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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 EPICENTRX, INC.,

12 Plaintiff,

13 v.

14 COREY A. CARTER, M.D.,

15 Defendant.
16
17

Case No.: 20cv1058-LAB-LL

**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
STIPULATED PROTECTIVE
ORDER WITH MODIFICATIONS**

[ECF No. 46]

18
19 Currently before the Court is the Parties' "Joint Motion for Entry of [Proposed]
20 Stipulated Protective Order." ECF No. 46. The Parties represent they have agreed upon the
21 terms of a Protective Order (attached as Exhibit A to this Order) in all respects except for
22 one: whether the Protective Order should contain a "HIGHLY CONFIDENTIAL-
23 ATTORNEYS' EYES ONLY" designation that would preclude Defendant, Dr. Carter,
24 from directly reviewing certain materials with this designation. Id. at 5-6. For the reasons
25 set forth below, the Court: (1) **GRANTS** Plaintiff's request for a provision allowing for
26 materials to be designated "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY";
27 and (2) **GRANTS** the Parties' Joint Motion for Entry of a Stipulated Protective Order with
28 modifications.

1 **RELEVANT BACKGROUND**

2 The instant dispute arises over Section 7.3 of the Parties’ Stipulated Protective
3 Order, which permits the Parties to designate certain items as “HIGHLY
4 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” Id. at 5.

5 Specifically, Section 7.3 states:

6 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY” Information or Items. A higher level of
8 protection shall be provided for trade secrets and highly sensitive
9 research, development or commercial documents, testimony,
10 information, or other materials designated “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Unless
12 otherwise ordered by the Court or permitted in writing by the
13 Designating Party, access to material designated “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be
15 restricted to the following individuals:

16 (a) Outside Counsel of Record for the Parties as well as
17 employees of said Outside Counsel of Record to whom it is
18 reasonably necessary to disclose the information to assist such
19 attorneys in connection with the Action;

20 (b) Experts (as defined in this Order) used by Outside Counsel
21 of Record for the Parties (1) to whom disclosure is reasonably
22 necessary for this Action; and (2) who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (c) court reporters and their staff;

25 (d) the Court and its personnel;

26 (e) professional jury or trial consultants, and Professional
27 Vendors to whom disclosure is reasonably necessary for this
28 Action and who have signed the “Acknowledgment and
Agreement to Be Bound” (Exhibit A);

(f) authors and recipients of the Confidential Material;

1 (g) a fact deposition witness or a trial witness that meets the
2 limitations of Section (f) above; any 30(b)(6) deposition witness
3 presented by the Designating Party; any trial witness, provided
4 that the Designated Material marked “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” has been or
6 will be offered into evidence, by stipulation of the Designating
7 Party or by ruling by the Court; attorneys for those witnesses;
8 and if disclosure is reasonably necessary, provided: (1) the
9 deposing and/or examining party requests that the witness sign
10 the form attached as Exhibit A hereto; and (2) the witness will
11 not be permitted to keep any confidential information unless they
12 sign the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A), unless otherwise agreed by the Designating Party or
14 ordered by the court. Pages of transcribed deposition testimony
15 or exhibits to depositions that reveal Protected Material may be
16 separately bound by the court reporter and may not be disclosed
17 to anyone except as permitted under this Stipulated Protective
18 Order;

14 (h) any mediator or settlement officer, and their supporting
15 personnel, mutually agreed upon by the parties engaged in
16 settlement discussions, subject to their agreement to maintain
17 confidentiality to the same degree as required by this Protective
18 Order; and

18 (i) any other person with the prior written consent of the
19 Designating Party or by Order of this Court.

20 Ex. A at 9-10.¹

21 Plaintiff argues a “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
22 provision is appropriate in this case because there “may be disclosures and documents”
23 exchanged that “contain highly sensitive trade secrets and proprietary information” which
24 Plaintiff “contends [] would be inappropriate and prejudicial” for Plaintiff to disclose to
25

26
27 ¹ The Parties also dispute whether all other references to the “HIGHLY
28 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” designation should be included. ECF
No. 46 at 5.

1 Defendant directly. ECF No. 46 at 5. Plaintiff further argues that the designation does not
2 prevent “counsel from rendering advice to their clients with respect to this litigation” and
3 that “protective orders in trade secrets cases commonly include” an AEO designation. Id.

