Proskauer Rose LLP | 1001 Pennsylvania Avenue, NW | Washington, DC 20004

Colin R. Kass
202-416-6890
ckass@proskauer.com

May 28, 2026

Via ECF
The Honorable Paul A. Engelmayer
United States District Judge
Thurgood Marshall United States Courthouse

Re: *U.S. v. The New York and Presbyterian Hospital*, 26-cv-2480 (S.D.N.Y.)

Dear Judge Engelmayer:

The New York and Presbyterian Hospital (NYP) writes in response to the DOJ's letter motion for entry of a Protective Order (ECF 20).[1] We agree a Protective Order should be entered, but NYP's proposal hews more closely to this District's Model, affords greater protection to both parties and non-parties, reduces delay, and does not prejudice any party's legitimate interests. *See* Ex. 1. We address the disputed issues in order of importance.

Bulk Initial Designation of E-Discovery Materials (DOJ Issue 5). The parties' principal disagreement concerns the procedure for designating e-discovery materials. Large antitrust cases inevitably entail the production of vast amounts of competitively sensitive information, much of it from non-parties. Without a streamlined mechanism for efficiently designating this information, discovery will be unduly delayed and needlessly expensive.

To address this, NYP proposes that the Court adopt the approach taken recently by several others, including in this District. (*See* Exs. 2-6.) Rather than require producing parties to hire swarms of contract attorneys solely to make confidentiality designations before production, these courts permit producing parties to *initially* designate all materials as highly confidential, subject to a defined procedure for seeking redesignation for specific materials if the need arises.

This is efficient. Gone are the days where every document requires human review before production. Increasingly sophisticated e-discovery tools can identify responsive documents in a fraction of the time. Potentially privileged documents can be set aside based on search terms for individual review, leaving just confidentiality. Requiring document-by-document review solely for confidentiality would hold up production and drive up costs exponentially. But under NYP's proposal, producing parties need not incur that time and expense, and can quickly produce their information. Notably, the DOJ itself seeks the virtues of bulk designation, reserving for itself the right to so designate its *entire* investigative file, including public documents. NYP does not object to those initial designations, but the right to employ this procedure should be mutual.

NYP's proposal does not alter the standards for filing materials under seal. Nor does it restrict disclosure of *public* information. (NYP ¶ 1(c).) It simply prohibits dissemination of *confidential* information to in-house counsel and businesspeople without further notice.

Nor does this proposal prejudice the DOJ. From the DOJ's perspective, there is no difference between the parties' proposals since neither restricts disclosure to any DOJ attorney or staff working on the matter. Moreover, the DOJ acknowledges that it *expects* producing parties to

[1] The DOJ filed its letter without notice and before the parties completed their meet and confer. NYP nonetheless agrees that the parties' positions are sufficiently developed for the Court to rule.

bulk designate their documents and has conceded there is a good faith basis for doing so in this case given the issues at play and likely discovery to be held.

The problem with the DOJ's proposal, however, is that it does not affirmatively permit bulk designation, exposing the parties to later objection. Indeed, it continues to require some manual, document-by-document (or, in the case of testimony, line-by-line) designation, defeating the efficiencies of NYP's proposal. Most importantly, the DOJ's "designation challenge" procedures allow a receiving party to demand a manual, document-by-document review of the entire production without limit and without a showing of need. That is unwarranted.

The DOJ's sole objection to NYP's procedure is that it differs from the form protective order the DOJ typically proposes and to which some defendants in other cases have stipulated. That is no reason to reject NYP's superior proposal. As the Court explained in *Mathew Enterprises v. Chrysler Group LLC*, 5:13-cv-04236, ECF 82 (N.D. Cal.), "our species is made so that those who walk on the well-trodden path always throw stones at those who are showing a new road," but that is no reason not to adopt a protective order that "would allow either party to 'bulk designate'" their documents.

Two-Tiered Confidentiality. NYP proposes two confidentiality levels; the DOJ proposes one. The top tiers of both are equivalent, and – if the Court permits bulk designations – will presumptively govern nearly all discovery materials regardless of which proposal the Court adopts. But because NYP's in-house counsel (not businesspeople) may eventually need access to certain information (*e.g.*, pleadings or expert reports), we need a safety valve that – upon *consent* of the producing party – permits access without having to engage in further motion practice. The DOJ does not explain why this is a problem.

Use for Unrelated Purposes (DOJ Issue 2). Nearly every protective order, including this District's Model, restricts use of protected materials to the prosecution or defense of the action. The DOJ seeks an exception because it is the "government," asserting that its status gives it the right to use the materials in any judicial proceeding or for any law enforcement purpose. The DOJ, of course, has broad investigative powers pursuant to various special-purpose legislation, each with its own statutory safeguards. But the Federal Rules of Civil Procedure is not such a statute. When the government files suit as a civil plaintiff, it has the same discovery rights and obligations as any other litigant. A civil litigant cannot disclose discovery in other lawsuits to "enforce" the law or provide them to other government agencies. The same is true for the DOJ.[2]

Indeed, the practical consequence of conferring such rights on the DOJ – rights exercised outside the jurisdiction and supervision of the Court – is that discovery materials will be recyclable in any future case brought by the United States. This concern is not hypothetical. The DOJ has brought other cases against insurers and hospitals that are germane here.[3] The defendants in those

[2] Contrary to the DOJ's assertion, NYP is ***not*** complaining that it "is not permitted similar disclosure rights." We do not seek to expand our disclosure rights; we object to ***anyone*** using discovery materials for unrelated purposes, including the DOJ.

[3] *See U.S. v. Anthem*, 1:16-cv-1493, ECF 67, § E.5.e (D.D.C.) (stipulation permitting DOJ to disclose discovery materials "in the course of any other legal proceedings in which the United States is a party" or "for law-enforcement purposes" or "as may be required by law."); *U.S. v.*

cases, for unknown reasons, consented to the disclosure of their information in future cases in which the United States is a party, *including this case*. Those defendants may have waived their right to object to such re-production. But NYP is not willing to do so. Nor does NYP believe that either it or non-parties must open their files – without a warrant – to the government for any, as-yet unspecified law enforcement use. *Daniels v. City of New York*, 200 F.R.D. 205, 209 (S.D.N.Y. 2001) ("To provide the Government with discovery tools it would otherwise not have merely because it is the Government and not a private party is both counterintuitive and illogical.").

Disclosure in Public Proceedings (DOJ Issue 3). The parties agree that information *filed* with the court will be governed by Local Rule. NYP believes this suffices for now. The DOJ, however, proposes an additional provision directed at the use of materials in hearings or at trial. If the Court is inclined to address that issue now, NYP agrees that the DOJ's 5-day notice provision applicable to third parties is reasonable. But the same notice period should apply to NYP. It is not realistic to expect NYP to object in real time or to request courtroom sealing on the fly. Advance notice will allow NYP to confer over redactions or other more limited protections. Nor is the DOJ prejudiced by this. If it can provide notice for non-parties, it can provide notice to NYP. The DOJ's only response – that it might be surprised if NYP waives its own confidentiality and may want to use an unexpected exhibit after the disclosure deadline – is speculative, and if the concern materializes, the DOJ can simply ask the Court to waive notice for good cause shown.

Related Cases. The DOJ initiated this action after the filing of related (and now consolidated) class actions in E.D.N.Y. The parties agree that discovery materials produced here may be re-produced or used in that related case. (NYP ¶ 7; DOJ ¶¶ 40-42.) The parties differ in the amount of notice third parties will receive. NYP proposes 14 days; the DOJ proposes 30 days. Since the Related Case is already known and any qualifying protective order in that case would have similar restrictions, 14 days is sufficient and consistent with Rule 45's 14-day deadline.

Third-Party Notice (DOJ Issue 1). The DOJ's grievance about third-party notice is moot. During the meet and confer, NYP expressed concern that the DOJ's notice provision would unduly *delay* production because it could take *weeks* to get through that process. We also explained that, rather than waiting for entry of a protective order, the DOJ should have provided notice more than six weeks ago when NYP served its document requests. In response, the DOJ now says it provided notice and, for the first time, shortened the notice period to 12 days. That is acceptable to NYP.

Persons Bound (DOJ Issue 4). The DOJ seeks to bind persons not before the Court or subject to its jurisdiction. That is improper. The DOJ misplaces reliance on *ESPN v. Dish Network L.L.C.*, 2025 WL 2602160 (S.D.N.Y. 2025), because a non-contested stipulation cannot expand a court's jurisdiction. NYP's proposal instead binds the parties, their counsel, and other persons who received protected information either with knowledge of the Order or who have executed the specified Agreement to be Bound. This is a clear and standard procedure for binding non-parties.

Sincerely,
/s/ Colin R. Kass

Atrium, 3:16-cv-311, ECF 41-1, ¶¶ 24(b), (c) (W.D.N.C.) (same).

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE NEW YORK AND PRESBYTERIAN HOSPITAL,

Defendant.

Case No. 26-cv-02480-PAE-OTW

District Judge Paul A. Engelmayer
Magistrate Judge Ona T. Wang

PROTECTIVE ORDER

Discovery in the above-captioned action is likely to involve production of confidential, proprietary, trade secret, or private information for which special protection may be warranted. Accordingly, pursuant to Fed. R. Civ. P. 26(c), the Court finds good cause for entry of this Protective Order governing information produced in discovery:

I. DEFINITIONS

1. For the purposes of this Order, the following definitions will apply:

a. ***"Action"*** means *United States of America v. The New York and Presbyterian Hospital*, 26-cv-02480 (S.D.N.Y.), including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

b. ***"Related Action"*** means *UFCW Local 1500 Welfare Fund v. The New York and Presbyterian Hospital*, 25-cv-05023 (E.D.N.Y.); *Cement and Concrete Workers DC Benefit Fund v. The New York and Presbyterian Hospital*, 25-cv-05571 (E.D.N.Y.); and any other action that is consolidated with those actions or this Action, and arises out of substantially the same nucleus of operative fact.

c. ***"Discovery Materials"*** means any information produced in this Action in response to any discovery request or obligation pursuant to Court Order or Federal Rules of Civil Procedure 26-37, or 45. Discovery Materials do not include information that is or becomes publicly available or known to the Receiving Party through other sources, other than through a violation of this Order.

d. ***"Confidential Information"*** means Discovery Materials that contain (i) trade secrets; (ii) non-public technical, marketing, sales, commercial, or financial information; (iii) private or confidential personal information; (iv) information the Designating Party received in confidence from a third-party; or (v) information the Designating Party believes in good faith is entitled to protection under Fed. R. Civ. P. 26(c) or 45(d)(3)(B). Information and documents designated by a party as confidential will be stamped "CONFIDENTIAL."

e. ***"Highly Confidential Information"*** means (i) Confidential Information that is competitively sensitive or which could otherwise cause any commercial or non-commercial harm; or (ii) Discovery Materials for which the burden or expense of making a document-by-document confidentiality designation outweighs the Receiving Party's need for the disclosures beyond that permitted by the Highly Confidential Designation. Information and documents designated by a party as highly confidential will be stamped "HIGHLY CONFIDENTIAL."

f. ***"PPI"*** means documents that contain protected personal information, including (i) personally identifiable information, such as social security numbers, home addresses, personal phone numbers; or (ii) protected health information as that term is defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 U.S.C. § 1320d, 45 CFR § 160.103, and any applicable New York State law.

g. ***"Party."*** "Party" means a party to this Action, including any majority owned or controlled affiliates of such party.

h. ***"Non-Party."*** Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Action.

i. "***Producing Party***" means a Party or Non-Party that has produced Discovery Materials in this Action.

j. ***"Designating Party"*** means a Party or Non-Party that has designated information as "Confidential" or "Highly Confidential."

k. ***"Receiving Party."*** Any Party that receives Discovery Materials in this Action from a Producing Party.

l. ***"Challenging Party."*** A Receiving Party that challenges the designation of information made by a Designating Party.

m. ***"Expert."*** A person who possesses specialized knowledge that a Party has retained to provide opinions or analysis pursuant to Federal Rule of Civil Procedure 26(b)(4), including persons who may testify pursuant to Federal Rules of Evidence 701-702, and non-testifying trial preparation consulting experts. Absent agreement of the Parties or Court Order, the term Expert excludes any past, present, or anticipated future employee of the Party retaining the expert.

n. ***"Summary"*** means any extract, abstract, digest, compilation, analysis, notes, or other document or material that contains, reflects, incorporates, or otherwise discloses Confidential or Highly Confidential Information.

II. INITIAL DESIGNATIONS

2. ***Initial Confidentiality Designations.*** All Discovery Materials produced in the Action may initially be designated "Highly Confidential." All deposition testimony, transcripts and recordings shall also initially be designated "Highly Confidential," and the Designating Party shall have the right to exclude from attendance at any deposition any person not entitled to receive Highly Confidential Information. A Receiving Party may challenge a Designating Party's Initial Confidentiality Designation pursuant to Section III.

3. ***Inadvertent Failure to Designate.*** The disclosure of a document or information without designating it as "Highly Confidential" or "Confidential" shall not constitute a waiver of the right to designate such document as Highly Confidential Information or Confidential Information. If so designated, the document or information shall thenceforth be treated as such subject to all the terms of this Order.

4. ***Initial PPI Designations.*** Any PPI exchanged in discovery shall be maintained by the Receiving Party in a manner that is secure and confidential. A Producing Party may redact PPI from any document, provided that the redaction contains the legend "Redacted PPI" or similar designation. Alternatively, where the burden or expense of redacting PPI designation on a document-by-document basis outweighs the Receiving Party's need for discovery, a Producing Party may withhold such documents, provided that each document is separately listed on a PPI Log. The PPI Log shall identify the author, recipients, date, file name and/or subject line of the document to the extent such information is reflected in the document's ESI metadata. A Party that seeks to compel production of redacted or withheld PPI Information may challenge a Designating Party's Initial PPI designation pursuant to Section III.

