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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ROCIO LOPEZ,

12 Plaintiff,

13 v.

14 ABBOTT LABORATORIES,

15 Defendant.

Case No.: 22-CV-421-L-SBC

**ORDER ON JOINT MOTION FOR  
PROTECTIVE ORDER**

16  
17 Before the Court is the Parties' Joint Motion for Protective Order ("Joint Motion").  
18 (Doc. No. 44.) The Parties move the Court to enter the Parties' Stipulated Protective Order  
19 into effect for purposes of preserving confidentiality of certain documents and information  
20 to be exchanged during this litigation. (*See id.*) Having reviewed and considered the  
21 Parties' Joint Motion and accompanying Stipulated Protective Order, the Court finds good  
22 cause supports the Joint Motion and the Joint Motion complies with all applicable rules,  
23 including this Court's Civil Chambers Rule VII. Accordingly, the Court GRANTS the Joint  
24 Motion in its entirety and, upon issuance of this Order, makes enforceable the following  
25 language as submitted and agreed upon by the Parties:

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

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

8 **DEFINITIONS**

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

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

25 3. The term “counsel” will mean outside counsel of record, and other attorneys,  
26 paralegals, secretaries, and other support staff employed in the law firms identified below:

27 BURSOR & FISHER, P.A.

28 O’MELVENY & MYERS LLP

1 “Counsel” also includes in-house attorneys for Defendant.

2 **GENERAL RULES**

3 4. Each party to this litigation that produces or discloses any materials, answers  
4 to interrogatories, responses to requests for admission, trial testimony, deposition  
5 testimony, and transcripts of trial testimony and depositions, or information that the  
6 producing party believes should be subject to this Order may designate the same as  
7 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY.”

8 a. Designation as “CONFIDENTIAL”: Any party may designate  
9 information as “CONFIDENTIAL” only if, in the good faith belief of such party and its  
10 counsel, the unrestricted disclosure of such information could be potentially prejudicial to  
11 the business or operations of such party.

12 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any  
13 party may designate information as “CONFIDENTIAL – FOR COUNSEL ONLY” only  
14 if, in the good faith belief of such party and its counsel, the information is among that  
15 considered to be most sensitive by the party, including but not limited to trade secret or  
16 other confidential research, development, financial, or other commercial information.

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

25 6. Whenever a deposition taken on behalf of any party involves a disclosure of  
26 confidential information of any party:

27 a. the deposition or portions of the deposition must be designated as  
28 containing confidential information subject to the provisions of this Order; such

1 designation must be made on the record whenever possible, but a party may designate  
2 portions of depositions as containing confidential information after transcription of the  
3 proceedings; a party will have until fourteen (14) days after receipt of the deposition  
4 transcript to inform the other party or parties to the action of the portions of the transcript  
5 to be designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY.”

6           b. the disclosing party will have the right to exclude from attendance at  
7 the deposition, during such time as the confidential information is to be disclosed, any  
8 person other than the deponent, counsel (including their staff and associates), the court  
9 reporter, and the person(s) agreed upon pursuant to paragraph 8 below; and

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

15           7. All confidential information designated as “CONFIDENTIAL” or  
16 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving  
17 party to anyone other than those persons designated within this Order and must be handled  
18 in the manner set forth below and, in any event, must not be used for any purpose other  
19 than in connection with this litigation, unless and until such designation is removed either  
20 by agreement of the parties, or by order of the Court.

21           8. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” must  
22 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by  
23 independent experts that provide to Plaintiff’s Counsel an executed copy of the form  
24 attached hereto as Exhibit A, which includes an affirmative representation that such expert  
25 has no financial or professional connection to a competitor of Defendant.

26           a. Plaintiff’s Counsel need not seek or obtain the advance approval by the  
27 producing party or permission of the Court before disclosing confidential information to  
28 any independent expert that provides to Plaintiff’s Counsel an executed copy of Exhibit A

1 in advance of the disclosure. Further, Plaintiff's Counsel need not provide a copy of the  
2 executed form to Defendant's Counsel in advance of disclosure of confidential information  
3 to the expert, but must retain the executed form in its records at all times during the  
4 litigation, and must provide the same to the opposing party upon request in the event of  
5 any dispute as to the expert's financial or professional connection to Defendant's  
6 competitor.