4 Defendant argues that the inclusion of an AEO provision would be “prejudicial to
5 his ability to advise his attorneys, assist in this case, and make informed decision[s].” Id.
6 at 6. In addition, Defendant argues the provision is “illogical and highly prejudicial” as
7 Defendant would previously have had access to all confidential documents and information
8 in this case as the former CEO of EpicentRx, Inc. Id.

9 ANALYSIS

10 I. Inclusion of AEO Provision

11 Rule 26 authorizes the court, upon a showing of good cause, to issue a protective
12 order to “to protect a party or person from annoyance, embarrassment, oppression, or undue
13 burden or expense[.]” Fed. R. Civ. P. 26(c)(1).

14 As the party seeking the “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
15 ONLY” designation, Plaintiff bears the burden of establishing good cause for its inclusion.
16 Lindsey v. Elsevier Inc., No. 16-cv-00959-GPC-DHB, 2016 U.S. Dist. LEXIS 111786, at
17 *5 (S.D. Cal. Aug. 19, 2016) (citing Rivera v. NIBCO, Inc., 384 F.3d 822, 827 (9th Cir.
18 2004)). To establish good cause, Plaintiff must demonstrate that disclosure “will cause
19 specific prejudice or harm.” Id. In evaluating prejudice or harm in cases “[w]here trade
20 secrets or other confidential commercial information is involved, the court will balance the
21 risk of disclosure to competitors against the risk that a protective order will impair
22 prosecution or defense of the claims.” Lindsey, 2016 U.S. Dist. LEXIS 111786, at *5-6
23 (quoting Nutratch, Inc. v. Syntech Int’l, Inc., 242 F.R.D. 552, 555 (C.D. Cal. 2007))
24 (citing Brown Bag Software v. Symantec Corp., 960 F.2d 1465, 1470 (9th Cir. 1992)).

25 As an initial matter, the Court notes with disfavor that **both** of the Parties’ respective
26 briefs were unsupported by any factual evidence or legal authority. Nonetheless, Rule 26(c)
27 “confers broad discretion on the trial court to decide when a protective order is appropriate
28 and what degree of protection is required.” Seattle Times Co. v. Rhinehart, 467 U.S. 20,

1 36 (1984).

2 Here, the Court agrees with Plaintiff that this District’s Model Protective Order is an
3 appropriate starting point “setting forth presumptively reasonable conditions regarding the
4 treatment of highly confidential information.” See Barnes & Noble, Inc. v. LSI Corp., No.
5 C 11-02709 EMC (LB), 2012 U.S. Dist. LEXIS 23103, at *6 (N.D. Cal. Feb. 23, 2012).
6 Under this District’s Model Protective Order, Parties may designate information
7 “CONFIDENTIAL – FOR COUNSEL ONLY” only if “in the good faith belief of such
8 party and its counsel” the designated information is “considered to be the most sensitive
9 by the party”—including but not limited to “trade secret or other confidential research,
10 development, financial or other commercial information.” See United States District Court
11 for the Southern District of California Model Protective Order at 3, available at
12 <https://www.casd.uscourts.gov/assets/pdf/forms/Model%20Protective%20Order.pdf>.

13 Section 7.3 of the Stipulated Protective Order operates similarly, providing a “higher
14 level of protection” for “trade secrets and highly sensitive research, development or
15 commercial documents, testimony, information or other materials[.]” Ex. A at 10. The
16 Stipulated Protective Order further defines “HIGHLY CONFIDENTIAL—
17 ATTORNEYS’ EYES ONLY” items to be Confidential Information that the designating
18 party contends are “trade secrets and/or commercially sensitive” such that the disclosure
19 “could cause harm that could not be avoided absent such designation.” Id. at 3. Given these
20 similarities, the Court finds Section 7.3 of the Parties’ Stipulated Protective Order is at least
21 presumptively reasonable.