III. CHALLENGES TO INITIAL DESIGNATIONS

5. If a Receiving Party seeks to challenge a Designating Party's Initial Confidentiality or PPI Designation, the following procedures shall apply:

a. ***Request for a Final Designation***. A Challenging Party that intends to disclose a document or portion of deposition testimony in a manner not permitted by the Initial Designation may request a Final Confidentiality Designation. A Challenging Party that would like to compel production of redacted or withheld PPI information may request a Final PPI Designation. Any request for a Final Designation shall identify the document with particularity and provide a specific reason for requesting a Final Designation. Mass, indiscriminate, or routine requests for Final Designations are prohibited.

b. ***Final Confidentiality Designation***. Absent agreement between the Designating Party and the Challenging Party or Court Order, the Designating Party shall have fourteen (14) days to make a Final Designation after receiving a request for such designation. If the Designating Party fails to provide a Final Confidentiality Designation within the time prescribed, or as otherwise agreed between the Parties, the information shall no longer be deemed Confidential or Highly Confidential. If the Designating Party fails to provide a Final PPI designation for a withheld document, it shall promptly produce the document with any PPI information redacted. If the Designating Party fails to provide a Final PPI designation for a redacted document, the redacted document shall constitute the Final PPI designation.

c. ***Challenging a Final Confidentiality Designation***. If the Challenging Party believes that a Final Designation is not appropriate, it shall meet and confer with the Designating Party to resolve the dispute. If the dispute cannot be resolved, the dispute may be raised with the Court, in which case, the Designating Party retains the burden to show that the Final Designation is appropriate. The information shall continue to be treated in accordance with its Final Designation until the Court rules on the dispute.

IV. DISCLOSURE AND USE OF CONFIDENTIAL OR HIGHLY CONFIDENTIAL MATERIALS

6. ***Restriction on Use.*** Unless ordered by the Court or otherwise provided herein, Confidential or Highly Confidential Information shall be used solely for the purpose of prosecuting or defending the Action or any Related Action.

7. ***Related Actions***. Notwithstanding anything to the contrary in this Order, unless otherwise ordered by a court of competent jurisdiction, information produced in this Action may

be re-produced or made available to the parties in a Related Action upon 14 days' notice to the Producing Party. The use of the information in the Related Action, and any restrictions relating to the disclosure of such information, shall be governed by the Protective Order in the Related Action.

8. ***Disclosure of Confidential Material.*** Confidential Material may be disclosed only to the following individuals:

a. In-house counsel who has executed Exhibit A;

b. Outside counsel of record in the Action;

c. The Court (including court personnel, jurors, or other persons having access to any Confidential Information by virtue of his or her position with the Court);

d. Court reporters and videographers;

e. Litigation support vendors who have executed Exhibit A, including without limitation e-discovery vendors, jury consultants, and trial graphics or trial presentation firms;

f. Experts or mediators who have executed Exhibit A;

g. Any person who has authored or received the information, or who is identified as a participant in any meeting memorialized by the document;

h. A testifying witness, provided that (i) the witness has executed Exhibit A; (ii) counsel has a good faith belief that the witness has knowledge of the subject matter of the document; (iii) such witness is only shown the document during the course of providing or preparing for such testimony; and (iv) such witness does not retain a copy of the information.

9. ***Disclosure of Highly Confidential Material.*** Highly Confidential Material may be disclosed only to individuals permitted to receive Confidential Information pursuant to Paragraphs (b) through (h).

10. ***Advice of Counsel***. The provision of legal advice to a Party based on counsel's evaluation of Confidential or Highly Confidential Information shall not constitute an impermissible use or disclosure of such information, provided that such advice and opinions do not reveal the specific contents of the information.

11. ***Summaries***. Any Summary that reveals Confidential or Highly Confidential Information shall, to that extent, be treated as Confidential or Highly Confidential Information commensurate with the designation of the information disclosed. For avoidance of doubt, Summaries that reflect general information but do not reveal the specific contents of Confidential or Highly Confidential Information or any information that makes the material from which the Summary was derived Confidential or Highly Confidential shall not be deemed Confidential or Highly Confidential.

12. ***Use of Large Language Model or Generative AI***. A Receiving Party must not load, upload, input, import, submit, or otherwise transfer Confidential or Highly Confidential Information to a publicly accessible Large Language Model ("LLM") or generative artificial intelligence ("GenAI") platform. Before using Confidential or Highly Confidential Information in any non-publicly accessible LLM or GenAI platform, a Receiving Party must ensure that the LLM or GenAI platform cannot and will not utilize Confidential or Highly Confidential Information to train public models or otherwise disclose Confidential or Highly Confidential Information to other users of the LLM or GenAI platform not authorized to receive such materials. For avoidance of doubt, any output or result generated by a GenAI model that contains, reflects, incorporates, or is derived from Confidential or Highly Confidential Information will be deemed attorney work product and shall be treated as a Summary.

V. THIRD-PARTY NOTICE

13. Within two (2) business days of the Court's entry of this Order, each Party must send a copy of this Order to each Non-Party that produced information to that Party during the pre-Complaint Investigation. Any Party that seeks discovery related to this Action from any Non-Party must include a copy of this Order when serving a discovery request or subpoena on the Non-

Party. If any Party sent a discovery request or subpoena to any Non-Party prior to entry of this Order, that Party must send a copy of this Order to the Non-Party within two (2) business days of entry of this Order.

14. If a Non-Party that produced information to a Party during the pre-Complaint Investigation determines that this Order does not adequately protect its confidential information, it may, within ten (10) business days after receiving notice of this Order, file a motion seeking additional protection from the Court. A Party may not disclose a Non-Party's produced information until the ten (10) business day period concludes, unless such Non-Party consents to earlier disclosure. If a Non-Party timely files such a motion, the information for which additional protection has been sought may not be disclosed until the Court has rendered a decision on the motion, unless the movant and the Parties reach an agreement that permits disclosure of Confidential Information while the motion is pending.

VI. INADVERTENT DISCLOSURE

15. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential Information or Highly Confidential Information in a manner that is not authorized under this Order, the Receiving Party must immediately (a) notify the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the information, and (c) provide a copy of this Order to any person to whom unauthorized disclosures were disclosed and request that such person execute Exhibit A.

16. The treatment of privileged information that has been inadvertently produced is governed by Federal Rule of Evidence 502 and Federal Rule of Civil Procedure 26(b)(5). Such rules shall govern the existence of any waiver, and the right of a Producing Party to "claw back" any inadvertently produced information. Notwithstanding the foregoing, use of technology-

assisted review, including artificial intelligence, to make initial privilege determinations does not on its own operate as a waiver of privilege absent a specific intent to waive privilege and so long as the holder of the privilege promptly took reasonable steps to rectify the error upon learning of it. Moreover, pursuant to Federal Rule of Evidence 502(d), unless the Court specifically finds that a Producing Party has waived privilege over inadvertently-produced privileged information that has been clawed back pursuant to Federal Rule of Civil Procedure 26(b)(5)(B), the disclosure of such information does not operate as a waiver in this Action or in any other federal or state proceeding.

VII. FILING UNDER SEAL

17. ***Courts' Sealing Procedures Govern***. Nothing in this Order shall modify the standards for maintaining judicial records under seal. A party that files information with the Court shall exercise its good faith judgment to ensure that only confidential portions of the filings with the Court shall be filed under seal. The parties shall follow the Court's procedures with respect to filings under seal.

18. ***No Concession by Filing Under Seal.*** Filing another Party's Confidential or Highly Confidential Information under seal does not constitute agreement by the filing Party that the information is properly designated, and nothing in this Order prevents a party from later challenging such a designation.

19. ***Disclosure in Public Proceedings.*** Absent good cause or further Order of the Court, (i) a Receiving Party shall give the Designating Party five (5) days' notice if the Receiving Party reasonably expects to disclose the Designating Party's Confidential or Highly Confidential Information at a public hearing or other public proceeding before the Court; and (ii) a Designating Party seeking to seal or restrict access to such information must file a motion seeking such relief

in advance of the proceeding. In the absence of a subsequent Court Order, Confidential or Highly Confidential Information may be used at such hearing or proceeding and may be disclosed on the public record.

VIII. PROCEDURES UPON TERMINATION OF THE ACTION

20. ***Right to Petition for Modification.*** Nothing in this Order limits any person, including members of the public, a Party, or an interested non-party, from seeking additional protection or modification of this Order upon a motion duly made according to the Local Rules of this Court or an order that certain information need not be produced at all or is not admissible evidence in this Action or any other proceeding.

21. ***Subpoenas In Other Actions.*** A Receiving Party shall provide a Designating Party notice within seven (7) days after receipt of a subpoena or other process compelling production of Discovery Materials. Absent agreement of the Designating Party or an order of this Court or other court of competent jurisdiction, the Receiving Party shall not disclose such Discovery Materials for twenty-one (21) days after such notice has been provided. If the Designating Party objects to the production of such information within such twenty-one (21)-day period, the Receiving Party shall not disclose such information absent an order from this Court or other court of competent jurisdiction.

22. ***Final Disposition.*** Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in the Action, with prejudice; and (2) final judgment in the Action herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law. Within ninety (90) days following the final disposition of the Action, the Receiving Party shall return or destroy all Confidential or Highly Confidential Information it

has received, except that a Receiving Party may retain archival copies of all pleadings; motion papers and exhibits; trial, deposition, and hearing transcripts and exhibits; legal memoranda; correspondence; expert reports and exhibits; attorney work product; and consultant and expert work product. The restrictions set forth in Sections IV-VI shall continue to govern any use or disclosure of such archival copies.

23. ***Survival.*** This Order shall survive the termination of this Action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

24. ***Privacy Act***. This Order, and any subsequent order of this Court governing the United States' production of any documents, data, communications, transcripts of testimony, or other materials in this Action, constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a(b)(12).

25. ***Continuing Jurisdiction.*** This Court retains jurisdiction to resolve any disputes arising out of this Order after termination of this Action.

IT IS SO ORDERED.

This ____ day of __ 2026

____
Paul A. Engelmayer
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE NEW YORK AND PRESBYTERIAN HOSPITAL,

Defendant.

Case No. 26-cv-02480-PAE-OTW

District Judge Paul A. Engelmayer
Magistrate Judge Ona T. Wang

Exhibit A to Protective Order

I, the undersigned person, state as follows:

1. I have received and read the Protective Order entered in the above-captioned Action.

2. I have been informed that certain information to be disclosed to me or my firm in connection with the Action has been designated as Confidential or Highly Confidential.

3. I have been informed that any such documents or information labeled "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" are so designated by Order of the Court.

4. I agree that I will (i) comply with the Protective Order; (ii) not disclose any Confidential or Highly Confidential Information to any other person not entitled to receive such information under the terms of the Protective Order; and (iii) not use any Confidential or Highly Confidential Information for any purpose other than this litigation.

5. To the extent that disclosure pursuant to Paragraphs 8(e), 8(f), or 9 of the Protective Order is to be made to a litigation support vendor or expert firm with which I am affiliated, I

represent and warrant I have authority to agree on behalf of such vendor or firm that the vendor or firm, and its employees, shall (i) comply with the Protective Order; (ii) not disclose any Confidential or Highly Confidential Information to any other person not entitled to receive such information under the terms of the Protective Order; and (iii) not use any Confidential or Highly Confidential Information for any purpose other than this litigation.

Dated:__________________________ By: ____

EXHIBIT 2

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

MATHEW ENTERPRISE, INC., Plaintiff, v. CHRYSLER GROUP, LLC, Defendant.	))))))))	Case No. 5:13-cv-04236-BLF **ORDER GRANTING MOTION FOR ENTRY OF PROTECTIVE ORDER** **(Re: Docket No. 75)**

Plaintiff Mathew Enterprise, Inc. brings antitrust claims against Defendant Chrysler Group LLC, alleging that Chrysler favored two new surrounding auto dealers over it. Among the authorities cited by the parties in the present dispute is the French intellectual Voltaire. "[Our] species is so made that those who walk on the well-trodden path always throw stones at those who are showing a new road."[1]

The new road proposed by Chrysler is a protective order that would allow either party initially to "bulk designate" documents as "Attorney Eyes Only" during production. Chrysler represents that a substantial portion of the documents to be produced will qualify as AEO—financial statements, incentive payments, records and the like. The idea is to save the time and expense of a front-end confidentiality review of each and every document slated for production.

[1] Voltaire, Philosophical Dictionary, *Men of Letters* (Knopf, N.Y., 1924).

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For the Northern District of California

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Chrysler would permit a number of procedures to mitigate the burden on a receiving party. Counsel could still render advice to her client relying on her review of AEO documents. Depositions attended by a party would be designated—if at all—with the less restrictive "Confidential" level of protection. Up to 150 documents could be submitted by the receiving party for individual review by the producing party. And nothing in this scheme would prohibit court challenges to AEO designations or keep the public from information otherwise suitable for general consumption, as the sealing procedures under Civ. L.R. 79-5 would remain in place.

MEI denies being any kind of stone thrower. While conceding that bulk designation of certain document categories might be reasonable, MEI maintains that the "blanket designation" that would result from Chrysler's specific proposal would merely and unfairly shift costs to a receiving party. These costs would arise largely from the need to disclose to opposing counsel when certain designated documents must be shared beyond outside counsel. MEI also notes that federal courts have generally entered protective orders permitting 100% of a document production to be labeled AEO only with the consent of all parties.[2]

Fed. R. Civ. P. 26(c) authorizes a court, based on a showing of good cause, to enter protective orders that "protect a party" from "undue burden or expense." District courts have broad discretion and flexibility in evaluating proposed protective orders.[3] On balance, Chrysler has shown good cause supporting its proposal.

First, nearly thirty years ago, the Ninth Circuit recognized that "the costs of discovery in [antitrust] actions are prohibitive."[4] Factor in the massive proliferation of electronically stored information in all cases since 1987—including antitrust cases—and "prohibitive" sounds almost

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[2] *See, e.g.*, *Rec Solar Grade Silicon LLC v. Shaw Group, Inc.*, Case No. 09-cv-00188, 2011 U.S. Dist. LEXIS 51459, at *2 (E.D. Wash. May 13, 2011).

