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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

ORDER GRANTING JOINT MOTION TO AMEND PROTECTIVE ORDER [DKT. NO. 381] AND ENTERING AMENDED PROTECTIVE ORDER

1 Before the Court is the parties' Joint Motion to Amend Protective Order. Dkt.
2 No. 381. Good cause appearing, the Court GRANTS the Motion and enters the
3 following Amended Protective Order:

4 The Court recognizes that at least some of the documents and information
5 ("materials") being sought through discovery in the above-captioned action are, for
6 competitive reasons, normally kept confidential by the Parties. The Parties have
7 agreed to be bound by the terms of this Protective Order ("Order") in this action. The
8 materials to be exchanged throughout the course of the litigation between the parties
9 may contain trade secret or other confidential research, technical, cost, price,
10 marketing or other commercial information, as is contemplated by Federal Rule of
11 Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the
12 confidentiality of such materials as much as practical during the litigation.

13 THEREFORE:

14 **DEFINITIONS**

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

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

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 and court-approved in-house counsel for Plaintiffs—Nancy Radtke—
14 pursuant to agreement of all parties.

15 **GENERAL RULES**

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

23 (a) **Designation as “CONFIDENTIAL”:** Any Producing Party may
24 designate information as “CONFIDENTIAL” only if, in the good faith
25 belief of such Producing Party and its counsel, the unrestricted
26 disclosure of such information could be potentially prejudicial to the
27 business or operations of such designating party.
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- 1 (b) **Designation as “ATTORNEYS’ EYES ONLY”**: Any Producing Party
2 may designate information as “ATTORNEYS’ EYES ONLY” only if,
3 in the good faith belief of such Producing Party and its counsel, the
4 information is among that considered to be highly sensitive by the
5 designating party, including but not limited to research, technical,
6 commercial, financial, or pricing information, or such other proprietary
7 or sensitive business and commercial information that is not publicly
8 available, disclosure of which could reasonably result in commercial,
9 financial, or business harm.
- 10 (c) **Designation as “OUTSIDE COUNSEL AND COURT APPROVED**
11 **IN-HOUSE COUNSEL ONLY”**: Any Producing Party may designate
12 information as “OUTSIDE COUNSEL AND COURT APPROVED IN-
13 HOUSE COUNSEL ONLY” only if, in the good faith belief of such
14 Producing Party and its counsel, the information would disclose trade
15 secrets or Source Code.
16 “Source Code” includes extremely sensitive information or items
17 representing computer code and associated comments and revision
18 histories, formulas, engineering specifications, or schematics that define
19 or otherwise describe in detail the algorithms or structure of software or
20 hardware designs, disclosure of which to another Party or non-party
21 would create a substantial risk of serious harm that could not be avoided
22 by less restrictive means. To the extent production of Source Code
23 becomes necessary in this case, a Producing Party may designate Source
24 Code as “OUTSIDE COUNSEL AND COURT APPROVED IN-
25 HOUSE COUNSEL ONLY” if it comprises or includes confidential,
26 proprietary or trade secret Source Code.
- 27 (d) If a Producing Party chooses to designate material “ATTORNEYS’
28 EYES ONLY” or “OUTSIDE COUNSEL AND COURT APPROVED

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

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

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

- 26 (a) the deposition or portions of the deposition must be designated as
27 containing confidential information subject to the provisions of this
28 Order; such designation must be made on the record whenever possible,

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

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

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

25 7. All confidential information designated as “CONFIDENTIAL” or
26 “ATTORNEYS’ EYES ONLY” or “OUTSIDE COUNSEL AND COURT
27 APPROVED IN-HOUSE COUNSEL ONLY” must not be disclosed by the
28 Receiving Party to anyone other than those persons designated within this Order and

1 must be handled in the manner set forth below and, in any event, must not be used
2 for any purpose other than in connection with this litigation or as permitted by this
3 Court's Order dated December 9, 2021 (Dkt. 373), unless and until such designation
4 is removed either by agreement of the Parties, or by order of the Court.

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

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

- 21 (1) the name of the witness appears on the document either as an
22 author or recipient thereof or in the body of the document;
- 23 (2) the witness is a current employee of the Producing Party;
- 24 (3) the witness is a former employee of the Producing Party who was
25 employed at the time the document was created (provided the
26 former employee is not currently employed by a competitor of the
27 Producing Party or is or was a Defendant in this matter); or
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1 (4) counsel for the Producing Party expressly authorizes in writing
2 disclosure of the information to the witness prior to its disclosure.