22 The Court is additionally mindful of the context in which this case was brought. See
23 Brown Bag, 960 F.2d at 1470 (courts should examine “the nature of the claims” in making
24 a determination on the propriety of a protective order). Plaintiff commenced this action for
25 (among other things) trade secret misappropriation. See ECF No. 1. Specifically, Plaintiff
26 alleges (among other things) that Defendant is engaged in an effort to “recreate the
27 proprietary formulations of its therapies” and that Defendant “has been in contact with
28 entities in China and elsewhere to secure a deal for these trade secrets and other

1 information.” Id. at 24.

2 Given this context, the Court takes Plaintiff’s concerns seriously and is not
3 persuaded Plaintiff should be prevented from **ever** designating **any** materials “HIGHLY
4 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” As the Ninth Circuit has held, district
5 courts are permitted “broad latitude to grant protective orders to prevent disclosure of
6 materials for many types of information, including, but not limited to, trade secrets or other
7 confidential research, development, or commercial information[.]” Phillips v. GMC, 307
8 F.3d 1206, 1211 (9th Cir. 2002) (emphasis added); see also Pedinol Pharmacal v. Rising
9 Pharm., No. CV 06-2120 (LDW) (AKT), 2007 U.S. Dist. LEXIS 114268, at *4 (E.D.N.Y.
10 Apr. 12, 2007) (“Protective orders that limit access to certain documents to counsel and
11 experts only are commonly entered in litigation involving trade secrets and other
12 confidential research, development, or commercial information.”) (emphasis added).

13 The Court takes equally as seriously Defendant’s concerns an AEO provision would
14 make this litigation more onerous and affect “his ability to advise his attorneys[.]” ECF
15 No. 46 at 6. However, “[a] showing that the protective order increases the difficulty of
16 managing litigation, without more, does not constitute actual prejudice.” Mad Catz
17 Interactive, Inc. v. Razor USA, Ltd., No. 13cv2371-GPC (JLB), 2014 U.S. Dist. LEXIS
18 115896, at *16 (S.D. Cal. Aug. 19, 2014). As Plaintiff correctly notes, an AEO provision
19 would not deny Defendant complete access to AEO designated materials. The documents
20 would still be accessible by Defendant’s experienced attorneys. GXP Capital, LLC v.
21 Argonaut EMS, No. 17cv2283-GPC (BLM), 2018 U.S. Dist. LEXIS 102581, at *10 (S.D.
22 Cal. June 19, 2018) (no showing plaintiff would be prevented from litigating its case where
23 plaintiff had “experienced attorneys and possibly experts who will be able to review and
24 utilize the information.”); see also Intel Corp. v. VIA Techs., Inc., 198 F.R.D. 525, 529
25 (N.D. Cal. 2000) (“[r]equiring a party to rely on its competent outside counsel does not
26 create an ‘undue and unnecessary burden.’”) (citation omitted).

27 Defendant further argues that as the former CEO of EpicentRx, Inc., he would have
28 already had access to any confidential documents in this case, and precluding him from

1 access now would be “illogical and highly prejudicial.” ECF No. 46 at 6. The Stipulated
2 Protective Order however allows AEO designated materials to be shared with the “authors
3 and recipients of the Confidential Material.” Ex. A at 11. Under these terms, Defendant
4 would be allowed to view materials that he either authored or received during his tenure as
5 CEO. The Court finds this carve out reasonable given Defendant’s concerns—and
6 Defendant has provided no authority for the much broader assertion that he is automatically
7 entitled access to any information he **could** have accessed during his tenure as EpicentRx’s
8 CEO.

9 Finally, Defendant requests that Plaintiff establish “why Dr. Carter should be
10 precluded from seeing” any documents designated AEO before the documents are so
11 designated. ECF No. 46 at 6. This request is unnecessary. The Stipulated Protective Order
12 includes a provision allowing Defendant to challenge an AEO designation if Defendant’s
13 counsel believes such materials were improperly designated or that the designation would
14 unfairly prevent from Defendant from litigating his case. Ex. A at 8. The provision further
15 provides that the burden of persuasion to justify the designation would be on Plaintiff as
16 the designating party. Id. at 8.

17 On balance, the Court finds Defendant’s concerns are adequately addressed by the
18 Stipulated Protective Order and reasonably balanced against Plaintiff’s interests in safe-
19 guarding its trade secrets and other sensitive information in this case. The Court cautions
20 Plaintiff however that the Court expects the AEO designation to be used **sparingly** and
21 only when **absolutely necessary** to protect only that matter which is genuinely extremely
22 sensitive such that the disclosure could subject Plaintiff to harm that **could not be avoided**
23 **absent this designation** (consistent with the terms set forth in the Stipulated Protective
24 Order). See Ex. A at 3.