7           b. In the event an independent expert retained, or sought to be retained, by  
8 Plaintiff's Counsel cannot sign the form attached hereto as Exhibit A based on the expert's  
9 financial or professional connection to a competitor of Defendant, the right of any such  
10 independent expert to receive any information designated as confidential pursuant to this  
11 paragraph will be subject to the advance approval of such expert by the producing party or  
12 by permission of the Court. Under such circumstances, the party seeking approval of an  
13 independent expert must provide the producing party with the name and curriculum vitae  
14 of the proposed independent expert in advance of providing any confidential information  
15 of the producing party to the expert. Any objection by the producing party to an  
16 independent expert receiving confidential information must be made in writing within  
17 fourteen (14) days following receipt of the identification of the proposed expert.  
18 Confidential information may be disclosed to an independent expert if the fourteen (14)  
19 day period has passed and no objection has been made. The approval of independent  
20 experts must not be unreasonably withheld.

21           9. Information designated "CONFIDENTIAL" must be viewed only by counsel  
22 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant to the  
23 terms of paragraph 8), by court personnel, and by the additional individuals listed below,  
24 provided each such individual has read this Order in advance of disclosure and has agreed  
25 in writing to be bound by its terms:

26           a. Executives who are required to participate in policy decisions with  
27 reference to this action;

1           b.     Technical personnel of the parties with whom counsel for the parties  
2 find it necessary to consult, in the discretion of such counsel, in preparation for trial of this  
3 action; and

4           c.     Stenographic and clerical employees associated with the individuals  
5 identified above.

6           10.    With respect to material designated “CONFIDENTIAL” or  
7 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the  
8 document to be its originator, author, or a recipient of a copy of the document, may be  
9 shown the same.

10          11.    All information which has been designated as “CONFIDENTIAL” or  
11 “CONFIDENTIAL – FOR COUNSEL ONLY” by the producing or disclosing party, and  
12 any and all reproductions of that information, must be retained in the custody of the counsel  
13 for the receiving party identified in paragraph 3, except that independent experts authorized  
14 to view such information under the terms of this Order may retain custody of copies such  
15 as are necessary for their participation in this litigation.

16          12.    Before any materials produced in discovery, answers to interrogatories,  
17 responses to requests for admissions, deposition transcripts, or other documents which are  
18 designated as confidential information are filed with the Court for any purpose, the party  
19 seeking to file such material must seek permission of the Court to file the material under  
20 seal.

21          13.    No document shall be filed under seal unless counsel secures a court order  
22 allowing the filing of a document under seal. An application to file a document under seal  
23 shall be served on opposing counsel, and on the person who has or entity that has custody  
24 and control of the document, if different from opposing counsel. If opposing counsel, or  
25 the person who has or entity who has custody and control of the document, wishes to  
26 oppose the application, they must contact the chambers of the judge who will rule on the  
27 application, to notify the judge’s staff that an opposition to the application will be filed.  
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1           14. At any stage of these proceedings, any party may object to a designation of  
2 the materials as confidential information. The party objecting to confidentiality must  
3 notify, in writing, counsel for the designating party of the objected-to materials and the  
4 grounds for the objection. If the dispute is not resolved consensually between the parties  
5 within seven (7) days of receipt of such a notice of objections, the designating party may  
6 move the Court for a ruling on the designation. The burden of persuasion shall be on the  
7 designating party. The materials at issue must be treated as confidential information, as  
8 designated by the designating party, until the Court has ruled on the designation or the  
9 matter has been otherwise resolved.

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

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

22           17. The parties agree that they do not intend to disclose information subject to a  
23 claim of attorney-client privilege, attorney work product protection, common-interest  
24 privilege, or any other privilege, immunity or protection from production or disclosure  
25 (“Privileged Information”). If, nevertheless, a producing party discloses Privileged  
26 Information, such disclosure (as distinct from use) shall be deemed inadvertent without  
27 need of further showing under Federal Rule of Evidence 502(b) and shall not constitute or  
28 be deemed a waiver or forfeiture of the privilege or protection from discovery in this case

1 or in any other federal or state proceeding by that party (the “Disclosing Party”). This  
2 Section shall be interpreted to provide the maximum protection allowed by Federal Rule  
3 of Evidence 502(d).