[3] *See Phillips v. GMC*, 307 F.3d 1206, 1211 (9th Cir. 2002).

[4] *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987).

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quaint. A back-end process like that proposed by Chrysler mitigates those costs by deferring the substantial component that is "eyes-on" confidentiality review and limiting it to a subset of the documents in the production stream.

Second, the benefits of a back-end process would likely be substantially reduced by a procedure like that offered by MEI, in which documents must still be categorized on the front end to qualify for bulk AEO designation.

Third, the parties appear to agree that the amount-in-controversy is about a million dollars, give or take. Eyes-on confidentiality review up front of every document slated for production could consume a meaningful percentage of that.[5]

Fourth, while "judicial records attached to dispositive motions" are presumptively public, mere "private materials unearthed during discovery" are not. "[R]estraints placed only upon the . . . use of information exchanged in discovery do not restrict 'a traditionally public source of information.'"[6] With Rule 79-5 in place, and in particular its requirements for securing court permission to seal documents, the public's rights to access case materials will be maintained. This is especially true here when the burden of substantiating an AEO designation remains on the producing party.

Fifth, it might turn out that the court's faith in the efficiency of Chrysler's proposal was misplaced. New approaches to discovery management rarely get it just right the first or even the second time. If down the road MEI can show that its fears about the unfair burden of Chrysler's approach were right, the court will happily consider a request for reconsideration. But fear alone should not discourage modest discovery innovations that might do some good.

[5] *Cf. FDIC v. Brudnicki*, 291 F.R.D. 669, 672-72 (N.D. Fla. 2013) (holding that blanket order would save "expense and time" that moving party "would incur if it was required to review each document line-by-line to identify and redact sensitive information.").

[6] *The Sedona Guidelines on Confidentiality & Public Access* (Mar. 2007), at 7 (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984)).

United States District Court
For the Northern District of California

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SO ORDERED.

Dated: January 7, 2015

PAUL S. GREWAL
United States Magistrate Judge

EXHIBIT 3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATHEW ENTERPRISE, INC.,

Plaintiff,

v.

CHRYSLER GROUP LLC,

Defendant.

Case No. 13-cv-04236-BLF-PSG

District Court Judge: Hon. Beth Labson Freeman

Magistrate Judge: Hon. Paul Singh Grewal

[Proposed] Protective Order

1 This matter comes before the Court on Defendant Chrysler Group LLC's ("Chrysler's")
2 motion for entry of a Protective Order governing the confidentiality of information subject to
3 discovery in this case. Having considered the submissions of the parties, the Court now finds
4 that:

5 1. One or more parties believe that a significant amount of the information being
6 sought in discovery or contained in documents being sought in discovery may be of a highly
7 confidential nature because such documents contain competitively sensitive business, research
8 and development, financial, and/or sales information, and trade secrets, that if disclosed to other
9 parties in the field at issue, would reveal technical or business advantages;

10 2. Federal Rule of Civil Procedure 26(c)(1)(G) permits a court to enter a protective
11 order to prevent unnecessary disclosure or dissemination of trade secrets or other confidential
12 research, development, or commercial information.

13 3. The procedures set forth below are appropriate to ensure that a producing party's
14 trade secrets or confidential research, development, or commercial information is adequately
15 protected in order to preserve the legitimate business interests of the Parties;

16 4. The procedures set forth below also appropriately balance each party's need for
17 access to relevant or discoverable information with the burden or expense associated with
18 appropriately identifying and protecting confidential information;

19 5. The procedures set forth below, which require the parties to comply with Local
20 Rule 79-5 with regard to the sealing of any information filed with the Court, will not restrict
21 public access to discovery materials filed with the Court in this Litigation;

22 IT IS THEREFORE ORDERED that, for good cause shown, the following procedures
23 shall apply to any discovery produced in this litigation:

24 I. DESIGNATION OF CONFIDENTIALITY

25 A. When used in this Order, the word "documents" is used in its broadest sense, and
26 means all written and computerized materials, videotapes, and all other tangible
27 items and items in magnetic or electronic form.

28

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

B. Except as otherwise indicated below, documents that are produced in this action and designated by the producing party as either or both "Confidential-Subject to Protective Order," or similar phrase, or "Attorneys' Eyes Only," shall be Protected Information and given confidential treatment as described below.

C. All documents and information produced by a party (the "Producing Party") may initially be deemed "Attorneys' Eyes Only," and all transcripts or videography of depositions taken in conjunction with this litigation may initially be deemed "Confidential" or "Attorneys' Eyes Only" in accordance with procedures set forth in Section II.D below.

D. A party that has received "Attorneys' Eyes Only" or "Confidential" information and that would like to use, and in the absence of the restrictive confidentiality designation would use, a specific document or testimony in a manner not permitted by the Attorneys' Eyes Only or Confidential designation may request that other parties (the "Designating Party"), including the Producing Party, review the document's initial confidentiality designation to determine whether it should remain "Attorneys' Eyes Only" or be given some other designation.

E. Once a party has made a request that a document's initial confidentiality designation be reviewed, the Designating Party shall have ten (10) business days, unless otherwise agreed upon, to make a final confidentiality designation. In making a final confidentiality designation, a Designating Party shall only designate as "Attorneys' Eyes Only" information (i) the Designating Party believes to be of a highly commercially sensitive nature, such as those reflecting, containing, or derived from current confidential trade secret, research, development, pricing, production, cost, marketing or customer information, and (ii) for which the Designating Party claims a right of confidentiality, such as, for example, where the information was transmitted by the Designating Party to the Producing Party pursuant to an agreement of confidentiality. In making a final

1 confidentiality designation, a Designating Party shall only designate as
2 "Confidential" information that has not been made publicly available, that is
3 competitively sensitive, or that is otherwise encompassed in Rule 26(c)(1)(G). If
4 the parties cannot resolve the issue, the objecting party will have the option to apply
5 to the Court to set a hearing for the purpose of establishing the proper confidentiality
6 designation. The party designating a document as "Confidential – Subject to
7 Protective Order" or "Attorneys' Eyes Only" has the burden of proving that a
8 Protected Document contains such designated confidential information. The
9 objecting party will treat any document so-marked until the Court enters a contrary
10 ruling on the matter.

11 F. A person receiving Confidential Information or Attorneys' Eyes Only Information
12 shall not use or disclose the information except for the purposes set forth in this
13 Order or by such orders as may be issued by the Court during the course of this
14 litigation. The provisions of this Order extend to all designated Confidential
15 Information and Attorneys' Eyes Only Information regardless of the manner in
16 which it is disclosed, including but not limited to documents, data, electronically
17 stored information, computerized materials, interrogatory answers, responses or
18 requests for admissions, deposition testimony and transcripts, deposition exhibits,
19 any other discovery materials produced by a party in response to or in connection
20 with any discovery conducted in this litigation, and any copies, notes, abstracts or
21 summaries of the foregoing.

22 II. MEANS OF DESIGNATING CONFIDENTIAL OR ATTORNEYS' EYES ONLY
23 DOCUMENTS FILED WITH THE COURT OR USED IN A HEARING OR DEPOSITION.

24 A. When marking documents with either an initial or final confidentiality
25 designation, the following protocol applies:

26 B. <u>Documents</u>. Except for electronically stored information, Counsel for the
27 Producing Party will place the relevant "CONFIDENTIAL" or "ATTORNEYS'
28 EYES ONLY" legend on each page of any such document.

C. Interrogatory Answers and Responses to Requests for Admissions. Counsel for the Producing Party will place a statement on the front of any set of answers to interrogatories or responses to requests for admission specifying that the answers or responses or specific parts thereof are designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

D. Depositions. Unless attended by a party representative (other than counsel of record or a party representative of a party that employs the witness), all deposition transcripts will be automatically designated Attorneys' Eyes Only. If a party representative attends a deposition (other than counsel of record or a party representative of a party that employs the witness), any party present at the deposition may designate any portion of the deposition as Attorneys' Eyes Only, and any portion not so designated will be automatically designated Confidential. The party taking the deposition shall instruct the court reporter and videographer to mark all deposition transcripts and video tapes with the appropriate designation. The failure of deposition or videotape to contain such a legend shall not be construed as a waiver of any right of confidentiality. To the extent a party requests a Designating Party to make a final confidentiality designation as to specific portions of a deposition transcript, the Designating Party shall inform the parties of its final confidentiality designations by page and line number.

E. Electronically Stored Information:

1. Electronically Stored Information ("ESI") means information stored or recorded in the form of electronic or magnetic media (including information, files, data, databases, computerized materials or programs stored on any digital or analog machine-readable device, computers, discs, networks or tapes). ESI will initially be deemed "Attorneys' Eyes Only." To the extent that ESI is produced in a form rendering it impracticable to label, counsel for the Producing Party may designate Electronic Data as "Confidential" or "Attorneys' Eyes Only" in a letter identifying the

1 information generally. When feasible, counsel for the Producing Party
2 will also mark the electronic or magnetic media with the appropriate
3 designation. Whenever any party to whom ESI designated as Confidential
4 Information or Attorneys' Eyes Only Information is produced reduces
5 such material to hard copy form, such party shall mark such hard copy
6 form with the appropriate confidentiality legend. Whenever any
7 "Confidential" or "Attorneys' Eyes Only" Electronic Data is copied into
8 another file, all such copies shall also be marked "CONFIDENTIAL" or
9 "ATTORNEYS' EYES ONLY" as appropriate.
10 2. To the extent that any party or counsel for any party creates, develops or
11 otherwise establishes on any digital or analog machine-readable device,
12 recording media, computers, discs, networks or tapes any information,
13 files, databases or programs that contain information designated
14 "Confidential" or "Attorneys' Eyes Only," that party and its counsel must
15 take all necessary steps to insure that access to that electronic or magnetic
16 media is properly restricted to those persons who, by the terms of this
17 Order, may have access to Confidential Information and Attorneys' Eyes
18 Only Information.
19 III. INFORMATION FILED WITH THE COURT.
20 A. A party that seeks to file Confidential Information or Attorneys' Eyes Only
21 Information with the Court shall file a motion to seal in accordance with Local
22 Rule 79-5 or obtain written agreement from the Designating Party that the
23 Confidential Information or Attorneys' Eyes Only Information can be made
24 available to the public. The movant shall indicate in their motion to seal that the
25 Confidential Information or Attorneys' Eyes Only Information is governed by this
26 Order and, if applicable, that the information required under Local Rule 79-
27 5(d)(1)(A) is not within the movant's knowledge, except that nothing in this
28 provision relieves the party seeking to seal from its obligation to satisfy Local

1 Rule 79-5. The Designating Party shall file a declaration pursuant to Local Rule
2 79-5(e)(1) or re-designate the Confidential Information or Attorneys' Eyes Only
3 Information as Not Confidential and request that the movant withdraw the motion
4 to seal not later than fourteen (14) days after the filing of the motion.

5 B. Only those portions of such documents and materials containing or reflecting
6 Confidential Information or Attorneys' Eyes Only Information shall be
7 considered "Confidential" or "Attorneys' Eyes Only" and may be disclosed only
8 in accordance with this Order. To the extent practical, only those portions of such
9 filings which contain Confidential Information or Attorneys' Eyes Only
10 Information shall be filed under seal. No party or other person may have access
11 to any sealed document from the files of the Court without an order of the Court.
12 The "Judge's Copy" of a sealed document may be opened by the presiding Judge,
13 the presiding Judge's law clerks and other Court personnel without further order
14 of the Court.

15 C. Regardless of any provision in this Order to the contrary, a party is not required to
16 file a document under seal if the Confidential Information or Attorneys' Eyes
17 Only Information contained or reflected in the document was so designated solely
18 by that party, but should a Designating Party file such a document without
19 requesting sealing the document shall no longer be considered Confidential for
20 any purpose.

21 IV. USE OF INFORMATION PRODUCED IN DISCOVERY.

22 A. No information produced in this case shall be used by any person, other than the
23 Designating Party, for any purpose other than prosecuting, defending or settling
24 the Litigation. In no event shall information produced in this case be used for any
25 business, competitive, personal, private, public or other purpose, except as
26 required by law.

