already been made available for review, the
2 Receiving Party shall provide two (2) days' notice prior to any
3 additional requests to review that Source Code, although more notice is
4 preferred, and less notice will be considered by the Producing Party if
5 circumstances allow the Producing Party to make such accommodation.
- 6 (e) Source Code that is designated "OUTSIDE COUNSEL AND COURT
7 APPROVED IN-HOUSE COUNSEL ONLY" shall be produced for
8 inspection and review subject to the following provisions, unless
9 otherwise agreed by the Producing Party:
- 10 (1) All Source Code shall be made available by the Producing Party
11 to the Receiving Party's counsel and/or experts in a secure room
12 on a secured computer in a configuration deemed secure by the
13 Producing Party, as necessary and appropriate to prevent and
14 protect against any unauthorized copying, transmission, removal
15 or other transfer of any Source Code outside or away from the
16 computer on which the Source Code is provided for inspection
17 (the "Source Code Computer" in the "Source Code Review
18 Room"). The Producing Party shall install tools that are sufficient
19 for viewing and searching the Source Code produced, on the
20 platform produced, if such tools exist and are presently used in
21 the ordinary course of the Producing Party's business. The
22 Receiving Party's counsel and/or experts or consultants may
23 request that commercially available software tools for viewing
24 and searching Source Code be installed on the secured computer,
25 provided, however, that (a) the Receiving Party possesses an
26 appropriate license to such software tools; (b) the Producing Party
27 approves such software tools, which approval shall not be
28 unreasonably withheld; and (c) such other software tools are

1 reasonably necessary for the Receiving Party to perform its
2 review of the Source Code consistent with all of the protections
3 herein. The Receiving Party must provide the Producing Party
4 with access to such licensed software tool(s) at least seven (7)
5 days in advance of the date upon which the Receiving Party
6 wishes to have the additional software tools available for use on
7 the Source Code Computer.

8 (2) No recordable media or recordable devices, including without
9 limitation sound recorders, computers, tablets, cellular
10 telephones, peripheral equipment, cameras, CDs, DVDs, or
11 drives of any kind, shall be permitted into the Source Code
12 Review Room.

13 (3) The Receiving Party's counsel and/or experts or consultants shall
14 be entitled to take notes relating to the Source Code but may not
15 copy the Source Code into the notes and may not take such notes
16 electronically on the Source Code Computer itself or any other
17 computer. Each page of any such notes containing Source Code
18 information or (and any additional notes, analyses, or descriptions
19 relating thereto) must be marked as "OUTSIDE COUNSEL AND
20 COURT APPROVED IN-HOUSE COUNSEL ONLY."

21 (4) The Producing Party may visually monitor the activities of the
22 Receiving Party's representatives during any Source Code
23 review, but only to ensure that no unauthorized electronic records
24 of the Source Code and no information concerning the Source
25 Code is being created or transmitted in any way.

26 (5) Access to and review of the Source Code shall be strictly for the
27 purposes of investigating the claims and defenses at issue in this
28 action. Unless otherwise agreed by the Parties in writing, no

1 person shall review or analyze any Source Code for purposes
2 unrelated to this action, and no person may use any knowledge
3 gained as a result of reviewing the Source Code in this action in
4 any other pending or future dispute, proceeding or litigation
5 (although Source Code can be used in appeal or writ proceedings
6 arising from this action).

- 7 (6) No copies of all or any portion of the Source Code may leave the
8 Source Code Review Room except as otherwise provided herein.
9 Further, no other written or electronic record of the Source Code
10 is permitted except as otherwise provided herein. The Source
11 Code Computer shall be equipped to allow printing of the Source
12 Code made available for inspection by the Producing Party.
13 Copies of Source Code shall only be made on watermarked pre-
14 Bates numbered paper, which shall be provided by the Producing
15 Party. Under no circumstances are original printouts of the Source
16 Code to be made except for directly onto the watermarked and
17 numbered sides of the paper provided by the Producing Party.
18 Printouts may be made only when necessary to prepare court
19 filings or pleadings, to prepare a testifying expert's expert report,
20 or for use in a deposition, and for no other purpose (such as to
21 review at a later time elsewhere). Counsel for the Producing Party
22 will keep the original printouts, and shall provide copies of such
23 original printouts to counsel for the Receiving Party within one
24 (1) business day of (1) any request by the Receiving Party, or
25 (2) otherwise being notified that such original printouts have been
26 made or designated. Counsel may request up to 5 copies of each
27 original printout. All printed Source Code shall be logged by
28 Receiving Party's counsel and/or other personnel of a Receiving