4 18. If a party or non-party discovers that it has produced Privileged Information,  
5 it shall promptly notify the receiving party of the production in writing, shall identify the  
6 produced Privileged Information by Bates range where possible, and may demand that the  
7 receiving party return or destroy the Privileged Information. In the event that a receiving  
8 party receives information that it believes is subject to a good faith claim of privilege by  
9 the designating party, the receiving party shall immediately refrain from examining the  
10 information and shall promptly notify the designating party in writing that the receiving  
11 party possesses potentially Privileged Information. The designating party shall have seven  
12 (7) days to assert privilege over the identified information. If the designating party does  
13 not assert a claim of privilege within the 7-day period, the information in question shall be  
14 deemed nonprivileged.

15 19. If the designating party has notified the receiving party of production, or has  
16 confirmed the production called to its attention by the receiving party, the receiving party  
17 shall within fourteen (14) days of receiving such notification or confirmation: (1) destroy  
18 or return to the designating party all copies or versions of the produced Privileged  
19 Information requested to be returned or destroyed; (2) delete from its work product or other  
20 materials any quoted or paraphrased portions of the produced Privileged Information; and  
21 (3) ensure that produced Privileged Information is not disclosed in any manner to any party  
22 or non-party. The following procedures shall be followed to ensure all copies of such ESI  
23 are appropriately removed from the receiving party’s system:

24 a. Locate each recalled document in the document review/production  
25 database and delete the record from the database;

26 b. If there is a native file link to the recalled document, remove the native  
27 file from the network path;



1 c. If the database has an image load file, locate the document image(s)  
2 loaded into the viewing software and delete the image file(s) corresponding to the recalled  
3 documents. Remove the line(s) corresponding to the document image(s) from the image  
4 load file;

5 d. Apply the same process to any additional copies of the document or  
6 database, where possible;

7 e. Locate and destroy all other copies of the document, whether in  
8 electronic or hardcopy form. To the extent that copies of the document are contained on  
9 write-protected media, such as CDs or DVDs, these media shall be discarded, with the  
10 exception of production media received from the recalling party, which shall be treated as  
11 described herein;

12 f. If the document was produced in a write-protected format, the party  
13 seeking to recall the document shall, at its election, either (i) provide a replacement copy  
14 of the relevant production from which the document has been removed, in which case the  
15 receiving party shall discard the original production media; or (ii) allow the receiving party  
16 to retain the original production media, in which case the receiving party shall take steps  
17 to ensure that the recalled document will not be used; and

18 g. Confirm that the recall of ESI under this procedure is complete by way  
19 of letter to the party seeking to recall ESI.

20 h. Notwithstanding the above, the receiving party may segregate and  
21 retain one copy of the clawed back information solely for the purpose of disputing the claim  
22 of privilege. The receiving party shall not use any produced Privileged Information in  
23 connection with this litigation or for any other purpose other than to dispute the claim of  
24 privilege. The receiving party may file a motion disputing the claim of privilege and  
25 seeking an order compelling production of the material at issue; the designating party may  
26 oppose any such motion, including on the grounds that inadvertent disclosure does not  
27 waive privilege.  
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1           20. Within 14 days of the notification that such Privileged Information has been  
2 returned, destroyed, sequestered, or deleted (“Clawed-Back Information”), the Disclosing  
3 Party shall produce a privilege log with respect to the Clawed-Back Information. Within  
4 14 days after receiving the Disclosing Party’s privilege log with respect to such Clawed-  
5 Back Information, a receiving party may notify the Disclosing Party in writing of an  
6 objection to a claim of privilege or work-product protection with respect to the Clawed-  
7 Back Information. Within 14 days of the receipt of such notification, the Disclosing Party  
8 and the objecting party shall meet and confer in an effort to resolve any disagreement  
9 concerning the Disclosing Party’s privilege or work-product claim with respect to such  
10 Clawed-Back Information. The parties may stipulate to extend the time periods set forth in  
11 this paragraph.

12           21. If, for any reason, the Disclosing Party and receiving party (or parties) do not  
13 resolve their disagreement after conducting the mandatory meet and confer, the designating  
14 party may request a conference with the Court pursuant to the procedures set forth in the  
15 August 8, 2023 Scheduling Order Regulating Discovery & Other Pre-Trial Proceedings  
16 (ECF No. 43). The Disclosing Party bears the burden of establishing the privileged or  
17 protected nature of any Privileged Information.