3 (b) Any witness authorized pursuant to subparagraphs (2, 3, or 4) of
4 paragraph 8(a) to review information designated “OUTSIDE
5 COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL
6 ONLY” may only review such information provided that:

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

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

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

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

24 (c) **Independent Experts:** Any independent expert (testifying or
25 otherwise) who is to receive or review confidential information must
26 sign a copy of the form attached hereto as Exhibit A in advance of seeing
27 or receiving such confidential information. The right of any independent
28 expert, including support staff employed by such expert, to receive

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

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

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

9 (i) Any other person to whom the Court compels disclosure of the
10 designated "OUTSIDE COUNSEL AND COURT APPROVED IN-
11 HOUSE COUNSEL ONLY" or to whom disclosure is required by law.

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

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

1 Unless otherwise ordered by the Court or permitted in writing by the
2 Producing Party, discovery information designated as “OUTSIDE
3 COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL
4 ONLY” shall be subject to the provisions set forth herein, and may be
5 disclosed, subject to the provisions set forth below, solely to:

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

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

16 (3) experts of the Receiving Party, retained for this matter, provided
17 that disclosure is only to the extent necessary to perform such
18 work and provided that: (1) such Expert has agreed to be bound
19 by the provisions of the Protective Order by signing a copy of
20 Exhibit A; (2) such Expert is not involved in competitive
21 decision-making, as defined by *Brown Bag Software v. Symantec*
22 *Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992), on behalf of a Party
23 or a competitor of a Party; (3) to the extent required by U.S.
24 government export control and economic sanctions laws,
25 including the U.S. Export Administration Regulations, such
26 Expert accesses the Source Code in the United States only, and
27 does not transport such Source Code to or access it from any
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- 1 foreign jurisdiction; and (4) no unresolved objections to such
2 disclosure exist after proper notice has been given to all Parties;
3 (4) professional vendors to whom disclosure is reasonably necessary
4 for this litigation and who have signed Exhibit A;
5 (5) the Court and its personnel;
6 (6) court reporters and their staff who have signed Exhibit A, with
7 the exception that printouts of Source Code used as exhibits in a
8 deposition shall not be provided to the court reporter or their staff;
9 (7) any mediator who is assigned to hear this matter, and his or her
10 staff, subject to their agreement to maintain confidentiality to the
11 same degree as required by this Protective Order; and
12 (8) any other person with the prior written consent of the Producing
13 Party.
- 14 (b) Any Source Code produced by the Producing Party shall be made
15 available for inspection in electronic format at a designated facility of
16 the Producing Party's vendor, or any other location mutually agreed by
17 the Parties. Any Source Code files that are produced by the Producing
18 Party will be made available for inspection at the San Diego office of
19 their outside counsel, Pillsbury Winthrop Shaw Pittman LLP, or any
20 other location agreed by the Parties. Source Code will be made available
21 for inspection between the hours of 9 a.m. and 4:30 p.m. on business
22 days (i.e., weekdays that are not Federal holidays), although the Parties
23 will be reasonable in accommodating reasonable requests to conduct
24 inspections at other times.
- 25 (c) Prior to the first inspection of Source Code, the Receiving Party shall
26 provide thirty (30) days' notice of the Source Code that it wishes to
27 inspect. Plaintiffs made their first request to inspect Source Code on
28 November 3, 2020. Subsequent requests by the Receiving Party for

1 additional Source Code may be made on twenty (20) days' notice and
2 the Parties will work together to accommodate the Requesting Party's
3 request and the Responding Party's needs in making the requested
4 Source Code available in a timely manner.

5 (d) For Source Code that has already been made available for review, the
6 Receiving Party shall provide two (2) days' notice prior to any
7 additional requests to review that Source Code, although more notice is
8 preferred, and less notice will be considered by the Producing Party if
9 circumstances allow the Producing Party to make such accommodation.

10 (e) Source Code that is designated "OUTSIDE COUNSEL AND COURT
11 APPROVED IN-HOUSE COUNSEL ONLY" shall be produced for
12 inspection and review subject to the following provisions, unless
13 otherwise agreed by the Producing Party:

14 (1) All Source Code shall be made available by the Producing Party
15 to the Receiving Party's counsel and/or experts in a secure room
16 on a secured computer in a configuration deemed secure by the
17 Producing Party, as necessary and appropriate to prevent and
18 protect against any unauthorized copying, transmission, removal
19 or other transfer of any Source Code outside or away from the
20 computer on which the Source Code is provided for inspection
21 (the "Source Code Computer" in the "Source Code Review
22 Room"). The Producing Party shall install tools that are sufficient
23 for viewing and searching the Source Code produced, on the
24 platform produced, if such tools exist and are presently used in
25 the ordinary course of the Producing Party's business. The
26 Receiving Party's counsel and/or experts or consultants may
27 request that commercially available software tools for viewing
28 and searching Source Code be installed on the secured computer,

1 provided, however, that (a) the Receiving Party possesses an
2 appropriate license to such software tools; (b) the Producing Party
3 approves such software tools, which approval shall not be
4 unreasonably withheld; and (c) such other software tools are
5 reasonably necessary for the Receiving Party to perform its
6 review of the Source Code consistent with all of the protections
7 herein. The Receiving Party must provide the Producing Party
8 with access to such licensed software tool(s) at least seven (7)
9 days in advance of the date upon which the Receiving Party
10 wishes to have the additional software tools available for use on
11 the Source Code Computer.