27 B. Disclosure of Confidential Information. Access to information designated
28 "Confidential" pursuant to this Order shall be limited to:

1. Counsel (including members and associates of counsel in private law firms) and in-house counsel for the parties, as well as their paralegal, investigative, technical, secretarial and clerical personnel who are engaged in assisting them in the Litigation;

2. Outside photocopying, document storage, data processing or graphic production services employed or retained by the parties or their counsel to assist in the Litigation, provided that Paragraph V of this Order has been complied with;

3. Any outside expert, consultant or investigator retained by counsel for the purposes of consulting or testifying in the Litigation, provided that Paragraph V of this Order has been complied with;

4. Any mediator(s) engaged by the parties in the Litigation, provided that Paragraph V of this Order has been complied with;

5. Any director, officer or employee of a party charged with the responsibility for making business decisions dealing directly with the resolution of the Litigation, provided that Paragraph V of this Order has been complied with;

6. Any natural person who (i) is a current or former employee of the Designating Party; (ii) authored, received or otherwise has been provided access to (in the ordinary course, outside this action) the Confidential Information sought to be disclosed to that person; or (iii) is mentioned, discussed or referred to in the material, but, to the extent practical in the judgment of the party seeking to use the Confidential Information only as to the specific material in which such person is mentioned, discussed or referred to. Disclosure under this section shall only be made if (a) the disclosure is made for the purpose of advancing the disclosing party's claims or defenses, and for no other purposes; (b) the person is not permitted to access the Confidential Information outside the presence of

1 counsel; (c) the person is explicitly informed that this Order forbids him or
2 her to disclose the Confidential Information except as permitted under this
3 Order and that he or she is subject to the Court's jurisdiction for the
4 purposes of enforcing this Order;

5 7. This Court, or any other Court exercising jurisdiction with respect to the
6 Litigation, any appellate court(s), court personnel, jurors, alternate jurors,
7 and qualified persons (including necessary clerical personnel) recording,
8 taking or transcribing testimony or argument at any deposition, hearing,
9 trial or appeal in the Litigation;

10 8. A witness who has been subpoenaed or noticed for deposition, trial
11 testimony, or other court proceeding in the above-captioned case not
12 otherwise authorized to view the Confidential Information in question,
13 during that witness' testimony at a deposition, hearing, or trial in the
14 above-captioned case, or in preparation for the same, provided that: (i) the
15 disclosure is made for the purpose of advancing the disclosing party's
16 claims or defenses, and for no other purposes; (ii) counsel for the
17 disclosing party endeavors in god faith to redact or handle the Confidential
18 Information in such a manner as to disclose no more Confidential
19 Information than is reasonably necessary in order to examine the witness;
20 (iii) the witness is not permitted to retain the Confidential Information
21 after the witness is examined regarding the Confidential Information; and
22 (iv) the witness is explicitly informed that this Order forbids him or her to
23 disclose the Confidential Information except as permitted under this Order
24 and that he or she is subject to the Court's jurisdiction for the purposes of
25 enforcing this Order. A deposition witness may review the entire
26 deposition transcript and exhibits thereto in order to review and sign
27 pursuant to Fed. R. Civ. P. 30(e); however, the Designating Party may
28 object to the deponent reviewing a Confidential deposition exhibit in

1 connection with the review and sign. If such an objection is raised, any
2 party may seek relief from the Court, and the disclosure may not be made
3 until the Court rules or the Producing Party withdraws its objections;
4 9. Any other person to whom the Producing Party agrees in writing or on the
5 record, and any other person whom the Court directs should have access to
6 the Confidential Information.
7 C. Disclosure of Attorneys' Eyes Only Information. Access to information
8 designated "Attorneys' Eyes Only" pursuant to this Order shall be limited to:
9 1. Counsel of record (including members and associates of such counsel's
10 firm), as well as their paralegal, investigative, technical, secretarial and
11 clerical personnel who are engaged in assisting them in this litigation;
12 2. Outside photocopying, document storage, data processing or graphic
13 production services employed or retained by the parties or their counsel to
14 assist in the Litigation, provided that Paragraph V of this Order has been
15 complied with;
16 3. Any outside expert, consultant or investigator retained by counsel for the
17 purposes of consulting or testifying in the Litigation, provided that
18 Paragraph V of this Order has been complied with;
19 4. Any mediator(s) engaged by the parties in the Litigation, provided that
20 Paragraph V of this Order has been complied with;
21 5. Any natural person who (i) is a current or former employee of the
22 Designating Party; (ii) authored, received or otherwise has been provided
23 access to (in the ordinary course, outside this action) the Attorneys' Eyes
24 Only Information sought to be disclosed to that person; or (iii) is
25 mentioned, discussed or referred to in the material, but to the extent
26 practical in the judgment of the party seeking to use the Confidential
27 Information, only as to the specific material in which such person is
28 mentioned, discussed or referred to. Disclosure under this section shall

only be made if (a) the disclosure is made for the purpose of advancing the disclosing party's claims or defenses, and for no other purposes; (b) the person is not permitted to access the Confidential Information outside the presence of counsel; (c) the person is explicitly informed that this Order forbids him or her to disclose the Confidential Information except as permitted under this Order and that he or she is subject to the Court's jurisdiction for the purposes of enforcing this Order;

6. This Court, any other Court exercising jurisdiction over the Litigation, appellate court(s), court personnel, jurors, alternate jurors, and qualified persons (including necessary clerical personnel) recording, taking or transcribing testimony or argument at any deposition, hearing, trial or appeal in the Litigation; and

7. A witness who has been subpoenaed or noticed for deposition, trial testimony, or other court proceeding in the above-captioned case not otherwise authorized to view the Attorneys' Eyes Only Information in question, during that witness' testimony at a deposition, hearing, or trial in the above-captioned case, or in preparation for the same, provided that: (i) the disclosure is made for the purpose of advancing the disclosing party's claims or defenses, and for no other purposes; (ii) the witness is not permitted to retain the Attorneys' Eyes Only Information after the witness is examined regarding the Attorneys' Eyes Only Information; (iii) the witness is not permitted to retain the Confidential information after the witness is examined regarding the Confidential Information; and (iv) the witness is explicitly informed that this Protective Order forbids him or her to disclose the Confidential Information except as permitted under this Protective Order and that he or she is subject to the Court's jurisdiction for the purposes of enforcing this Protective Order. A deposition witness may review the entire deposition transcript and exhibits thereto in order to

review and sign pursuant to Fed. R. Civ. P. 30(e); however, the Producing Party may object to the deponent reviewing an Attorneys' Eyes Only deposition exhibit in connection with the review and sign. If such an objection is raised, any party may seek relief from the Court, and the disclosure may not be made until the Court rules or the Producing Party withdraws its objections;

8. Any other person whom the Producing Party agrees in writing or on the record, and any other person whom the Court directs should have access to the Attorneys' Eyes Only Information.

D. Non-Application of Order. The restrictions set forth above shall not apply to documents or information designated Confidential or Attorneys' Eyes Only, which (a) were, are, or become public knowledge, not in violation of this Order; or (b) were or are discovered independently by the receiving party.

E. Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients in this Action and, in the course thereof, relying generally on examination of designated Protected Materials; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose the contents of Protected Materials to persons not authorized to receive such material pursuant to the Protective Order.

F. Use of Confidential Information at Trial or Hearing. The restrictions, if any, that will govern the use of Confidential Information or Attorneys' Eyes Only Information at trial or hearings will be determined at a later date by the Court, in consultation with the parties if necessary.

G. Return of Materials. Within sixty (60) days after the final resolution of the Litigation, all Confidential Information and Attorneys' Eyes Only Information, including all copies, abstracts and summaries, shall be returned to counsel for the Producing Party or, if the Producing Party's counsel is so informed, destroyed,

1 with the party that had received the Confidential Information or Attorneys' Eyes Only Information certifying to the return or destruction as appropriate. As to those materials that contain or reflect Confidential Information or Attorneys' Eyes Only Information, but that constitute or reflect counsel's work product, counsel of record for the parties shall be entitled to retain such work product in their files in accordance with the provisions of this Order, so long as it is clearly marked to reflect that it contains information subject to this Order. Counsel shall be entitled to retain pleadings, affidavits, motions, briefs, other papers filed with the Court, deposition transcripts, and the trial record (including exhibits) even if such materials contain Confidential Information or Attorneys' Eyes Only Information, so long as such pleadings, affidavits, motions, briefs, other papers filed with the Court, deposition transcripts, and the trial record (including exhibits), in accordance with the provisions of this Order, are clearly marked to reflect that they contain information subject to this Order, and are maintained as such.

V. NOTIFICATION OF CONFIDENTIALITY ORDER.

A. Confidential Information and Attorneys' Eyes Only Information shall not be disclosed to persons described in Paragraphs IV.B., and IV.C., unless and until such persons are provided a copy of this Order, and are advised by the disclosing counsel that they are bound by the provisions of this Order, and, in the case of persons listed in Paragraphs IV(B)(2)-(5) and IV(C)(2)-(4), execute an Agreement of Confidentiality ("Confidentiality Agreement") in substantially the form attached hereto as Exhibit A.

B. The originals of such Confidentiality Agreements shall be maintained by the counsel who obtained them until the final resolution of the Litigation. Confidentiality Agreements and the names of persons who signed them shall not be subject to discovery except upon agreement of the parties or further order of the Court after application upon notice and good cause shown.

1 VI. OBJECTIONS TO DESIGNATIONS.

2 A. A party shall not be obligated to challenge the propriety of a Confidential
3 Information or Attorneys' Eyes Only Information designation at the time of such
4 designation, and a failure to do so shall not preclude a subsequent challenge
5 thereto.

6 B. In the event a party objects to the final designation of any material under this
7 Order by another party, the objecting party shall consult with the Designating
8 Party to attempt to resolve their differences. If the parties are unable, after
9 conferring in good faith, to reach an accord as to the proper designation of the
10 material, either party may present the dispute to the Court initially by telephone or
11 letter, in accordance with Local Rule 37, before filing a formal motion for an
12 order regarding the challenged designation.

13 C. If such a motion is made, the requesting party shall have the burden to
14 establishing that there is a need for a lower level of confidentiality than the final
15 designation made by the Designating Party. The Designating Party will have the
16 burden to establish that the designation is proper. If no such motion is made, the
17 material will remain as designated. Any documents or other materials that have
18 been designated "Confidential" or "Attorneys' Eyes Only" shall be treated as such
19 until the Court rules that they should not be so treated

20 D. In addition to the procedures set forth above, a Party that receives information that
21 is automatically designated Attorneys' Eyes Only may request that the
22 Designating Party make a document-by-document designation of confidentiality.
23 If that Party requests such a document-by-document designation for more than
24 150 documents, the Designating party may, at its option, retain attorneys,
25 including contract attorneys, to conduct a document-by-document confidentiality
26 review of such documents. The attorneys conducting such a confidentiality
27 review will perform the review under the direction of the Designating Party, and
28 all applicable privileges will be preserved. The party requesting the

confidentiality review pursuant to this paragraph shall reimburse the Designating Party for the reasonable costs, including attorneys' fees, of such review.

VII. PRIVILEGES.

A. Nothing contained in this Order shall affect the right of any party or witness to make any other appropriate objection or other response to discovery requests, including, without limitation, interrogatories, requests for admissions, requests for production of documents, questions at a deposition, or any other discovery request. This Order shall not be construed as a waiver by any party of any legally cognizable privilege to withhold any Confidential Information or Attorneys' Eyes Only Information, or of any right that any party may have to assert such privilege at any stage of the Litigation.

B. The inadvertent or unintentional disclosure by the Producing Party of information subject to a claim of privilege, including, but not limited to, the attorney-client privilege, or the work product doctrine, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of the party's claim of privilege. As an example, but without limiting the foregoing, the disclosure of privileged information shall be deemed inadvertent if the disclosure was the result of the failure of search terms to capture such documents, so long as the Producing Party believed in good faith, at the time of production, that the search terms were adequate to guard against such production. In all cases, information that contains privileged information or attorney-work product shall be immediately returned if information appears on its face to have been inadvertently produced or if there is notice of the inadvertent production within thirty (30) days. The resolution of any dispute that may arise concerning whether a document is privileged or entitled to protection as trial-preparation material shall be governed by Rule 26(b)(5)(B).

1 C. A party's compliance with the terms of this Order shall not operate as an
2 admission that any particular document is or is not (a) confidential, (b) privileged
3 or (c) admissible in evidence at trial.

4 VIII. OTHER PROVISIONS.

5 A. Subpoenas. Any party or person in possession of Confidential Information or
6 Attorneys' Eyes Only Information who receives a subpoena or other process from
7 any person or entity who is not subject to this Order, which subpoena seeks
8 production or other disclosure of such Confidential Information or Attorneys'
9 Eyes Only Information, shall promptly give telephonic notice and written notice
10 to counsel for the Producing Party who designated the materials as "Confidential"
11 or "Attorneys' Eyes Only," identifying the materials sought and enclosing a copy
12 of the subpoena or other process. The party or person receiving the subpoena
13 shall also inform the person seeking the Confidential Information or Attorneys'
14 Eyes Only Information that such information is subject to this Order. No
15 production or other disclosure of such information pursuant to the subpoena or
16 other process shall occur before the last date on which production may be made as
17 specified in or required by the subpoena or other process. Nothing contained
18 within this paragraph shall be construed as encouraging any party or person not to
19 comply with any court order, subpoena, or other process.

20 B. Application to Non-Parties. This Order shall apply to any non-party who is
21 obligated to provide discovery, by deposition, production of documents or
22 otherwise, in the Litigation, if that non-party requests the protection of this Order
23 as to its Confidential Information or Attorneys' Eyes Only Information and
24 complies with the provisions of this Order.

25 C. Modification of the Order. This Order shall not foreclose a Party from moving
26 this Court for an order that documents or information within the meaning of this
27 Order are, in fact, not "Confidential," "Attorneys' Eyes Only" or otherwise
28 protectable under Rule 26(c) or the terms of this Order. In addition, this Order

1 shall not prevent a Party from applying to the Court for relief therefrom, or from
2 applying to the Court for further or additional protective orders, or from agreeing
3 to modification of this Order.
4 D. Term. Upon the final resolution of the Litigation, the provisions of this Order
5 shall continue to be binding. Upon final conclusion of this Litigation, each party
6 or other individual subject to the terms hereof shall assemble and return to the
7 originating source all originals and unmarked copies of confidential materials and
8 upon request, shall destroy any confidential materials containing or constituting
9 attorney work product. However, counsel may retain a copy of any transcript and
10 pleadings, including exhibits thereto, for archival purposes, consistent with and
11 subject to this Order. Any request for the return of confidential material from the
12 Court may be made at the final conclusion of all litigation and by formal motion.
13 This Court expressly retains jurisdiction over this action for enforcement of the
14 provisions of this Order following the final resolution of this Litigation.
15 E. Parties Bound. This Order is binding on all parties to this action, on all nonparties
16 who have agreed to be bound by this Order and on all others who have signed the
17 Confidentiality Agreement in substantially the form attached hereto as Exhibit A,
18 and shall remain in force and effect until modified, superseded, or terminated by
19 consent of the parties or by Order of the Court.
20 F. Calculation of Time Periods. All time periods set forth in this Order shall be
21 calculated according to Rule 6 of the Federal Rules of Civil Procedure, as then in
22 effect.
23
24 **IT IS SO ORDERED.**
25
26 DATED: ___________________ ____
27 HON. PAUL S. GREWAL
United States Magistrate Judge
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATHEW ENTERPRISE, INC., Plaintiff, v. **CHRYSLER GROUP LLC,** Defendant.	Case No. 13-cv-04236-BLF District Court Judge: Hon. Beth Labson Freeman Magistrate Judge: Hon. Paul Singh Grewal **Exhibit A to Protective Order**

CERTIFICATION

I hereby certify my understanding that Confidential Information and/or Attorneys' Eyes Only Information is being provided to me pursuant to the terms and restrictions of the Order dated ____________________, in *Mathew Enterprise, Inc. v. Chrysler Group LLC*, Civil Case No. 13-cv-04236-BLF (N.D. Cal.). I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information or Attorneys' Eyes Only Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information and Attorneys' Eyes Only Information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information and Attorneys' Eyes Only Information including copies, notes, or other transcriptions made therefrom – to the counsel who provided me with the Confidential Information or Attorneys' Eyes Only Information. I hereby consent to the jurisdiction of the United States District Court of the Northern District of California for the purpose of enforcing the Order.