25 **II. Additional Modifications**

26 Per the undersigned Magistrate Judge’s Civil Chamber Rules, the Court further
27 modifies the Parties’ Stipulated Protective Order as follows:

- 28 • Paragraph 6.1 should be modified to read as follows: “Any Party or Non-Party

1 may challenge a designation of confidentiality at any time that is consistent
2 with the Court’s Scheduling Order and the Chamber Rules of the applicable
3 Judge.”

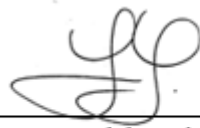
- 4 • Paragraph 12.3 should be modified to read as follows: “Filing Under Seal. No
5 document shall be filed under seal, and the Court shall not be required to take
6 any action, without separate prior order by the Judge before whom the hearing
7 or proceedings will take place, after application by the affected party with
8 appropriate notice to opposing counsel. The parties shall follow and abide by
9 applicable law, including Civil Local Rule 79.2, Section 2.j of the Electronic
10 Case Filing Administrative Policies and Procedures, and the chambers rules,
11 with respect to filing documents under seal. A sealing order may issue only
12 upon a request that establishes that the document, or portions thereof, is
13 privileged or otherwise subject to protection under the law. The request must
14 be narrowly tailored to seek sealing only of sensitive personal or confidential
15 information. An unredacted version of the document, identifying the portions
16 subject to the motion to seal, must be lodged with the motion to seal. A
17 redacted version of the document must be publicly filed simultaneously with
18 the motion or ex parte application to file under seal.”
- 19 • Paragraph 12.8 should be modified to read as follows: “The Court may modify
20 the terms and conditions of this Order for good cause, or in the interest of
21 justice, or for public policy reasons, on its own order at any time in these
22 proceedings. The parties prefer that the Court provide them with notice of the
23 Court's intent to modify the Order and the content of those modifications, prior
24 to entry of such an order.”

25 **CONCLUSION**

26 As set forth above, it is hereby **ORDERED** that the Parties’ Stipulated Protective
27 Order (Ex. A) be entered consistent with the terms set forth above.

28 **IT IS SO ORDERED.**

1 Dated: September 30, 2020



3 Honorable Linda Lopez
4 United States Magistrate Judge

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EXHIBIT A

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18 COREY A. CARTER, M.D.

19 Additional counsel listed on following page

20 **UNITED STATES DISTRICT COURT**
21 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

22 EPICENTRX, INC., a Delaware
23 corporation,

24 Plaintiff,

25 v.

26 COREY A. CARTER, M.D.,

27 Defendant.

Case No. 3:20-cv-01058-LAB-LL

Hon. Larry Alan Burns

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Complaint Filed: June 9, 2020

1 COREY A. CARTER, MD, an
2 individual,

3 Counterclaimant

4 v.

5 EPICENTRX, INC., a Delaware
6 corporation,

7 Counter-Defendant.
8
9

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19 EPICENTRX, INC.

COREY A. CARTER, M.D.

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 **1. PURPOSES AND LIMITATIONS**

12 Discovery in this action is likely to involve production of confidential,
13 proprietary, and/or private information for which special protection from public
14 disclosure and from use for any purpose other than prosecuting this litigation may
15 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
16 enter the following Stipulated Protective Order. The parties acknowledge that this
17 Order does not confer blanket protections on all disclosures or responses to
18 discovery and that the protection it affords from public disclosure and use extends
19 only to the limited information or items that are entitled to confidential treatment
20 under the applicable legal principles. The parties further acknowledge, as set forth
21 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
22 file confidential information under seal; the parties must follow the applicable local
23 rules, including the procedures that must be followed and the standards that will be
24 applied when a party seeks permission from the Court to file material under seal.