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

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

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

3 (5) Access to and review of the Source Code shall be strictly for the
4 purposes of investigating the claims and defenses at issue in this
5 action. Unless otherwise agreed by the Parties in writing, no
6 person shall review or analyze any Source Code for purposes
7 unrelated to this action, and no person may use any knowledge
8 gained as a result of reviewing the Source Code in this action in
9 any other pending or future dispute, proceeding or litigation
10 (although Source Code can be used in appeal or writ proceedings
11 arising from this action).

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

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(1) business day of (1) any request by the Receiving Party, or (2) otherwise being notified that such original printouts have been made or designated. Counsel may request up to 5 copies of each original printout. All printed Source Code shall be logged by Receiving Party’s counsel and/or other personnel of a Receiving 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

1 permitted purpose and not merely printed for the purposes of
2 review and analysis elsewhere. The Receiving Party shall not
3 print Source Code in order to review blocks of Source Code
4 elsewhere in the first instance, i.e., as an alternative to reviewing
5 that Source Code electronically on the Source Code Computer, as
6 the Parties acknowledge and agree that the purpose of the
7 protections herein would be frustrated by printing portions of
8 code for review and analysis elsewhere, and that printing is
9 permitted only when necessary to prepare court filings or
10 pleadings, to prepare a testifying expert's expert report, or for use
11 in a deposition. The printed pages shall constitute part of the
12 Source Code produced by the Producing Party.

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

25 (8) Unless otherwise agreed in advance by the Parties in writing,
26 following each day on which inspection is done under this
27 Protective Order, the Receiving Party's counsel and/or experts
28 shall remove all notes, documents, and all other materials from

1 the Source Code Review Room. The Producing Party shall not be
2 responsible for any items left in the room following each
3 inspection session, and the Receiving Party shall have no
4 expectation of confidentiality for any items left in the room
5 following each inspection session without a prior agreement to
6 that effect. Proper identification of all authorized persons shall be
7 provided prior to any access to the Source Code Review Room or
8 the Source Code Computer. Proper identification requires
9 showing, at a minimum, a photo identification card sanctioned by
10 the government of any State of the United States, by the
11 government of the United States, or by the nation state of the
12 authorized person's current citizenship. Access to the secure
13 room or the Source Code Computer may be denied, at the
14 discretion of the supplier, to any individual who fails to provide
15 proper identification.

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

23 (10) The Receiving Party's counsel may not make paper copies of any
24 portions of the Source Code received from a Producing Party,
25 except for copies attached to court filings, expert reports, or used
26 at depositions, and shall maintain a log of all paper copies of the
27 Source Code. The log shall include the names of the reviewers
28 and/or recipients of paper copies and locations where the paper

1 copies are stored. Upon one (1) business day's advance notice to
2 the Receiving Party by the Producing Party, the Receiving Party
3 shall provide a copy of this log to the Producing Party.

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

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

25 (13) Except as provided in this sub-paragraph, absent express written
26 permission from the Producing Party, the Receiving Party may
27 not create electronic images, or any other images, or make
28 electronic copies, of the Source Code from any paper copy of

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Source Code for use in any manner (including by way of example only, the Receiving Party may not scan the Source Code to a PDF, photograph the Source Code, or scan the Source Code using optical character recognition (“OCR”). Subject to the foregoing exceptions, images or copies of Source Code shall not be included 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

1 names of the reviewers and/or recipients of any such electronic
2 copies, and the locations and manner in which the electronic
3 copies are stored. Additionally, any such electronic copies must
4 be labeled “OUTSIDE COUNSEL AND COURT APPROVED
5 IN-HOUSE COUNSEL ONLY” as provided for in this Protective
6 Order.

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

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

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

7 (d) Stenographic and clerical employees associated with the individuals
8 identified above.

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

17 13. All information which has been designated as "CONFIDENTIAL" or
18 "ATTORNEYS' EYES ONLY" by a Producing Party, and any and all reproductions
19 of that information, must be retained in the custody of the counsel for the Receiving
20 Party identified in Paragraph 3. All information which has been designated as
21 "OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL
22 ONLY" by a Producing Party, and any and all reproductions of that information,
23 must be retained in the custody of the counsel for the Receiving Party identified in
24 Paragraph 3(a). However, independent experts authorized to view information
25 designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" or "OUTSIDE
26 COUNSEL AND COURT APPROVED IN-HOUSE COUNSEL ONLY" under the
27 terms of this Order may retain custody of copies such as are necessary for their
28 participation in this litigation. Any transcripts containing confidential information

1 kept in a document management system must be password protected. To the extent
2 possible, the Parties will request the court reporter provide a version of the transcript
3 with all confidential information redacted to be approved by counsel making the
4 designations.