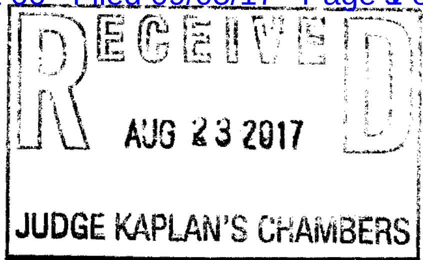
Dated:___________________

By:______________________

Print Name:______________________

EXHIBIT 4

Kaplan, J.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRUEEX, LLC, and TRUEPTS, LLC

Plaintiffs,

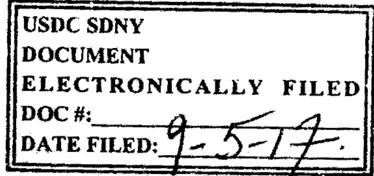
-against-

MARKITSERV LIMITED, AND MARKITSERV, LLC.

Defendants.

Civil Action No.: 17-cv-3400 (LAK)

STIPULATED ~~[PROPOSED]~~ PROTECTIVE ORDER



LEWIS A. KAPLAN, District Judge:

The parties in the above-captioned action (the "Action") having agreed to the following terms of confidentiality, and the Court finding that:

1. Federal Rule of Civil Procedure 26(c)(1)(G) permits a court to enter a protective order to prevent unnecessary disclosure or dissemination of trade secrets or other confidential research, development, or commercial information;

2. The parties believe that a significant amount of the information contained in documents being sought in discovery may be of a highly confidential nature because such documents contain competitively sensitive business, research and development, financial, and/or sales information, and trade secrets, that if disclosed would reveal technical or business advantages;

3. In light of substantial volume of information that will be produced in this case, it is appropriate to permit the parties to have broader initial confidentiality designations for Discovery Materials that are exchanged among themselves (*e.g.*, to permit bulk designation of

information), and narrower confidentiality designations as the need arises or for information that is ultimately filed with the Court.

4. The procedures set forth below are appropriate to ensure that a producing party's trade secrets or confidential research, development, or commercial information is adequately protected in order to preserve the legitimate business interests of the Parties. These procedures also appropriately balance each party's need for access to relevant or discoverable information with the burden or expense associated with appropriately identifying and protecting confidential information;

5. Having found that good cause exists for issuance of a confidentiality order governing the pre-trial phase of this Action, it is HEREBY ORDERED that the following procedures shall apply to any discovery produced in this Action:

I. DESIGNATION OF CONFIDENTIALITY

6. "Discovery Material" consists of any information provided in the course of discovery in this Action (whether produced voluntarily or pursuant to compulsory process), including without limitation, documents, communications, written discovery responses, and deposition video and testimony. A party who produces such Discovery Material shall be referred to as a "Producing Party;" a party who receives such Discovery Material shall be referred to as a "Receiving Party."

7. A Producing Party may initially and presumptively designate any Discovery Material as "Highly Confidential." Such material shall be subject to final re-designation (it will either remain as "Highly Confidential," or be re-designated to "Confidential," or "Non-Confidential") pursuant to Section IV governing information filed with the Court, or Section V

governing party requests for re-designation. Discovery Material designated as "Highly Confidential," or "Confidential" shall be referred to as "Protected Material."

8. In making a final confidentiality designation, the Producing Party may designate as "Highly Confidential" material that it reasonably and in good faith believes to be of a highly commercially sensitive nature, disclosure of which could result in competitive or commercial harm to any Person, such as material reflecting, containing, or derived from current confidential trade secret, research, development, pricing, production, cost, marketing, or customer information.

9. In making a final confidentiality designation, the Producing Party may designate as "Confidential" material consisting of:

a) Financial information not previously disclosed to the public (including without limitation profitability reports or estimates, trading positions, percentage fees, design fees, royalty rates, minimum guarantee payments, market share data, sales reports, and sale margins);

b) Material not previously disclosed to the public relating to ownership or control of any non-public company;

c) Business plans, product development information, or marketing plans not previously disclosed to the public;

d) Proprietary business information or communications, or other confidential research, development, or commercial information or communications;

e) Information obtained from personnel-related files or records;

f) Any information of a personal or intimate nature regarding any individual, including but not limited to any information or data defined as "personal data" as that term is defined in applicable data privacy laws or regulations;

g) Information for which applicable law—foreign or domestic—requires confidential treatment;

h) Extracts or summaries of information described above;

i) Any other category of information hereinafter designated as confidential by the parties or given confidential status by the Court; or

j) Information that is otherwise encompassed in Rule 26(c)(1)(G).

II. USE OF INFORMATION PRODUCED IN DISCOVERY.

10. All Discovery Material produced or disclosed in connection with this Action shall be used solely for the prosecution or the defense of this Action bearing case number 17-cv-3400 (including any appeal therefrom) and for no other purpose unless otherwise compelled by court order, subpoena, or other process. In no event shall information produced in this Action be used for any business, competitive, personal, private, public or other purpose, except as required by law.

11. Unless otherwise agreed to in writing by the Producing Party, a Receiving Party shall not disclose "Highly Confidential" information to any other person, except the following:

a) The Court, any other Court exercising jurisdiction over this Action, appellate court(s), court personnel, jurors, alternate jurors, and qualified persons (including necessary clerical personnel) recording, taking or transcribing testimony or argument at any deposition, hearing, trial or appeal in the Action;

b) The parties' outside counsel participating in the prosecution and defense of this matter, including any paralegal, clerical and/or other assistant employed by such counsel and involved in this Action;

c) Independent photocopying, document storage, data processing or graphic production services, or litigation support services employed by the parties or their counsel to assist in this Action and computer service personnel performing duties in relation to a computerized litigation system;

d) Any person retained by a party to serve as an expert witness, consultant, investigator, or otherwise provide specialized advice to counsel in connection with this Action, and any clerical and/or other assistant retained by such person, provided such person has first executed a Non-Disclosure Agreement in substantially the form annexed as Exhibit A hereto and that such person does not work for or provide business consulting advice for any Party or competitor of such Party;

e) Any mediator(s) engaged by the parties in this Action, provided such person has first executed a Non-Disclosure Agreement in substantially the form annexed as Exhibit A hereto;

f) As to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;

g) A witness while testifying at a deposition, trial, or other court proceeding;

h) A witness in preparation for testifying who has been subpoenaed or noticed for deposition, or other court proceeding in this Action, provided that (i) it is reasonable to conclude based upon deposition testimony or other objective

evidence that the person would have access to or knowledge of the information contained in, or related to, that document; (ii) the disclosure is made for the purpose of preparing such witness for testimony and for the purpose of advancing the disclosing party's claims or defenses, and for no other purpose; (iii) the witness is not permitted to retain the information; and (iv) the witness is explicitly informed that this Order forbids him or her to disclose the information except as permitted under this Order and that he or she is subject to the Court's jurisdiction for the purposes of enforcing this Order;

12. Unless otherwise agreed to in writing by the Producing Party, a Receiving Party shall not disclose "Confidential" information to any other person, except the following:

a) Any Person who is entitled to receive access to Highly Confidential Information, pursuant to paragraph 11 above.

b) The parties' in-house counsel participating in the prosecution and defense of this Action, including any assistant employed by such counsel and involved in this Action;

c) The parties to this Action, including any current or former director, officer, employee, trustee, designated representative, or agent of a party charged with the responsibility for making decisions dealing directly with the prosecution or defense of this Action; provided such person has first executed a Non-Disclosure Agreement in substantially the form annexed as Exhibit A hereto;

13. The restrictions set forth above shall not apply to documents or information which (a) were, are, or become public knowledge, not in violation of this Order, or (b) were or are discovered independently by the receiving party.

III. MARKING AND DESIGNATING INFORMATION

14. Documents. When marking documents with either an initial or final confidentiality designation, the Producing Party shall designate such Discovery Material with the appropriate confidentiality designation by stamping or otherwise clearly marking "Confidential," or "Highly Confidential" on each page of any such document in a manner that will not interfere with legibility or audibility. Documents previously produced in expedited discovery in this Action marked "Attorneys' Eyes Only" need not be redesignated; such documents shall be treated as having been designated "Highly Confidential" in accordance with this Order.

15. Responses to Interrogatories and Requests for Admission. When marking interrogatory answers or responses to requests for admissions with either an initial or final confidentiality designation, counsel for the Producing Party will place a statement on the front of any set of answers specifying that the answers or responses or specific parts thereof are designated "Confidential" or "Highly Confidential."

16. Depositions. Deposition testimony and exhibits will be automatically designated Highly Confidential. Such testimony and exhibits may be subject to final re-designation as specified in Paragraph 7, pursuant to the procedures set forth in Section IV and V of this Order.

IV. INFORMATION FILED WITH THE COURT

17. In the event that before trial in this Action, or in connection with any hearing, motion, or pleading related to this Action, any party determines to file or submit Protected Material, such party shall do so by filing a request with the Court that the Protected Material be filed under seal in accordance with the applicable Local Rules, Electronic Case Filing Rules & Instructions, and the "Sealed Records Filing Instructions," and kept under seal until further order of the Court.

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18. The restrictions, if any, that will govern the use of Protected Material at trial or hearings will be determined at a later date by the Court, in consultation with the parties if necessary.

19. Regardless of any provision in this Order to the contrary, a party is not required to file a document under seal if the Protected Material contained or reflected in the document was so designated solely by that party. Should a Producing Party file such a document without requesting sealing the document shall no longer be considered Protected Material for any purpose.

V. OBJECTIONS TO DESIGNATIONS

20. A party shall not be obligated to challenge the propriety of a confidentiality designation at the time of such designation, and a failure to do so shall not preclude a subsequent challenge thereto.

21. In the event that a Receiving Party disagrees at any time with any designation(s) made by the Designating Party, the Receiving Party must first try to resolve such challenge in good faith on an informal basis ~~with the Designating Party~~. The Receiving Party must provide written notice of the challenge and the grounds therefor to the Designating Party, who must respond in writing to the challenge within 15 days. At all times, the Designating Party carries the burden of establishing the propriety of the designation and protection level.

22. If the parties are unable to resolve any dispute, the objecting ~~party~~ shall submit the dispute to the Court in accordance with the Court's Individual Rules of Practice in Civil Cases. During the pendency of a dispute over a final designation (or if the dispute is not submitted to the Court for resolution), the information shall be treated as designated. The failure of any Receiving Party to challenge a designation does not constitute a concession that the

designation is proper or an admission that the designated information is otherwise competent, relevant, or material.

VI. INADVERTENTLY DISCLOSED INFORMATION

23. If a Producing Party claims that it has inadvertently produced Discovery Material that is subject to a claim of attorney-client privilege or attorney work product protection ("Inadvertently Disclosed Information"), such disclosure, in itself, shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection with respect to the Inadvertently Disclosed Information and its subject matter.

24. A Producing Party making a claim of inadvertent disclosure shall do so in writing. Within ten (10) business days of such written notification of any Inadvertently Disclosed Information, the producing Person shall produce a privilege log with respect to the Inadvertently Disclosed Information. However, the producing Person may request a reasonable extension of the deadline for the production of such privilege log due to the volume of such material, and consent to such extension shall not be unreasonably withheld.

25. Upon receiving such a written notification, the receiving party immediately shall return or destroy all copies of the Inadvertently Disclosed Information, and provide a written notice that all such information has been returned or destroyed within ten (10) business days of receipt of the request, unless the receiving party provides notice of its intent to challenge the assertion of a claim of protection under Fed. R. Civ. P. 26(b)(5)

26. The receiving party may request a reasonable extension of the deadline for the return or destruction of Inadvertently Disclosed Information due to the volume of such material, and consent to such extension shall not be unreasonably withheld.

27. The resolution of any dispute that may arise concerning whether a document is privileged or entitled to protection as trial-preparation material shall be governed by Rule 26(b)(5)(B).

VII. NON-PARTY PRODUCTIONS

28. Absent further order of the Court, a non-party that produces information in this Action shall be deemed a "Producing Party" for purposes of this Order. Such non-parties shall have the same rights and obligations as a Producing Party. Any party who serves a subpoena on a non-party shall provide such non-party with a copy of this Order.

29. In the event a non-party produces information in response to a subpoena or request, any party receiving such information from the non-party shall ensure that all other parties receive copies of the non-party's production within five (5) business days of the receiving party's receipt of such production.

VIII. OTHER PROVISIONS

30. A Receiving Party shall take reasonable precautions to prevent unauthorized disclosure of Protected Materials.

31. A party's compliance with this Order shall not operate as an admission that any particular document is or is not (a) confidential, (b) privileged, or (c) admissible in evidence at trial. Nothing contained in this Order shall affect the right of any party or witness to make any objection to the production or use of any information.

32. Originals of any executed Non-Disclosure Agreements as required for persons noted above shall be maintained by the counsel who obtained them until the final resolution of the Action. Non-Disclosure Agreements and the names of persons who signed them shall not be

subject to discovery except upon agreement of the parties or further order of the Court after application upon notice and good cause shown.