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Party. No additional electronic copies of the Source Code shall be provided by the Producing Party. Any printed portion that consists of more than twenty-five (25) pages of a continuous block of Source Code shall be subject to the Receiving Party demonstrating good cause, and the burden shall be on the Receiving Party to demonstrate need for such a printed copy. The Receiving Party may print out no more than 5% or two hundred (200) pages of the total Source Code, whichever is greater, absent good cause. If the Receiving Party deems it necessary to print more than 5% or two hundred (200) pages of the total Source Code, whichever is greater, or more than twenty-five (25) pages of a continuous block of Source Code, the Receiving Party and the Producing Party shall meet and confer pursuant to CivLR 26.1.a to determine the appropriate amount of additional pages to be printed. If, after meeting and conferring, the Producing Party and the Receiving Party cannot come to an agreement as to whether the requested additional pages of printed Source Code are narrowly tailored for a permitted purpose, the Receiving Party shall be entitled to seek a Court resolution by contacting the assigned magistrate judge's chambers within thirty (30) days of the Receiving Party's request to raise the dispute. The burden shall be on the Receiving Party to demonstrate that the requested additional pages are no more than is reasonably necessary for a permitted purpose and not merely printed for the purposes of review and analysis elsewhere. The Receiving Party shall not print Source Code in order to review blocks of Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code electronically on the Source Code Computer, as

1 the Parties acknowledge and agree that the purpose of the
2 protections herein would be frustrated by printing portions of
3 code for review and analysis elsewhere, and that printing is
4 permitted only when necessary to prepare court filings or
5 pleadings, to prepare a testifying expert's expert report, or for use
6 in a deposition. The printed pages shall constitute part of the
7 Source Code produced by the Producing Party.

8 (7) All persons who will review a Producing Party's Source Code on
9 behalf of a Receiving Party, including a Receiving Party's
10 counsel, shall be identified in writing to the Producing Party at
11 least five (5) days in advance of the first time that such person
12 reviews such Source Code. Such identification shall be in
13 addition to any other disclosure required under this Protective
14 Order. All persons viewing the Source Code shall sign on each
15 day they view Source Code a log that will include the names of
16 persons who enter the locked room to view the Source Code and
17 when they enter and depart. The Producing Party shall be entitled
18 to a copy of the log upon one (1) business day's advance notice
19 to the Receiving Party.

20 (8) Unless otherwise agreed in advance by the Parties in writing,
21 following each day on which inspection is done under this
22 Protective Order, the Receiving Party's counsel and/or experts
23 shall remove all notes, documents, and all other materials from
24 the Source Code Review Room. The Producing Party shall not be
25 responsible for any items left in the room following each
26 inspection session, and the Receiving Party shall have no
27 expectation of confidentiality for any items left in the room
28 following each inspection session without a prior agreement to

1 that effect. Proper identification of all authorized persons shall be
2 provided prior to any access to the Source Code Review Room or
3 the Source Code Computer. Proper identification requires
4 showing, at a minimum, a photo identification card sanctioned by
5 the government of any State of the United States, by the
6 government of the United States, or by the nation state of the
7 authorized person's current citizenship. Access to the secure
8 room or the Source Code Computer may be denied, at the
9 discretion of the supplier, to any individual who fails to provide
10 proper identification.

11 (9) Other than as provided above, the Receiving Party will not copy,
12 remove, or otherwise transfer any Source Code from the Source
13 Code Computer including, without limitation, copying,
14 removing, or transferring the Source Code onto any recordable
15 media or recordable device. The Receiving Party will not transmit
16 any Source Code in any way from the Producing Party's facilities
17 hosting the Source Code Computer.