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

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

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

1 the law. The party seeking to file under seal must limit its sealing request to the
2 specific portion of the document that contains the confidential or privileged material.

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

15 18. All confidential information must be held in confidence by those
16 inspecting or receiving it, and must be used only for purposes of this action or as
17 permitted by Court Order dated December 9, 2021 (Dkt. 373). Counsel for each
18 Party, and each person receiving confidential information must take reasonable
19 precautions to prevent the unauthorized or inadvertent disclosure of such
20 information. If confidential information is disclosed to any person other than a person
21 authorized by this Order, the Party responsible for the unauthorized disclosure must
22 immediately bring all pertinent facts relating to the unauthorized disclosure to the
23 attention of the other Parties and, without prejudice to any rights and remedies of the
24 other Parties, make every effort to prevent further disclosure by the Party and by the
25 person(s) receiving the unauthorized disclosure.

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

1 20. If a Party or subpoenaed non-party, through inadvertence, produces any
2 confidential information without labeling or marking or otherwise designating it as
3 such in accordance with this Order, the designating party or subpoenaed non-party
4 may give written notice to the Receiving Party that the document or thing produced
5 is deemed confidential information, and that the document or thing produced should
6 be treated as such in accordance with that designation under this Order. The
7 Receiving Party must treat the materials as confidential, once the designating party
8 so notifies the Receiving Party. If the Receiving Party has disclosed the materials
9 before receiving the designation, the Receiving Party must notify the designating
10 party in writing of each such disclosure. Counsel for the Parties or subpoenaed non-
11 parties will agree on a mutually acceptable manner of labeling or marking the
12 inadvertently produced materials as “CONFIDENTIAL” or “ATTORNEYS’ EYES
13 ONLY” or “OUTSIDE COUNSEL AND COURT APPROVED IN-HOUSE
14 COUNSEL ONLY” subject to the protective order.

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

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

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

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

3 25. Within ninety (90) days following the final termination of this action,
4 including any and all appeals, counsel for each party must return all confidential
5 information to the Party or subpoenaed non-party that produced the information,
6 including any copies, excerpts, and summaries of that information, or must destroy
7 same at the option of the Receiving Party, and must purge all such information from
8 all machine-readable media on which it resides. Should counsel decide to
9 destroy/delete rather than return any of the applicable confidential information,
10 counsel shall provide the party that produced such information with written
11 certification that the destruction/deletion of all confidential information has been
12 completed. Notwithstanding the foregoing, counsel for each Party may retain all
13 pleadings, briefs, memoranda, motions, and other documents filed with the Court that
14 refer to or incorporate confidential information and will continue to be bound by this
15 Order with respect to all such retained information. Further, attorney work product
16 materials that contain confidential information need not be destroyed, but, if they are
17 not destroyed, the person in possession of the attorney work product will continue to
18 be bound by this Order with respect to all such retained information.

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

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

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

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

8 30. The Court may modify the protective order in the interest of justice or
9 for public policy reasons. The Parties prefer that the Court provide them with notice
10 of the Court's intent to modify the Order and the content of those modifications, prior
11 to entry of such an order.

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

27 **32. Inadvertent Production of Privileged or Otherwise Protected**
28 **Material:** When a Producing Party gives notice to Receiving Parties that certain

1 inadvertently or mistakenly produced information, document, or thing is subject to a
2 claim of privilege or other protection, the obligations of the Receiving Parties are
3 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent or
4 mistaken disclosure of such information, document, or thing shall not by itself
5 constitute a waiver by the Producing Party of any claims of privilege or work-product
6 immunity or other applicable protections. However, nothing herein restricts the right
7 of the Receiving Party to challenge the Producing Party's claim of privilege if
8 appropriate within a reasonable time after receiving notice of the inadvertent or
9 mistaken disclosure. This provision is not intended to modify whatever procedure
10 may be established in an e-discovery order that provides for production without prior
11 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
12 Parties reach an agreement on the effect of disclosure of a communication or
13 information covered by the attorney-client privilege or work product protection, the
14 Parties may incorporate their agreement in the stipulated protective order submitted
15 to the Court.

16 **IT IS SO ORDERED.**

17 Dated: December 23, 2021



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19 _____
Honorable Daniel E. Butcher
20 United States Magistrate Judge

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 the
12 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 derived
15 from such materials) or any words, summaries, abstracts, or indices of Confidential
16 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: _____