33. If, at any time, any Discovery Material governed by this Order is subpoenaed or requested by any court, administrative or legislative body, or by any other person or entity purporting to have authority to require the production thereof, the person to whom the subpoena or request is directed, to the extent permitted by law, shall promptly give written notice to the producing person and include with that notice a copy of the subpoena or request. To the extent permitted by law, a Receiving Party may not produce Discovery Material subject to this Order in response to such a subpoena unless it has provided the Producing Party reasonable opportunity to quash, limit, or object to such production of at least ten (10) business days. Further, in the event Protected Material is ultimately produced following appropriate notice and process, the Producing Party shall advise the entity to which such production is made as to the terms of this Order and the designations assigned to the documents pursuant to its terms. Nothing contained within this paragraph shall be construed as encouraging any party or person not to comply with any court order, subpoena, or other process.

34. This Order shall survive the termination of this Action. Within sixty (60) calendar days after the final conclusion of all aspects of this Action by judgment not subject to further appeal or by settlement, the parties shall take commercially reasonable efforts to ensure that all Discovery Material and all copies thereof (including electronic information) shall be returned or destroyed and the Producing party, upon request, shall be provided with a certification stating that the Producing Party's documents have been destroyed. Notwithstanding any other provision of this Order, the obligation to return or destroy all Discovery Material and all copies of such material upon such written request shall not apply to pleadings, motions,

briefs, supporting affidavits, other papers filed with the Court, attorney notes, deposition transcripts, hearing transcripts, trial transcripts, exhibits, the trial record (including exhibits), Court opinions or orders, attorney-client privileged material, and/or work product created by counsel, a party, or a third party in connection with this Action, which reflect, summarize, or otherwise refer to Discovery Material, and copies thereof retained by counsel, so long as the Person retaining such material otherwise complies with this Order with respect to such retained material.

35. This Order is governed by, interpreted under, and construed and enforced in accordance with New York law, without regard to the conflict of law principles of the State of New York. Any dispute between the parties regarding this Order shall be resolved by making an appropriate application to this Court in accordance with its rules.

36. All time periods set forth in this Order shall be calculated according to Rule 6 of the Federal Rules of Civil Procedure, as then in effect.

37. During the pendency of this case only, this Court shall retain jurisdiction over all Persons subject to this Order to the extent necessary to enforce any obligations arising hereunder.

SO STIPULATED AND AGREED.

DATED: August 16, 2017

QUINN EMANUEL URQUHART &
SULLIVAN LLP
DANIEL L. BROCKETT
ADAM M. ABENSOHN
THOMAS J. LEPRI
KANIKA SHAH

DANIEL L. BROCKETT

51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: 212/849-7000
212/849-7100 (fax)
danbrockett@quinnemanuel.com
adamabensohn@quinnemanuel.com
thomaslepri@quinnemanuel.com
kanikashah@quinnemanuel.com

Attorneys for Plaintiffs trueEX, LLC and truePTS, LLC

DATED: August 18, 2017

PROSKAUER ROSE LLP
COLIN KASS
GREGG M. MASHBERG
SCOTT A. EGGERS
DAVID A. MUNKITTRICK
SETH FIUR

COLIN KASS

11 Times Square
New York, NY 10036
Tel. 212-969-3000
Fax 212-969-2900
CKass@proskauer.com
BRuskin@proskauer.com
GMashberg@proskauer.com
SEggers@proskauer.com
DMunkittrick@proskauer.com
SFiur@proskauer.com

IT IS SO ORDERED.

DATED: ________________

THE HONORABLE LEWIS A. KAPLAN
UNITED STATES DISTRICT JUDGE

Notwithstanding anything to the contrary herein:

1. Any papers filed under seal in this action shall be made part of the public record on or after 9/5/2022 unless the Court otherwise orders.

2. Any person may apply to the Court for access to any papers filed under seal pursuant to this order. Should such an application be made, the person or persons who designated the sealed material as Confidential shall have the burden of establishing good cause for the continuation of the sealing order unless the Court previously made an individualized determination of the existence of good cause for sealing.

Dated: 9/5/17

Lewis A. Kaplan
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRUEEX, LLC, and TRUEPTS, LLC Plaintiffs, -against- MARKITSERV LIMITED, AND MARKITSERV, LLC. Defendants.	Civil Action No.: 17-cv-3400 (LAK) **EXHIBIT A: NON-DISCLOSURE AGREEMENT**

I hereby certify my understanding that Confidential Information and/or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the order dated __________, in *trueEX, LLC and truePTS, LLC v. MarkitSERV Limited and MarkitSERV, LLC*, Civil Action No. 17-CV-3400 (LAK) (S.D.N.Y.). I agree that I will use Discovery Material solely for the prosecution or defense of this action and for no other purpose. I will maintain all such Confidential or Highly Confidential information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it, and no later than thirty (30) days after the conclusion of the litigation I will return all Discovery Material I have received to the party or attorney from whom I received it. In addition, I agree that I will not disclose Discovery Material designated as Confidential or Highly Confidential except as authorized by the Protective Order. By acknowledging these obligations, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of enforcing the Protective Order.

DATED: ______________________________ ______________________________
[NAME]

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CAREPOINT HEALTH SYSTEMS, *et al.*	)	Civil Action No: 2:22-cv-05421-EP-CLW
Plaintiffs,	)	Hon. Evelyn Padin, USDJ
v.	)	Hon. Cathy L. Waldor, USMJ
RWJ BARNABAS HEALTH, INC.,	)	
Defendant.	)	

DISCOVERY CONFIDENTIALITY ORDER

It appearing that discovery in the above-captioned action is likely to involve the disclosure of confidential information, it is ORDERED as follows:

1. ***Confidential Material.*** Any party to this litigation and any third-party shall have the right to designate as "Confidential" and subject to this Order any information, document, or thing, or portion of any document or thing: (a) that contains trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, or (b) that contains private or confidential personal information, or (c) that contains information received in confidence from third parties, or (d) which the producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure and Local Civil Rule 5.3. Any party to this litigation or

any third party covered by this Order, who produces or discloses any Confidential Material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “CONFIDENTIAL”.

2. ***AEO Material.*** Any party to this litigation and any third-party shall have the right to designate as “Attorneys’ Eyes Only” (“AEO”) and subject to this Order any information, document, or thing, or portion of any document or thing that contains highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the designating party. Any party to this litigation or any third party who is covered by this Order, who produces or discloses any Attorneys’ Eyes Only material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “ATTORNEYS’ EYES ONLY.”

3. ***Use of Discovery Material***. All material produced in this action (“Discovery Material”) shall be used by the receiving party solely for purposes of the prosecution or defense of this action, shall not be used by the receiving party for any business, commercial, competitive, personal or other purpose, and shall not be disclosed by the receiving party to anyone other than those set forth below in

Paragraphs 7 and 8, unless and until the restrictions herein are removed either by written agreement of counsel for the parties, or by Order of the Court.

4. ***Initial Designations.***

All Discovery Material produced in this action may initially be designated "ATTORNEYS' EYES ONLY," in accordance with procedures set forth below:

a. A Party that has received Discovery Material and that would like to use, and in the absence of the restrictive confidentiality designation would use, a specific document or testimony in a manner not permitted by the designation may request that the designating party review the document's initial confidentiality designation to determine whether it should remain or be given some other designation.

b. Once a party has made a request that a document's initial confidentiality designation be reviewed, the designating party shall have fourteen (14) days, unless otherwise agreed upon, to make a final confidentiality designation.

c. Mass, indiscriminate, or routinized final designation requests are prohibited.

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5. ***Designation of Deposition Testimony***.

All deposition testimony, transcripts and recordings will initially be automatically designated "ATTORNEYS' EYES ONLY," subject to the procedure for final designations set forth above in Paragraph 4.

6. ***Designation Disputes***. If counsel for a party receiving documents or information objects to a final designation under Paragraph 4 as Confidential or Attorneys' Eyes Only, the following procedure shall apply:

a. Counsel for the objecting party shall serve on the designating party or third party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection.

b. Counsel for the designating party or third party shall respond in writing to such objection within 14 days, and shall state with particularity the grounds for asserting that the document or information is Confidential or Attorneys' Eyes Only. If no timely written response is made to the objection, the challenged designation will be deemed to be void.

c. If the designating party or nonparty makes a timely response to such objection asserting the propriety of the designation,

counsel shall then confer in good faith in an effort to resolve the dispute.

d. If a dispute as to a Confidential or Attorneys' Eyes Only designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court initially by telephone or letter, in accordance with Local Civil Rule 37.1(a)(1), before filing a formal motion for an order regarding the challenged designation.

e. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

7. ***Use of Confidential Material***. Confidential Material and the contents of Confidential Material may be disclosed only to the following individuals under the following conditions:

a. The Parties and their current directors, officers, and employees, and other persons, with written approval of both Parties, who are bound by this Protective Order by executing the agreement attached as Exhibit A and who are assisting with or making

decisions concerning this action, to the extent necessary for the purpose of prosecuting or defending this action;

b. Outside counsel (herein defined as any attorney at the parties' outside law firms) and relevant in-house counsel for the parties;

c. Outside experts or consultants retained by or for the parties for purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A;

d. Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;

e. The Court and court personnel;

f. Any deponent may be shown or examined on any information, document or thing designated Confidential provided the deponent has signed a non-disclosure agreement in the form attached hereto as Exhibit A and does not retain any Confidential Material;

g. Any person indicated on the face of a document or accompanying cover letter, email, or other communication to be the author, addressee, or an actual or intended recipient of the document (or indicated as a blind copy recipient in such document/communication's metadata), or, in the case of

meeting minutes and presentations, an attendee of the meeting or presentation, provided the person has signed a non-disclosure agreement in the form attached hereto as Exhibit A;

h. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative, and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials.

8. ***Use of AEO Material.*** Attorneys' Eyes Only Material and the contents of Attorneys' Eyes Only Material may be disclosed only to the following individuals under the following conditions:

a. Outside counsel (herein defined as any attorney at the parties' outside law firms);

b. Outside experts or consultants retained by or for the parties for purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A;

c. Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;

d. The Court and court personnel;

e. Any deponent may be shown or examined on any information, document or thing designated Attorneys' Eyes Only provided the deponent has signed a non-disclosure agreement in the form attached hereto as Exhibit A and does not retain any AEO Material;

f. Any person indicated on the face of a document or accompanying cover letter, email, or other communication to be the author, addressee, or an actual or intended recipient of the document (or indicated as a blind copy recipient in such document/communication's metadata), or, in the case of meeting minutes and presentations, an attendee of the meeting or presentation, provided the person has signed a non-disclosure agreement in the form attached hereto as Exhibit A;

g. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative, and

audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials.

9. ***Advice of Counsel.*** It is understood that counsel for a party may give advice and opinions to his or her client solely relating to the above-captioned action based on his or her evaluation of AEO Material, provided that such advice and opinions shall not reveal the content of such AEO Material except by prior written agreement of counsel for the parties, or by Order of the Court.

10. ***Filing Under Seal***. Any document designated "Confidential" or "Attorneys' Eyes Only" by a party or non-party and which document is filed with the Court shall be filed under seal, in accordance with Local Civil Rule 5.3.

11. ***Use at Trial.*** If the need arises during trial or at any Hearing before the Court for any party to disclose Confidential or Attorneys' Eyes Only information, it may do so only after giving notice to the producing party and as directed by the Court.

12. ***Inadvertent Failure to Designate***. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential or AEO Material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, shall

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not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information, document or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all parties to whom the material was disclosed that the material should have been designated Confidential or AEO within a reasonable time after disclosure. Such notice shall constitute a designation of the information, document or thing as Confidential or AEO under this Discovery Confidentiality Order.

13. ***Inadvertent Disclosure of Privileged Material.*** The inadvertent or unintentional disclosure by a producing party of information subject to a claim of privilege, including, but not limited to, the attorney-client privilege, or the work product doctrine, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of the party's claim of privilege. As an example, but without limiting the foregoing, the disclosure of privileged information shall be deemed inadvertent if the disclosure was the result of the failure of search terms to capture such documents, so long as the producing party believed in good faith, at the time of production, that the search terms were adequate to guard against such production. In all cases, should the receiving party reasonably believe that a document produced to it was inadvertently produced or contains privileged information or attorney-work

product, that party shall notify the producing party and, upon the producing party's request, shall immediately sequester such documents. Further, should the producing party notify the receiving party of the inadvertent production of documents containing privileged information or attorney-work product, the receiving party shall immediately sequester such documents. The producing party shall then provide the basis for the privilege claim within fourteen (14) days of the producing party's discovery or notification of the inadvertent production, and produce to the party possessing the inadvertent production a privilege log identifying the inadvertently disclosed information and setting forth the basis for its withholding. If the receiving party intends to challenge the basis for withholding, the resolution of any dispute that may arise concerning whether a document is privileged or entitled to protection as trial-preparation material shall be governed by Rule 26(b)(5)(B). If the receiving party does not intend to challenge the basis for withholding, it shall return or destroy the inadvertently produced information within fourteen (14) days of receipt of a privilege log.

14. ***Public Domain Information.*** No information that is in the public domain or which is already known by the receiving party through proper means or which is or becomes available to a party from a source other than the party asserting confidentiality, rightfully in possession of such information on a non-confidential

basis, shall be deemed or considered to be Confidential or AEO Material under this Discovery Confidentiality Order.

15. ***Discovery Objections.*** This Discovery Confidentiality Order shall not deprive any party of its right to object to discovery by any other party or on any otherwise permitted ground. This Discovery Confidentiality Order is being entered without prejudice to the right of any party to move the Court for modification or for relief from any of its terms.