18 (10) The Receiving Party's counsel may not make paper copies of any
19 portions of the Source Code received from a Producing Party,
20 except for copies attached to court filings, expert reports, or used
21 at depositions, and shall maintain a log of all paper copies of the
22 Source Code. The log shall include the names of the reviewers
23 and/or recipients of paper copies and locations where the paper
24 copies are stored. Upon one (1) business day's advance notice to
25 the Receiving Party by the Producing Party, the Receiving Party
26 shall provide a copy of this log to the Producing Party.

27 (11) The Receiving Party's counsel and any person receiving a copy
28 of any Source Code shall maintain and store any paper copies of

1 the Source Code or any notes, analyses, or descriptions of Source
2 Code at their offices in a manner that prevents duplication of or
3 unauthorized access to the Source Code, including, without
4 limitation, storing the Source Code or any notes, analyses, or
5 descriptions of Source Code in a locked room or cabinet at all
6 times when it is not in use. No more than a total of ten (10)
7 individuals identified by the Receiving Party shall have access to
8 the printed portions of the Producing Party's Source Code (except
9 insofar as such code appears in any court filing or expert report).

10 (12) For depositions, the Receiving Party may bring printed copies of
11 specific portions of the Source Code it wishes to use at the
12 deposition for the witness and counsel for the Parties. Copies of
13 Source Code that are marked as deposition exhibits shall not be
14 provided to the court reporter or attached to deposition
15 transcripts; rather, the deposition record will identify the exhibit
16 by its production numbers. All paper copies of Source Code
17 brought to the deposition shall remain with the Producing Party's
18 counsel following the deposition for secure destruction in a timely
19 manner.

20 (13) Except as provided in this sub-paragraph, absent express written
21 permission from the Producing Party, the Receiving Party may
22 not create electronic images, or any other images, or make
23 electronic copies, of the Source Code from any paper copy of
24 Source Code for use in any manner (including by way of example
25 only, the Receiving Party may not scan the Source Code to a PDF,
26 photograph the Source Code, or scan the Source Code using
27 optical character recognition ("OCR")). Subject to the foregoing
28 exceptions, images or copies of Source Code shall not be included

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in correspondence between the Parties (references to production numbers shall be used instead) and shall be omitted from pleadings and other papers whenever possible. If a Party reasonably believes that it needs to submit a portion of Source Code as part of a filing with the Court, then the Parties shall meet and confer as to how to make such a filing while protecting the confidentiality of the Source Code and such Source Code will not be filed absent agreement from the Producing Party that the confidentiality protections will be adequate. If a Producing Party agrees to produce an electronic copy of all or any portion of its Source Code or to provide written permission to the Receiving Party that an electronic or any other copy needs to be made for a Court filing, access to the Receiving Party's submission, communication, and/or disclosure of electronic files or other materials containing any portion of Source Code (paper or electronic) shall at all times be limited solely to individuals who are expressly authorized to view Source Code under the provisions of this Protective Order. Where the Producing Party has provided the express written permission required under this provision for a Receiving Party to create electronic copies of Source Code, the Receiving Party shall maintain a log of all such electronic copies of any portion of Source Code in its possession or in the possession of its retained consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations and manner in which the electronic copies are stored. Additionally, any such electronic copies must be labeled "OUTSIDE COUNSEL AND COURT APPROVED

1 IN-HOUSE COUNSEL ONLY” as provided for in this Protective
2 Order.

3 10. Information designated “ATTORNEYS’ EYES ONLY” may only be
4 viewed by counsel of the Receiving Party, as defined in Paragraph 3(a)-(c), witnesses
5 (pursuant to the terms of Paragraph 8(a)-(b)); independent experts (pursuant to the
6 terms of Paragraph 8(c)); employees of a party’s insurer (pursuant to the terms of
7 Paragraph 8(d)); and Court personnel and individuals covered by and pursuant to
8 Paragraphs 8(e)-(i), on the same terms and conditions as set forth in Paragraph 8
9 hereof.