25 **A. GOOD CAUSE STATEMENT**

26 This action involves alleged trade secrets, confidential information, clinical
27 patient data and other valuable research, development, commercial, financial,
28 technical and/or proprietary information for which special protection from public

1 disclosure and from use for any purpose other than prosecution of this action is
2 warranted. Such confidential and proprietary materials and information may consist
3 of, among other things, confidential business or financial information, information
4 regarding confidential business practices, or other confidential research,
5 development, or commercial information (including information implicating privacy
6 rights of third parties), information otherwise generally unavailable to the public, or
7 which may be privileged or otherwise protected from disclosure under state or
8 federal statutes, court rules, case decisions, or common law. Accordingly, to
9 expedite the flow of information, to facilitate the prompt resolution of disputes over
10 confidentiality of discovery materials, to adequately protect information the parties
11 are entitled to keep confidential, to ensure that the parties are permitted reasonable
12 necessary uses of such material in preparation for and in the conduct of trial, to
13 address their handling at the end of the litigation, and serve the ends of justice, a
14 protective order for such information is justified in this matter. It is the intent of the
15 parties that information will not be designated as confidential for tactical reasons
16 and that nothing be so designated without a good faith belief that it has been
17 maintained in a confidential, non-public manner, and there is good cause why it
18 should not be part of the public record of this case.

19 **2. DEFINITIONS**

20 2.1 Action: *EpicentRx, Inc. v. Corey A. Carter, M.D., et al.*, Case No.
21 3:20-cv-01058-LAB-LL.

22 2.2 Challenging Party: a Party or Non-Party that challenges the
23 designation of information or items under this Order.

24 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
25 how it is generated, stored or maintained) or tangible things that qualify for
26 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
27 the Good Cause Statement, including, but not limited to, information contained or
28 disclosed in any materials, including documents, portions of documents, answers to

1 interrogatories, responses to requests for admissions, trial testimony, deposition
2 testimony, and transcripts of trial testimony and depositions, including data,
3 summaries, and compilations derived therefrom that is deemed to be confidential
4 information by any party to which it belongs.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
6 their support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY.”

11 2.6 Disclosure or Discovery Material: all items or information, regardless
12 of the medium or manner in which it is generated, stored, or maintained (including,
13 among other things, testimony, transcripts, and tangible things), that are produced or
14 generated in disclosures or responses to discovery in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as
17 an expert witness or as a consultant in this Action.

18 2.8 “HIGHLY CONFIDENTIAL” Information or Items: information or
19 items (regardless of how generated, stored or maintained) or tangible things that
20 contain or reflect sensitive Confidential Information that the designating party
21 contends are trade secrets and/or commercially sensitive, the disclosure of which
22 could cause harm that could not be avoided absent such designation.

23 2.9 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.10 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

28

1 2.11 Outside Counsel of Record: attorneys who are not employees of a
2 party to this Action but are retained to represent or advise a party to this Action and
3 have appeared in this Action on behalf of that party or are affiliated with a law firm
4 which has appeared on behalf of that party, and includes support staff.

5 2.12 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 2.14 Professional Vendors: persons or entities that provide litigation
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 2.15 Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY.”

17 2.16 Receiving Party: a Party that receives Disclosure or Discovery
18 Material from a Producing Party.

19 **3. SCOPE**

20 The protections conferred by this Stipulation and Order cover not only
21 Protected Material (as defined above), but also (1) any information copied or
22 extracted from Protected Material; (2) all copies, excerpts, summaries, or
23 compilations of Protected Material; and (3) any testimony, conversations, or
24 presentations by Parties or their Counsel that might reveal Protected Material.

25 **4. DURATION**

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
28 otherwise in writing or a court orders otherwise. Final disposition shall be deemed

1 to be the later of (1) dismissal of all claims and defenses in this Action, with or
2 without prejudice; and (2) final judgment herein after the completion and exhaustion
3 of all appeals, rehearings, remands, trials, or reviews of this action, including the
4 time limits for filing any motions or applications for extension of time pursuant to
5 applicable law.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

8 Each Party or Non-Party that designates information or items for protection under
9 this Order must take care to limit any such designation to specific material that
10 qualifies under the appropriate standards. To the extent it is practical to do so, the
11 Designating Party must designate for protection only those parts of material,
12 documents, items, or oral or written communications that qualify – so that other
13 portions of the material, documents, items, or communications for which protection
14 is not warranted are not swept unjustifiably within the ambit of this Order.