18           22. Nothing contained herein is intended to or shall serve to limit a party’s right  
19 to conduct a review of documents, ESI or information (including metadata) for relevance,  
20 responsiveness and/or segregation of privileged and/or protected information before  
21 production. Nothing in this Order shall limit the right to request an in-camera review of  
22 any Privileged Information.

23           23. In the event any prior order or agreement between the parties and/or between  
24 the parties and a non-party concerning the disclosure of privileged and/or work product  
25 protected materials conflicts with any of the provisions of this Order, the provisions of this  
26 Order shall control.

27           24. Nothing in this Order overrides any attorney’s ethical responsibilities to  
28 refrain from examining or disclosing materials that the attorney knows or reasonably

1 should know to be privileged and to inform the Disclosing Party that such materials have  
2 been produced.

3         25. If a party, through inadvertence, produces any confidential information  
4 without labeling or marking or otherwise designating it as such in accordance with this  
5 Order, the designating party may give written notice to the receiving party that the  
6 document or thing produced is deemed confidential information, and that the document or  
7 thing produced should be treated as such in accordance with that designation under this  
8 Order. The receiving party must treat the materials as confidential, once the designating  
9 party so notifies the receiving party. If the receiving party has disclosed the materials before  
10 receiving the designation, the receiving party must notify the designating party in writing  
11 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner  
12 of labeling or marking the inadvertently produced materials as “CONFIDENTIAL” or  
13 “CONFIDENTIAL – FOR COUNSEL ONLY – SUBJECT TO PROTECTIVE ORDER.”

14         26. Upon final termination of this action, including any and all appeals, counsel  
15 for each party must, upon request of the producing party, return all confidential information  
16 to the party that produced the information, including any copies, excerpts, and summaries  
17 of that information, or must destroy same at the option of the receiving party, and must  
18 purge all such information from all machine-readable media on which it resides.  
19 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,  
20 memoranda, motions, and other documents filed with the Court that refer to or incorporate  
21 confidential information, and will continue to be bound by this Order with respect to all  
22 such retained information. Further, attorney work product materials that contain  
23 confidential information need not be destroyed, but, if they are not destroyed, the person  
24 in possession of the attorney work product will continue to be bound by this Order with  
25 respect to all such retained information.

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

1           28. Nothing in this Order will bar counsel from rendering advice to their clients  
2 with respect to this litigation and, in the course thereof, relying upon any information  
3 designated as confidential information, provided that the contents of the information must  
4 not be disclosed.

5           29. This Order will be without prejudice to the right of any party to oppose  
6 production of any information for lack of relevance or any other ground other than the mere  
7 presence of confidential information. The existence of this Order must not be used by either  
8 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil  
9 Procedure.

10           30. Nothing within this Order will be construed to prevent disclosure of  
11 confidential information if such disclosure is required by law or by order of the Court.

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

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

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

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

27           35. The Court may modify the terms and conditions of this Order for good cause,  
28 in the interest of justice, or on its own order at any time in these proceedings.

1           36. The parties prefer that the Court provide them with notice of the Court’s intent  
2 to modify the Order and the content of those modifications, prior to entry of such an order.  
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4           **IT IS SO ORDERED.**

5 Dated: November 8, 2023



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Hon. Steve B. Chu  
United States Magistrate Judge

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1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
5 read in its entirety and understand the Protective Order that was issued by the United States  
6 District Court for the Southern District of California in the case of *Lopez v. Abbott*  
7 *Laboratories*, Case No. 3:22-cv-00421-L-SBC. I agree to comply with and to be bound by  
8 all the terms of this Order and I understand and acknowledge that failure to so comply  
9 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
10 that I will not disclose in any manner any information or item that is subject to this Order  
11 to any person or entity except in strict compliance with the provisions of this Order.

12 I affirm that I have no financial or professional connection to a competitor of Abbott  
13 Laboratories, have not served in the past as an employee or consultant for a competitor of  
14 Abbott Laboratories, and have no current plans to do so.

15 I further agree to submit to the jurisdiction of the United States District Court for the  
16 Southern District of California for the purpose of enforcing the terms of this  
17 Order, even if such enforcement proceedings occur after termination of this action.

18  
19 Date: \_\_\_\_\_

20 City and State where sworn and signed: \_\_\_\_\_

21 Printed name: \_\_\_\_\_

22 Signature: \_\_\_\_\_

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