10 11. Information designated “CONFIDENTIAL” may only be viewed by
11 counsel of the Receiving Party, as defined in Paragraph 3(a)-(c), on the same terms
12 and conditions as set forth in Paragraph 8 hereof; any witness while testifying under
13 oath in this matter provided the witness is governed by the provisions of Paragraph
14 8(b)(1)-(4) hereof; independent experts (pursuant to the terms of Paragraph 8(c));
15 employees of a party’s insurer (pursuant to the terms of Paragraph 8(d)); Court
16 personnel and individuals covered by and pursuant to Paragraphs 8(e)-(i); and by the
17 additional individuals listed below, provided each such individual has read this Order
18 in advance of disclosure and has signed Exhibit A:

- 19 (a) Executives who are required to participate in policy decisions with
20 reference to this action;
- 21 (b) Technical personnel of the Parties with whom Counsel for the Parties
22 find it necessary to consult, in the discretion of such counsel, in
23 preparation for trial of this action;
- 24 (c) Persons engaged by a Party’s counsel to furnish litigation support
25 services, such as, but not limited to, E-discovery vendors, technological
26 support staff, graphic consultants, jury consultants, jury research
27 participants, and office support staff, in this action, but not including the
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1 Party receiving the information, or any director, officer, agent or
2 employee of the Party; and

3 (d) Stenographic and clerical employees associated with the individuals
4 identified above.

5 12. Material designated “CONFIDENTIAL” or “ATTORNEYS’ EYES
6 ONLY” or “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE
7 COUNSEL ONLY” may be shown to any person indicated on the face of the
8 document to be its originator, author or a recipient of a copy of the document, or a
9 custodian or other person who otherwise possessed or knew the information. Nothing
10 herein is intended to limit or govern the manner in which the Producing Party handles
11 its own documents produced that are given a confidential designation hereunder,
12 including without limitation to whom the documents may be shown.

13 13. All information which has been designated as “CONFIDENTIAL” or
14 “ATTORNEYS’ EYES ONLY” by a Producing Party, and any and all reproductions
15 of that information, must be retained in the custody of the counsel for the Receiving
16 Party identified in Paragraph 3. All information which has been designated as
17 “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL
18 ONLY” by a Producing Party, and any and all reproductions of that information,
19 must be retained in the custody of the counsel for the Receiving Party identified in
20 Paragraph 3(a). However, independent experts authorized to view information
21 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” or “OUTSIDE
22 COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL ONLY” under the
23 terms of this Order may retain custody of copies such as are necessary for their
24 participation in this litigation. Any transcripts containing confidential information
25 kept in a document management system must be password protected. To the extent
26 possible, the Parties will request the court reporter provide a version of the transcript
27 with all confidential information redacted to be approved by counsel making the
28 designations.

1 14. Any handwritten or typed notes made by counsel about the confidential
2 information shall be treated as confidential information.

3 15. At all times, the confidential information disclosed shall remain in
4 possession of counsel permitted access to it in a secured environment within that
5 counsel's office or home. No copy may be sent or taken off-site without the prior
6 written consent of the designating counsel, except for use in preparing for or during
7 depositions, cross-examinations, hearings, or on affidavits (or any other examination)
8 or at Court or at a mediation in relation to this litigation.

9 16. Before any materials produced in discovery, answers to interrogatories,
10 responses to requests for admissions, deposition transcripts, or other documents
11 which are designated as confidential information are filed with the Court for any
12 purpose, the party seeking to file such material must seek permission of the Court to
13 file the material under seal. If a Party wishes to file or lodge documents designated
14 as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" or "OUTSIDE
15 COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL ONLY" under seal,
16 the other Parties shall not unreasonably withhold agreement to such procedure. If an
17 agreement is reached, the Parties shall submit to the Court a Joint Motion and
18 Proposed Order for such filing or lodging under seal. If no such agreement is reached,
19 then the proponent of lodging or filing under seal shall seek a sealing order from the
20 Court consistent with the Local Rules of the United States District Court for the
21 Southern District of California and the assigned judge's chambers rules. No party
22 may file any document under seal, except pursuant to a court order that authorizes
23 the filing of the document, or portion of the document, under seal. A sealing order
24 will issue only upon a showing that the information is privileged or protectable under
25 the law. The party seeking to file under seal must limit its sealing request to the
26 specific portion of the document that contains the confidential or privileged material.