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

20 If it comes to a Designating Party’s attention that information or items that it
21 designated for protection do not qualify for protection at all or do not qualify for the
22 level of protection initially asserted, that Designating Party must promptly notify all
23 other parties that it is withdrawing the inapplicable designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in
25 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
27 under this Order must be clearly so designated before the material is disclosed or
28 produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix at a minimum, the legend
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” to each page that contains protected material. If only a portion or portions
7 of the material on a page qualifies for protection, the Producing Party also must
8 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
9 margins) and must specify, for each portion, the level of protection asserted.

10 A Party or Non-Party that makes original documents available for inspection
11 need not designate them for protection until after the inspecting Party has indicated
12 which documents it would like copied and produced. During the inspection and
13 before the designation, all of the material made available for inspection shall be
14 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
15 inspecting Party has identified the documents it wants copied and produced, the
16 Producing Party must determine which documents, or portions thereof, qualify for
17 protection under this Order. Then, before producing the specified documents, the
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that
20 contains Protected Material.

21 (b) for testimony given in a deposition or in other pretrial or trial
22 proceedings, that the Designating Party identify on the record, before the close of
23 the deposition, hearing, or other proceeding, whenever possible, all protected
24 testimony and specify the level of protection being asserted.

25 (1) However, a party may designate portions of depositions as
26 containing Protected Material after transcription of the proceedings. A Designating
27 Party will have until fourteen (14) days after receipt of the deposition transcript to
28 inform the other party or parties to the action of the portions of the transcript to be

1 designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY.”

3 (2) The use of a document as an exhibit at a deposition shall
4 not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Transcripts containing
6 Protected Material shall have an obvious legend on the title page that the transcript
7 contains Protected Material, and the title page shall be followed by a list of all pages
8 (including line numbers as appropriate) that have been designated as Protected
9 Material and the level of protection being asserted by the Designating Party. The
10 Designating Party shall inform the court reporter of these requirements.

11 (3) The Designating Party will have the right to exclude from
12 attendance at the deposition, during such time as the confidential information is to
13 be disclosed, any person other than the deponent, counsel (including their staff and
14 associates), the court reporter, and the person(s) agreed upon pursuant to paragraphs
15 7.2 and 7.3 below.

16 (4) The originals of the deposition transcripts and all copies of
17 the deposition must bear the legend "CONFIDENTIAL" or "HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY," as appropriate, and the original
19 or any copy ultimately presented to a court for filing must not be filed unless it can
20 be accomplished under seal, identified as being subject to this Order, and protected
21 from being opened except by order of this Court.

22 (c) for information produced in some form other than documentary
23 and for any other tangible items, that the Producing Party affix in a prominent place
24 on the exterior of the container or containers in which the information is stored the
25 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
26 EYES ONLY.” If only a portion or portions of the information warrants protection,
27 the Producing Party, to the extent practicable, shall identify the protected portion(s).
28

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party’s right to secure protection under this Order for such material.
4 Upon timely correction of a designation, the Receiving Party must make reasonable
5 efforts to assure that the material is treated in accordance with the provisions of this
6 Order.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time that is consistent with the Court’s
10 Scheduling Order.

11 6.2 Meet and Confer. The Challenging Party objecting to confidentiality
12 must notify, in writing, counsel for the Designating Party of the objected-to materials
13 and the grounds for the objection. If the dispute is not resolved consensually between
14 the parties within seven (7) days of receipt of such a notice of objections, the
15 Challenging Party may move the Court for a ruling on the objection. The materials
16 at issue must be treated as confidential information, as designated by the designating
17 party, until the Court has ruled on the objection or the matter has been otherwise
18 resolved.

19 6.3. The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper purpose
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
22 expose the Challenging Party to sanctions. Unless the Designating Party has waived
23 or withdrawn the confidentiality designation, all parties shall continue to afford the
24 materials in question the level of protection to which it is entitled under the Producing
25 Party’s designation until the Court rules on the challenge.

26 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a Non-Party in connection with this

1 Action only for prosecuting, defending, or attempting to settle this Action. Such
2 Protected Material may be disclosed only to the categories of persons and under the
3 conditions described in this Order. When the Action has been terminated, a
4 Receiving Party must comply with the provisions of section 13 below (FINAL
5 DISPOSITION).