16. ***Survival.*** This Discovery Confidentiality Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

17. ***Final Disposition.*** Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law. Within 60 days after the final disposition of this action, each receiving party must return all Discovery Material to the producing party or destroy such material. As used in this subdivision, "all Discovery Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of

the Discovery Material. Whether the Discovery Material is returned or destroyed, the receiving party must submit a written certification to the producing party (and, if not the same person or entity, to the designating party) by the 60-day deadline that affirms that the receiving party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the discovery material. Notwithstanding this provision, Counsel are entitled to retain archival copies of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential or AEO Material. Any such archival copies that contain or constitute such material remain subject to this Discovery Confidentiality Order.

s/ Cathy L. Waldor
Hon. Cathy L. Waldor, USMJ

Date: January 8, 2024

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CAREPOINT HEALTH MANAGEMENT ASSOC. LLC, *et al.*	)	Civil Action No: 2:22-cv-05421-EP-CLW
Plaintiffs,	)	Hon. Evelyn Padin, USDJ
v.	)	Hon. Cathy L. Waldor, USMJ
RWJ BARNABAS HEALTH, INC.,	)	
Defendant.	)	

AGREEMENT TO BE BOUND BY CONFIDENTIALITY ORDER

I, ______________________, state that:

1. My address is:

2. My present employer is ____________________ and the address of my present employment is:

3. I have carefully read and understood the provisions of the Confidentiality Order in this case signed by the Court, and I will comply with all provisions of the Confidentiality Order.

4. I will hold in confidence and not disclose to anyone not qualified under the Confidentiality Order any Confidential or Attorneys' Eyes Only material or any words, summaries, abstracts, or indices of Confidential

or Attorneys' Eyes Only material disclosed to me.

5. I will limit use of Confidential or Attorneys' Eyes Only material disclosed to me solely for purpose of this action.

6. No later than the final conclusion of the case, I will return all Confidential or Attorneys' Eyes Only material and summaries, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

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

Dated: ________________

____
[Name]

EXHIBIT 6

John P. Barry
PROSKAUER ROSE LLP
One Newark Center
Newark, New Jersey 17102
T: (973) 274-3200
F: (973) 274-3299
E: jbarry@proskauer.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ADRIANA M. CASTRO, M.D., P.A.; SUGARTOWN PEDIATRICS, LLC; and MARQUEZ and BENGOCHEA, M.D., P.A., on behalf of themselves and all others similarly situated,	Case No.: 2:11-cv-07178 (JLL) (MAH) ECF CASE
Plaintiffs/Counterclaim Defendants,	
vs.	**DISCOVERY CONFIDENTIALITY ORDER**
SANOFI PASTEUR INC.,	
Defendant/Counterclaim Plaintiff.	

WHEREAS, the Parties to the above-captioned matter (the "Litigation") are presently engaged in discovery before the United States District Court, District of New Jersey in connection with the Litigation;

WHEREAS, Sanofi Pasteur Inc. considers a significant amount of the information being sought in discovery or contained in documents being sought in discovery to be of a highly confidential nature because they contain competitively sensitive business, research and development, financial, and/or sales information, and trade secrets, that, if disclosed to other parties in the field at issue, would reveal technical or business advantages;

WHEREAS, Sanofi Pasteur Inc. anticipates that it will produce millions of pages of documents in this Litigation, and the cost of determining confidentiality on a document by document basis will be well over $1,000,000;

WHEREAS, Sanofi Pasteur Inc. moves this Court to enter this Order to permit, in a cost efficient and timely manner, discovery of information deemed highly confidential pursuant to procedures protecting the confidentiality of such information, and Plaintiffs do not oppose the entry of this Order; and

WHEREAS, the Parties will follow Local Rule 5.3(c) when seeking to restrict public access to discovery materials filed with the Court in this Litigation;

IT IS HEREBY STIPULATED AND AGREED in accordance with Fed. R. Civ. P. 26(c) and Local Rule 5.3 as follows:

I. DESIGNATION OF CONFIDENTIALITY

A. All documents and information produced by a party (the "Producing Party") and transcripts or videography of depositions taken in conjunction with this litigation may initially be deemed "Attorneys' Eyes Only."

B. A party that has received "Attorneys' Eyes Only" information and that would like to use, and in the absence of the restrictive confidentiality designation would use, a specific document or testimony in a manner not permitted by the Attorneys' Eyes Only designation may request that other parties (the "Designating Party"), including the Producing Party, review the document's initial confidentiality designation to determine whether it should remain "Attorneys' Eyes Only" or be given some other designation.

C. Once a party has made a request that a document's initial confidentiality designation be reviewed, the Designating Party shall have five business days, unless otherwise agreed upon, to make a final confidentiality designation. In making a final confidentiality designation, a Designating Party shall only designate as "Attorneys' Eyes Only" information (i) the Designating Party believes to be of a highly commercially sensitive nature, such as those reflecting, containing, or derived from current confidential trade secret, research, development, pricing, production, cost,

marketing or customer information, and (ii) for which the Designating Party claims a right of confidentiality, such as, for example, where the information was transmitted by the Designating Party to the Producing Party pursuant to an agreement of confidentiality. In making a final confidentiality designation, a Designating Party shall only designate as "Confidential" information that has not been made publicly available, that is competitively sensitive, or that is otherwise encompassed in Rule 26(c)(1)(G).

D. A person receiving Confidential Information or Attorneys' Eyes Only Information shall not use or disclose the information except for the purposes set forth in this Order or by such orders as may be issued by the Court during the course of this litigation. The provisions of this Order extend to all designated Confidential Information and Attorneys' Eyes Only Information regardless of the manner in which it is disclosed, including but not limited to documents, data, electronically stored information, computerized materials, interrogatory answers, responses or requests for admissions, deposition testimony and transcripts, deposition exhibits, any other discovery materials produced by a party in response to or in connection with any discovery conducted in this litigation, and any copies, notes, abstracts or summaries of the foregoing.

II. MEANS OF DESIGNATING CONFIDENTIAL OR ATTORNEYS' EYES ONLY DOCUMENTS FILED WITH THE COURT OR USED IN A HEARING OR DEPOSITION.

A. When marking documents with either an initial or final confidentiality designation, the following protocol applies:

B. <u>Documents</u>. Except for electronically stored information, Counsel for the Producing Party will place the relevant "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" legend on each page of any such document.

C. <u>Interrogatory Answers and Responses to Requests for Admissions</u>. Counsel for the Producing Party will place a statement on the front of any set of answers to interrogatories or responses to requests for admission specifying that the answers or responses or specific parts thereof are designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

D. <u>Depositions</u>. All deposition transcripts will be automatically designated Attorneys' Eyes Only. The party taking the deposition shall instruct the court reporter and videographer to mark all deposition transcripts and video tapes "Attorneys' Eyes Only." The failure of deposition or videotape to contain such a legend shall not be construed as a waiver of any right of confidentiality. To the extent a party requests a Designating Party to make a final confidentiality designation as to specific portions of

a deposition transcript, the Designating Party shall inform the parties of its final confidentiality designations by page and line number.

E. Electronically Stored Information:

1. Electronically Stored Information ("ESI") means information stored or recorded in the form of electronic or magnetic media (including information, files, data, databases, computerized materials or programs stored on any digital or analog machine-readable device, computers, discs, networks or tapes). ESI will initially be deemed "Attorneys' Eyes Only." To the extent that ESI is produced in a form rendering it impracticable to label, counsel for the Producing Party may designate Electronic Data as "Confidential" or "Attorneys' Eyes Only" in a letter identifying the information generally. When feasible, counsel for the Producing Party will also mark the electronic or magnetic media with the appropriate designation. Whenever any party to whom ESI designated as Confidential Information or Attorneys' Eyes Only Information is produced reduces such material to hard copy form, such party shall mark such hard copy form with the appropriate confidentiality legend. Whenever any "Confidential" or "Attorneys' Eyes Only" Electronic Data is copied into another file, all such copies shall also be marked "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" as appropriate.

2. To the extent that any party or counsel for any party creates, develops or otherwise establishes on any digital or analog machine-readable device, recording media, computers, discs, networks or tapes any information, files, databases or programs that contain information designated "Confidential" or "Attorneys' Eyes Only," that party and its counsel must take all necessary steps to insure that access to that electronic or magnetic media is properly restricted to those persons who, by the terms of this Order, may have access to Confidential Information and Attorneys' Eyes Only Information.

III. INFORMATION FILED WITH THE COURT.

A. A party that seeks to file Confidential Information or Attorneys' Eyes Only Information with the Court shall file a motion to seal in accordance with Local Rule 5.3(c) or obtain written agreement from the Designating Party that the Confidential Information or Attorneys' Eyes Only Information can be made available to the public. The movant shall indicate in their motion to seal that the Confidential Information or Attorneys' Eyes Only Information is governed by this Order and, if applicable, that the information required under Local Rule 5.3(c)(2) is not within the movant's knowledge, except that nothing in this provision relieves the party seeking to seal from its obligation to satisfy L. Civ. R. 5.3. The Designating Party shall file

supplemental motion papers in support of the motion to seal providing the information required by Local Rule 5.3(c)(2) or re-designate the Confidential Information or Attorneys' Eyes Only Information as Not Confidential and request that the movant withdraw the motion to seal not later than fourteen (14) days after the filing of the motion.

B. Only those portions of such documents and materials containing or reflecting Confidential Information or Attorneys' Eyes Only Information shall be considered "Confidential" or "Attorneys' Eyes Only" and may be disclosed only in accordance with this Order. To the extent practical, only those portions of such filings which contain Confidential Information or Attorneys' Eyes Only Information shall be filed under seal. No party or other person may have access to any sealed document from the files of the Court without an order of the Court. The "Judge's Copy" of a sealed document may be opened by the presiding Judge, the presiding Judge's law clerks and other Court personnel without further order of the Court.

C. Regardless of any provision in this Order to the contrary, a party is not required to file a document under seal if the Confidential Information or Attorneys' Eyes Only Information contained or reflected in the document was so designated solely by that party, but should a Designating Party file such a document without requesting sealing the document shall no longer be considered Confidential for any purpose.

IV. USE OF INFORMATION PRODUCED IN DISCOVERY.

A. No information produced in this case shall be used by any person, other than the Designating Party, for any purpose other than prosecuting, defending or settling the Litigation. In no event shall information produced in this case be used for any business, competitive, personal, private, public or other purpose, except as required by law.

B. Disclosure of Confidential Information. Access to information designated "Confidential" pursuant to this Order shall be limited to:

1. Counsel (including members and associates of counsel in private law firms) and in-house counsel for the parties, as well as their paralegal, investigative, technical, secretarial and clerical personnel who are engaged in assisting them in the Litigation;

2. Outside photocopying, document storage, data processing or graphic production services employed or retained by the parties or their counsel to assist in the Litigation, provided that Paragraph V of this Order has been complied with;

3. Any outside expert, consultant or investigator retained by counsel for the purposes of consulting or testifying in the Litigation,

provided that Paragraph V of this Order has been complied with;

4. Any mediator(s) engaged by the parties in the Litigation, provided that Paragraph V of this Order has been complied with;

5. Any director, officer or employee of a party charged with the responsibility for making business decisions dealing directly with the resolution of the Litigation, provided that Paragraph V of this Order has been complied with;

6. Any natural person who (i) is a current or former employee of the Designating Party; (ii) authored, received or otherwise has been provided access to (in the ordinary course, outside this action) the Confidential Information sought to be disclosed to that person; or (iii) is mentioned, discussed or referred to in the material, but, to the extent practical in the judgment of the party seeking to use the Confidential Information only as to the specific material in which such person is mentioned, discussed or referred to. Disclosure under this section shall only be made if (a) the disclosure is made for the purpose of advancing the disclosing party's claims or defenses, and for no other purposes; (b) the person is not permitted to access the Confidential Information outside the presence of counsel; (c) the person is explicitly informed that this Order forbids him or her to disclose the Confidential Information except as permitted under this Order and that he or she is subject to the Court's jurisdiction for the purposes of enforcing this Order;

7. This Court, or any other Court exercising jurisdiction with respect to the Litigation, any appellate court(s), court personnel, jurors, alternate jurors, and qualified persons (including necessary clerical personnel) recording, taking or transcribing testimony or argument at any deposition, hearing, trial or appeal in the Litigation;

8. A witness who has been subpoenaed or noticed for deposition, trial testimony, or other court proceeding in the above-captioned case not otherwise authorized to view the Confidential Information in question, during that witness' testimony at a deposition, hearing, or trial in the above-captioned case, or in preparation for the same, provided that: (i) the disclosure is made for the purpose of advancing the disclosing party's claims or defenses, and for no other purposes; (ii) the witness is not permitted to retain the Confidential Information after the witness is examined regarding the Confidential Information; and (iii) the witness is explicitly informed that this Order forbids him or her to disclose the Confidential Information except as permitted under this Order and that he or she is subject to the Court's jurisdiction for the purposes of enforcing this Order. A deposition witness may review the

entire deposition transcript and exhibits thereto in order to review and sign pursuant to Fed.R.Civ.P. 30(e); however, the Designating Party may object to the deponent reviewing a Confidential deposition exhibit in connection with the review and sign. If such an objection is raised, any party may seek relief from the Court, and the disclosure may not be made until the Court rules or the Producing Party withdraws its objections. On any such objection, the burden of proof shall be on the Designating Party;

9. Any other person to whom the Producing Party agrees in writing or on the record, and any other person whom the Court directs should have access to the Confidential Information.