27 17. At any stage of these proceedings, any Party may object to a designation
28 of materials that have been designated as confidential information. The Party

1 objecting to confidentiality must notify, in writing, counsel for the Producing Party
2 of the objected-to materials and the ground(s) for the objection. Thereafter, lead
3 counsel (or attorneys with full authority to make decisions and bind the client without
4 later seeking approval from a supervising attorney) must promptly meet and confer,
5 pursuant to Local Rule 26.1.a. If the dispute is not resolved within seven (7) days of
6 receipt of the objections, and after counsel have thoroughly and completely met and
7 conferred, the Parties must place a joint call to the assigned magistrate judge's
8 chambers to explain the dispute and the Parties' respective positions. The materials
9 at issue must be treated as confidential, as designated by the designating party, until
10 the Court has ruled on the objection or the matter has been otherwise resolved.

11 18. All confidential information must be held in confidence by those
12 inspecting or receiving it, and must be used only for purposes of this action. Counsel
13 for each Party, and each person receiving confidential information must take
14 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such
15 information. If confidential information is disclosed to any person other than a person
16 authorized by this Order, the Party responsible for the unauthorized disclosure must
17 immediately bring all pertinent facts relating to the unauthorized disclosure to the
18 attention of the other Parties and, without prejudice to any rights and remedies of the
19 other Parties, make every effort to prevent further disclosure by the Party and by the
20 person(s) receiving the unauthorized disclosure.

21 19. No Party will be responsible to another Party or subpoenaed non-party
22 for disclosure of confidential information under this Order if the information in
23 question is not labeled or otherwise identified as such in accordance with this Order.

24 20. If a Party or subpoenaed non-party, through inadvertence, produces any
25 confidential information without labeling or marking or otherwise designating it as
26 such in accordance with this Order, the designating party or subpoenaed non-party
27 may give written notice to the Receiving Party that the document or thing produced
28 is deemed confidential information, and that the document or thing produced should

1 be treated as such in accordance with that designation under this Order. The
2 Receiving Party must treat the materials as confidential, once the designating party
3 so notifies the Receiving Party. If the Receiving Party has disclosed the materials
4 before receiving the designation, the Receiving Party must notify the designating
5 party in writing of each such disclosure. Counsel for the Parties or subpoenaed non-
6 parties will agree on a mutually acceptable manner of labeling or marking the
7 inadvertently produced materials as “CONFIDENTIAL” or “ATTORNEYS’ EYES
8 ONLY” or “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE
9 COUNSEL ONLY” subject to the protective order.

10 21. Nothing within this Order will prejudice the right of any Party or
11 subpoenaed non-party to object to the production of any discovery material on the
12 grounds that the material is protected as privileged or as attorney work product.

13 22. Nothing in this Order will bar counsel from rendering advice to their
14 clients with respect to this litigation and, in the course thereof, relying upon any
15 information designated as confidential information, provided that the contents of the
16 information must not be disclosed.

17 23. This Order will be without prejudice to the right of any Party or
18 subpoenaed non-party to oppose production of any information for lack of relevance
19 or any other ground other than the mere presence of confidential information. The
20 existence of this Order must not be used by either party as a basis for discovery that
21 is otherwise improper under the Federal Rules of Civil Procedure.

22 24. Nothing within this order will be construed to prevent disclosure of
23 confidential information if such disclosure is required by law or by order of the Court.

24 25. Within ninety (90) days following the final termination of this action,
25 including any and all appeals, counsel for each party must return all confidential
26 information to the Party or subpoenaed non-party that produced the information,
27 including any copies, excerpts, and summaries of that information, or must destroy
28 same at the option of the Receiving Party, and must purge all such information from

1 all machine-readable media on which it resides. Should counsel decide to
2 destroy/delete rather than return any of the applicable confidential information,
3 counsel shall provide the party that produced such information with written
4 certification that the destruction/deletion of all confidential information has been
5 completed. Notwithstanding the foregoing, counsel for each Party may retain all
6 pleadings, briefs, memoranda, motions, and other documents filed with the Court that
7 refer to or incorporate confidential information and will continue to be bound by this
8 Order with respect to all such retained information. Further, attorney work product
9 materials that contain confidential information need not be destroyed, but, if they are
10 not destroyed, the person in possession of the attorney work product will continue to
11 be bound by this Order with respect to all such retained information.