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

9 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated
12 “CONFIDENTIAL” only to:

13 (a) The Receiving Party’s Outside Counsel of Record in this Action,
14 as well as employees of said Outside Counsel of Record to whom it is reasonably
15 necessary to disclose the information for this Action;

16 (b) the officers, directors, and employees (including House Counsel)
17 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

21 (d) the Court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and
24 Professional Vendors to whom disclosure is reasonably necessary for this Action
25 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
26 A);

27 (g) the author or recipient of a document containing the information
28 or a custodian or other person who otherwise possessed or knew the information;

1 (h) during their depositions, witnesses, and attorneys for witnesses,
2 in the Action to whom disclosure is reasonably necessary provided: (1) the
3 deposing party requests that the witness sign the form attached as Exhibit A hereto;
4 and (2) they will not be permitted to keep any confidential information unless they
5 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
6 otherwise agreed by the Designating Party or ordered by the court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal Protected
8 Material may be separately bound by the court reporter and may not be disclosed to
9 anyone except as permitted under this Stipulated Protective Order;

10 (i) any mediator or settlement officer, and their supporting
11 personnel, mutually agreed upon by any of the parties engaged in settlement
12 discussions; and

13 (j) any other person with the prior written consent of the
14 Designating Party or by Order of this Court.

15 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY” Information or Items. A higher level of protection shall be provided for
17 trade secrets and highly sensitive research, development or commercial documents,
18 testimony, information, or other materials designated “HIGHLY CONFIDENTIAL
19 – ATTORNEYS’ EYES ONLY.” Unless otherwise ordered by the Court or
20 permitted in writing by the Designating Party, access to material designated
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be restricted to
22 the following individuals:

23 (a) Outside Counsel of Record for the Parties as well as employees
24 of said Outside Counsel of Record to whom it is reasonably necessary to disclose
25 the information to assist such attorneys in connection with the Action;

26 (b) Experts (as defined in this Order) used by Outside Counsel of
27 Record for the Parties (1) to whom disclosure is reasonably necessary for this
28

1 Action; and (2) who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A);

3 (c) court reporters and their staff;

4 (d) the Court and its personnel;

5 (e) professional jury or trial consultants, and Professional Vendors to
6 whom disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (f) authors and recipients of the Confidential Material;

9 (g) a fact deposition witness or a trial witness that meets the limitations
10 of Section (f) above; any 30(b)(6) deposition witness presented by the Designating
11 Party; any trial witness, provided that the Designated Material marked “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” has been or will be offered into
13 evidence, by stipulation of the Designating Party or by ruling by the Court; attorneys
14 for those witnesses; and if disclosure is reasonably necessary, provided: (1) the
15 deposing and/or examining party requests that the witness sign the form attached as
16 Exhibit A hereto; and (2) the witness will not be permitted to keep any confidential
17 information unless they sign the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
19 court. Pages of transcribed deposition testimony or exhibits to depositions that
20 reveal Protected Material may be separately bound by the court reporter and may
21 not be disclosed to anyone except as permitted under this Stipulated Protective
22 Order;

23 (h) any mediator or settlement officer, and their supporting personnel,
24 mutually agreed upon by the parties engaged in settlement discussions, subject to
25 their agreement to maintain confidentiality to the same degree as required by this
26 Protective Order; and

27 (i) any other person with the prior written consent of the Designating
28 Party or by Order of this Court.

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

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

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

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

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

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

24 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
25 **PRODUCED IN THIS LITIGATION**

26 (a) The terms of this Order are applicable to information produced by a
27 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by

1 Non-Parties in connection with this litigation is protected by the remedies and relief
2 provided by this Order. Nothing in these provisions should be construed as
3 prohibiting a Non-Party from seeking additional protections.

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

8 (1) promptly notify in writing the Requesting Party and the Non-
9 Party that some or all of the information requested is subject to a confidentiality
10 agreement with a Non-Party;

11 (2) promptly provide the Non-Party with a copy of the Stipulated
12 Protective Order in this Action, the relevant discovery request(s), and a reasonably
13 specific description of the information requested; and

14 (3) make the information requested available for inspection by the
15 Non-Party, if requested.