12 26. The restrictions and obligations set forth within this Order will not apply
13 to any information that: (a) the Parties agree should not be designated confidential
14 information; (b) the Parties agree, or the Court rules, is already public knowledge;
15 (c) the Parties agree, or the Court rules, has become public knowledge other than as
16 a result of disclosure by the Receiving Party, its employees, or its agents in violation
17 of this Order; or (d) has come or will come into the Receiving Party's legitimate
18 knowledge independently of the production by the designating party. Prior
19 knowledge must be established by pre-production documentation.

20 27. The restrictions and obligations within this Order will not be deemed to
21 prohibit discussions of any confidential information with anyone if that person
22 already has or obtains legitimate possession of that information.

23 28. Transmission by email or some other currently utilized method of
24 transmission is acceptable for all notification purposes within this Order.

25 29. This Order may be modified by agreement of the Parties, subject to
26 approval by the Court.

27 30. The Court may modify the protective order in the interest of justice or
28 for public policy reasons. The Parties prefer that the Court provide them with notice

1 of the Court’s intent to modify the Order and the content of those modifications, prior
2 to entry of such an order.

3 31. If another court or government agency subpoenas or orders production
4 of material designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” or
5 “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL
6 ONLY,” that a Party has obtained under the terms of this Order, such Party shall,
7 immediately or as soon as practicable, but in any event at least seven (7) days before
8 such designated materials are required to be produced, notify the designating party
9 of the pendency of the subpoena, public records request, or order, in writing, and
10 unless compelled to do so by court order shall not produce the designated information
11 until the designating party has either taken appropriate steps to protect the material,
12 or notified the Party that no such steps will be taken. It shall be the responsibility of
13 the designating party to obtain relief from the subpoena, public records request, or
14 order prior to the date of compliance, and, to give the designating party an
15 opportunity to obtain such relief, the Party from whom the information is sought shall
16 not make the disclosure before the actual due date of compliance set forth in the
17 subpoena, public records request, or other order.

18 32. **Inadvertent Production of Privileged or Otherwise Protected**
19 **Material:** When a Producing Party gives notice to Receiving Parties that certain
20 inadvertently or mistakenly produced information, document, or thing is subject to a
21 claim of privilege or other protection, the obligations of the Receiving Parties are
22 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent or
23 mistaken disclosure of such information, document, or thing shall not by itself
24 constitute a waiver by the Producing Party of any claims of privilege or work-product
25 immunity or other applicable protections. However, nothing herein restricts the right
26 of the Receiving Party to challenge the Producing Party’s claim of privilege if
27 appropriate within a reasonable time after receiving notice of the inadvertent or
28 mistaken disclosure. This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
3 Parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 Parties may incorporate their agreement in the stipulated protective order submitted
6 to the Court.

7 **IT IS SO ORDERED.**

8 Dated: February 16, 2021

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10 _____
11 Honorable Daniel E. Butcher
12 United States Magistrate Judge
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1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

3 I, _____, being duly sworn, state that:

4 1. My address is _____.

5 2. My present employer is _____ and the
6 address of my present employment is _____.

7 3. My present occupation or job description is _____.

8 4. I have carefully read and understood the provisions of the STIPULATED
9 PROTECTIVE ORDER in this case signed by the Court, and I will comply with all
10 provisions of the Protective Order.

11 5. I will hold in confidence and not disclose to anyone not qualified under
12 the Protective Order any Confidential Material (defined as material designated as
13 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” or “OUTSIDE COUNSEL
14 AND COURT APPROVED IN-HOUSE COUNSEL ONLY” or information
15 derived from such materials) or any words, summaries, abstracts, or indices of
16 Confidential Information disclosed to me.

17 6. I will limit use of Confidential Material disclosed to me solely for purpose
18 of this action.

19 7. No later than the final conclusion of the case, I will return all Confidential
20 Material and summaries, abstracts, and indices thereof which come into my
21 possession, and documents or things which I have prepared relating thereto, to
22 counsel for the party for whom I was employed or retained.

23 I declare under penalty of perjury that the foregoing is true and correct.

24
25 Dated: _____