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

24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this Order,
3 and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
11 procedure may be established in an e-discovery order that provides for production
12 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
13 (e), insofar as the parties reach an agreement on the effect of disclosure of a
14 communication or information covered by the attorney-client privilege or work
15 product protection, the parties may incorporate their agreement in the stipulated
16 protective order submitted to the court.

17 **12. MISCELLANEOUS**

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to
22 disclosing or producing any information or item on any ground, including, but not
23 limited to, the attorney-client privilege and work product doctrine, not addressed in
24 this Stipulated Protective Order. Similarly, no Party waives any right to object on
25 any ground to use in evidence of any of the material covered by this Protective
26 Order.

27 12.3. Filing Protected Material In Court. Before any Protected Material,
28 including, but not limited to, materials produced in discovery, answers to

1 interrogatories, responses to requests for admissions, deposition transcripts, or other
2 documents which are designated as CONFIDENTIAL or HIGHLY
3 CONFIDENTIAL – ATTORENY'S EYES ONLY are filed with the Court for any
4 purpose, the party seeking to file such material must seek permission of the Court to
5 file the material under seal. The filing party must comply with this Court's Local
6 Rules and the Federal Rules of Civil Procedure for that purpose. If a Party's request
7 to file Protected Material under seal is denied by the court, then the Receiving Party
8 may file the information in the public record, unless otherwise instructed by the
9 Court.

10 12.4 The restrictions and obligations set forth within this order will not
11 apply to any information that: (a) the parties agree should not be designated
12 confidential information; (b) the parties agree, or the Court rules, is already public
13 knowledge; (c) the parties agree, or the Court rules, has become public knowledge
14 other than as a result of disclosure by the receiving party, its employees, or its
15 agents in violation of this Order; or (d) has come or will come into the receiving
16 party's legitimate knowledge independently of the production by the designating
17 party. Prior knowledge must be established by pre-production documentation.

18 12.5 The restrictions and obligations within this order will not be deemed to
19 prohibit discussions of any confidential information with anyone if that person
20 already has or obtains legitimate possession of that information.

21 12.6 Transmission by email or some other currently utilized method of
22 transmission is acceptable for all notification purposes within this Order.

23 12.7 This Order may be modified by agreement of the parties, subject to
24 approval by the Court.

25 12.8 The Court may modify the terms and conditions of this Order for good
26 cause, or in the interest of justice, or on its own order at any time in these
27 proceedings. The parties prefer that the Court provide them with notice of the
28 Court's intent to modify the Order and the content of those modifications, prior to

1 entry of such an order.

2 **13. FINAL DISPOSITION**

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

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1 **14. VIOLATION**

2 Any violation of this Order may be punished by any and all appropriate
3 measures including, without limitation, contempt proceedings and/or monetary
4 sanctions.

5
6 I, Todd A. Boock, am the ECF user whose user ID and password authorized
7 the filing of this document. Pursuant to this Section 2(f)(4) of the Electronic Case
8 Filing Administrative Policies and Procedures Manual of the Southern District of
9 California, I attest that all signatories to this document have concurred and
10 authorized this filing.

11
12 Dated: September 21, 2020

Respectfully submitted,

13
14 _____
15 /s/ Todd A. Boock
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Attorneys for Plaintiff/Counter-Defendant
EPICENTRX, INC.

/s/ Guy A. Ricciardulli
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Attorneys for Defendant/Counter-Claimant
COREY A. CARTER, M.D.

SO ORDERED.

Dated: _____

Hon. Linda Lopez

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Southern District of California
8 on _____ [date] in the case of *EpicientRx, Inc. v. Corey A. Carter, M.D., et al.*,
9 Case No. 3:20-cv-01058-LAB-LL. I agree to comply with and to be bound by all
10 the terms of this Stipulated Protective Order and I understand and acknowledge that
11 failure to so comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person
14 or entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Southern District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [print or
19 type full name] of _____ [print or type full address
20 and telephone number] as my California agent for service of process in connection
21 with this action or any proceedings related to enforcement of this Stipulated
22 Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern District of California by using the CM/ECF system on September 21, 2020. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.
Executed on September 21, 2020.

/s/ Todd A. Boock

Todd A. Boock