C. Disclosure of Attorneys' Eyes Only Information. Access to information designated "Attorneys' Eyes Only" pursuant to this Order shall be limited to:

1. Counsel of record (including members and associates of such counsel's firm) as well as their paralegal, investigative, technical, secretarial and clerical personnel who are engaged in assisting them in this litigation;

2. Outside photocopying, document storage, data processing or graphic production services employed or retained by the parties or their counsel to assist in the Litigation, provided that Paragraph V of this Order has been complied with;

3. Any outside expert, consultant or investigator retained by counsel for the purposes of consulting or testifying in the Litigation, provided that Paragraph V of this Order has been complied with;

4. Any mediator(s) engaged by the parties in the Litigation, provided that Paragraph V of this Order has been complied with;

5. Any natural person who (i) is a current or former employee of the Designating Party; (ii) authored, received or otherwise has been provided access to (in the ordinary course, outside this action) the Attorneys' Eyes Only Information sought to be disclosed to that person; or (iii) is mentioned, discussed or referred to in the material, but to the extent practical in the judgment of the party seeking to use the Confidential Information, only as to the specific material in which such person is mentioned, discussed or referred to. Disclosure under this section shall only be made if (a) the disclosure is made for the purpose of advancing the disclosing party's claims or defenses, and for no other purposes; (b) the person is not permitted to access the Confidential Information outside the presence of counsel; (c) the person is explicitly

informed that this Order forbids him or her to disclose the Confidential Information except as permitted under this Order and that he or she is subject to the Court's jurisdiction for the purposes of enforcing this Order;

6. This Court, any other Court exercising jurisdiction over the Litigation, appellate court(s), court personnel, jurors, alternate jurors, and qualified persons (including necessary clerical personnel) recording, taking or transcribing testimony or argument at any deposition, hearing, trial or appeal in the Litigation; and

7. A witness who has been subpoenaed or noticed for deposition, trial testimony, or other court proceeding in the above-captioned case not otherwise authorized to view the Attorneys' Eyes Only Information in question, during that witness' testimony at a deposition, hearing, or trial in the above-captioned case, or in preparation for the same, provided that: (i) the disclosure is made for the purpose of advancing the disclosing party's claims or defenses, and for no other purposes; (ii) the witness is not permitted to retain the Attorneys' Eyes Only Information after the witness is examined regarding the Attorneys' Eyes Only Information; (iii) the witness is explicitly informed that this Order forbids him or her to disclose the Attorneys' Eyes Only Information except as permitted under this Order and that he or she is subject to the Court's jurisdiction for the purposes of enforcing this Order. A deposition witness may review the entire deposition transcript and exhibits thereto in order to review and sign pursuant to Fed.R.Civ.P. 30(e); however, the Producing Party may object to the deponent reviewing an Attorneys' Eyes Only deposition exhibit in connection with the review and sign. If such an objection is raised, any party may seek relief from the Court, and the disclosure may not be made until the Court rules or the Producing Party withdraws its objections. On any such objection, the burden of proof shall be on the Designating Party;

8. Any other person whom the Producing Party agrees in writing or on the record, and any other person whom the Court directs should have access to the Attorneys' Eyes Only Information.

D. Non-Application of Order. The restrictions set forth above shall not apply to documents or information designated Confidential or Attorneys' Eyes Only, which (a) were, are or become public knowledge, not in violation of this Order; or (b) were or are discovered independently by the receiving party.

E. Use of Confidential Information at Trial or Hearing. The restrictions, if any, that will govern the use of Confidential Information or Attorneys'

Eyes Only Information at trial or hearings will be determined at a later date by the Court, in consultation with the parties if necessary.

F. Return of Materials. Within sixty (60) days after the final resolution of the Litigation, all Confidential Information and Attorneys' Eyes Only Information, including all copies, abstracts and summaries, shall be returned to counsel for the Producing Party or, if the Producing Party's counsel is so informed, destroyed, with the party that had received the Confidential Information or Attorneys' Eyes Only Information certifying to the return or destruction as appropriate. As to those materials that contain or reflect Confidential Information or Attorneys' Eyes Only Information, but that constitute or reflect counsel's work product, counsel of record for the parties shall be entitled to retain such work product in their files in accordance with the provisions of this Order, so long as it is clearly marked to reflect that it contains information subject to this Order. Counsel shall be entitled to retain pleadings, affidavits, motions, briefs, other papers filed with the Court, deposition transcripts, and the trial record (including exhibits) even if such materials contain Confidential Information or Attorneys' Eyes Only Information, so long as such pleadings, affidavits, motions, briefs, other papers filed with the Court, deposition transcripts, and the trial record (including exhibits), in accordance with the provisions of this Order, are clearly marked to reflect that they contain information subject to this Order, and are maintained as such.

V. NOTIFICATION OF CONFIDENTIALITY ORDER.

A. Confidential Information and Attorneys' Eyes Only Information shall not be disclosed to persons described in Paragraphs IV.B., and IV.C., unless and until such persons are provided a copy of this Order, and are advised by the disclosing counsel that they are bound by the provisions of this Order, and, in the case of persons listed in Paragraphs IV(B)(2)-(5) and IV(C)(2)-(4), execute an Agreement of Confidentiality ("Confidentiality Agreement") in substantially the form attached hereto as Exhibit A.

B. The originals of such Confidentiality Agreements shall be maintained by the counsel who obtained them until the final resolution of the Litigation. Confidentiality Agreements and the names of persons who signed them shall not be subject to discovery except upon agreement of the parties or further order of the Court after application upon notice and good cause shown.

VI. OBJECTIONS TO DESIGNATIONS.

A. A party shall not be obligated to challenge the propriety of a Confidential Information or Attorneys' Eyes Only Information designation at the time of such designation, and a failure to do so shall not preclude a subsequent

challenge thereto.

B. In the event a party objects to the final designation of any material under this Order by another party, the objecting party shall consult with the Designating Party to attempt to resolve their differences. If the parties are unable, after conferring in good faith, to reach an accord as to the proper designation of the material, either party may present the dispute to the Court initially by telephone or letter, in accordance with Local Civil Rule 37.1, before filing a formal motion for an order regarding the challenged designation.

C. The Designating Party will have the burden to establish that the designation is proper. Unless otherwise agreed by the parties, if no such letter or motion is filed within ten (10) business days of the notice by the objecting party, the material will lose the protection offered in this Order. During the pendency of a dispute concerning any documents or other materials that have been designated "Confidential" or "Attorneys' Eyes Only," the documents or information being challenged shall be treated as - per their original designation until the Court rules that they should not be so treated.

VII. PRIVILEGES.

A. Nothing contained in this Order shall affect the right of any party or witness to make any other appropriate objection or other response to discovery requests, including, without limitation, interrogatories, requests for admissions, requests for production of documents, questions at a deposition, or any other discovery request. This Order shall not be construed as a waiver by any party of any legally cognizable privilege to withhold any Confidential Information or Attorneys' Eyes Only Information, or of any right that any party may have to assert such privilege at any stage of the Litigation.

B. The inadvertent or unintentional disclosure by the Producing Party of information subject to a claim of privilege, including, but not limited to, the attorney-client privilege, or the work product doctrine, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of the party's claim of privilege. As an example, but without limiting the foregoing, the disclosure of privileged information shall be deemed inadvertent if the disclosure was the result of the failure of search terms to capture such documents, so long as the Producing Party believed in good faith, at the time of production, that the search terms were adequate to guard against such production. In all cases, information that contains privileged information or attorney-work product shall be immediately returned if information appears on its face to have been inadvertently produced or if there is notice of the inadvertent production within thirty (30) days. The

resolution of any dispute that may arise concerning whether a document is privileged or entitled to protection as trial-preparation material shall be governed by Rule 26(b)(5)(B).

C. A party's compliance with the terms of this Order shall not operate as an admission that any particular document is or is not (a) confidential, (b) privileged or (c) admissible in evidence at trial.

VIII. OTHER PROVISIONS.

A. Subpoenas. Any party or person in possession of Confidential Information or Attorneys' Eyes Only Information who receives a subpoena or other process from any person or entity who is not subject to this Order, which subpoena seeks production or other disclosure of such Confidential Information or Attorneys' Eyes Only Information, shall promptly give telephonic notice and written notice to counsel for the Producing Party who designated the materials as "Confidential" or "Attorneys' Eyes Only," identifying the materials sought and enclosing a copy of the subpoena or other process. The party or person receiving the subpoena shall also inform the person seeking the Confidential Information or Attorneys' Eyes Only Information that such information is subject to this Order. No production or other disclosure of such information pursuant to the subpoena or other process shall occur before the last date on which production may be made as specified in or required by the subpoena or other process. Nothing contained within this paragraph shall be construed as encouraging any party or person not to comply with any court order, subpoena, or other process.

B. Application to Non-Parties. This Order shall apply to any non-party who is obligated to provide discovery, by deposition, production of documents or otherwise, in the Litigation, if that non-party requests the protection of this Order as to its Confidential Information or Attorneys' Eyes Only Information and complies with the provisions of this Order.

C. Modification of the Order. This Order shall not foreclose a Party from moving this Court for an order that documents or information within the meaning of this Order are, in fact, not "Confidential," "Attorneys' Eyes Only" or otherwise protectable under Rule 26(c) or the terms of this Order. In addition, this Order shall not prevent a Party from applying to the Court for relief therefrom, or from applying to the Court for further or additional protective orders, or from agreeing to modification of this Order.

D. Term. Upon the final resolution of the Litigation, the provisions of this Order shall continue to be binding. ~~This Court expressly retains jurisdiction over this action for enforcement of the provisions of this Order following the final resolution of the Litigation.~~ Upon final conclusion of this litigation, each party or other individual subject to the terms hereof shall assemble and return to the originating source all originals and unmarked copies of confidential materials and, upon request, shall destroy any confidential materials containing or constituting attorney work product. However, counsel may retain a copy of any transcript and pleadings, including exhibits thereto, for archival purposes, consistent with and subject to this Order. Any request for the return of confidential material from the Court may be made at the final conclusion of all litigation and by formal motion.

E. Parties Bound. This Order is binding on all parties to this action, on all nonparties who have agreed to be bound by this Order and on all others who have signed the Confidentiality Agreement in substantially the form attached hereto as Exhibit A, and shall remain in force and effect until modified, superseded, or terminated by consent of the parties or by Order of the Court.

F. Calculation of Time Periods. All time periods set forth in this Order shall be calculated according to Rule 6 of the Federal Rules of Civil Procedure, as then in effect.

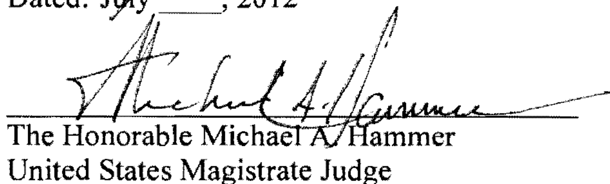
Dated: July 16, 2012

Respectfully submitted,

/s/ John P. Barry John P. Barry PROSKAUER ROSE LLP One Newark Center Newark, New Jersey 17102 T: (973) 274-3200 F: (973) 274-3299 E: jbarry@proskauer.com *Attorney for Defendant-Counterclaim Plaintiff Sanofi Pasteur Inc.*	/s/ Peter S. Pearlman Peter S. Pearlman COHN LIFLAND PEARLMAN HERRMANN & KNOPF, LLP Park 80 Plaza West-One 250 Pehle Ave., Suite 401 Saddle Brook, NJ 07663 T: 201-845-9600 F: 201-845-9423 E: psp@njlawfirm.com *Attorney for Plaintiffs-Counterclaim Defendants*

SO ORDERED:

Dated: ~~July~~ August 9, 2012



The Honorable Michael A. Hammer
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ADRIANA M. CASTRO, M.D., P.A.; SUGARTOWN PEDIATRICS, LLC; and MARQUEZ and BENGOCHEA, M.D., P.A., on behalf of themselves and all others similarly situated,	:	Case No.: 2:11-cv-07178 (JLL) (MAH)
	:	ECF CASE
Plaintiffs/Counterclaim Defendants,	:	**EXHIBIT A**
vs.	:	
SANOFI PASTEUR INC.,	:	
Defendant/Counterclaim Plaintiff.	:	

CERTIFICATION

I hereby certify my understanding that Confidential Information and/or Attorneys' Eyes Only Information is being provided to me pursuant to the terms and restrictions of the Order dated ________________, in *Adriana M. Castro, M.D., P.A. and Sugartown Pediatrics, LLC, Marquez and Bengochea, M.D., P.A., on behalf of themselves and all others similarly situated v. Sanofi Pasteur Inc.*, Civil Action No. 2:11-cv-07178 (JLL) (MAH) (D.N.J.). I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information or Attorneys' Eyes Only Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information and Attorneys' Eyes Only Information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information and Attorneys' Eyes Only Information –

including copies, notes, or other transcriptions made therefrom – to the counsel who provided me with the Confidential Information or Attorneys' Eyes Only Information. I hereby consent to the jurisdiction of the United States District Court of the District of New Jersey for the purpose of enforcing the Order.

Dated:______________ By: ________________________

Print Name: __________________

John P. Barry
PROSKAUER ROSE LLP
One Newark Center
Newark, New Jersey 17102
T: (973) 274-3200
F: (973) 274-3299
E: jbarry@proskauer.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ADRIANA M. CASTRO, M.D., P.A.; SUGARTOWN PEDIATRICS, LLC; and MARQUEZ and BENGOCHEA, M.D., P.A., on behalf of themselves and all others similarly situated, Plaintiffs/Counterclaim Defendants, vs. SANOFI PASTEUR INC., Defendant/Counterclaim Plaintiff.	Case No.: 2:11-cv-07178 (JLL) (MAH) ECF CASE **CERTIFICATION OF JOHN P. BARRY IN SUPPORT OF DISCOVERY CONFIDENTIALITY ORDER**

I, John P. Barry, hereby certify as follows:

1. I am a member of Proskauer Rose LLP, counsel for Sanofi Pasteur Inc. ("Sanofi"). I make this Certification in support of Discovery Confidentiality Order.

   A. *The Court Should Enter the Discovery Confidentiality Order to Prevent Competitive, Technical, and Business Disadvantages to Sanofi and Third Parties.*

2. The parties intend to engage in discovery on a broad range of topics, including market definition, market power, competitive foreclosure, competitive effects, and efficiencies. Discovery will include a considerable amount of information

concerning Sanofi's transactional, pricing, market share, and profit and loss data for its pediatric vaccine products.

3. A significant amount of the information being sought in discovery or contained in documents being sought in discovery are of a highly confidential "Attorneys' Eyes Only" nature because they contain competitively sensitive pricing, business, research and development, financial, and/or sales information, and trade secrets, that, if disclosed to other parties in the field, would reveal technical or business advantages. This competitive disadvantage is a clearly defined and serious injury that warrants confidentiality and constitutes a legitimate private interest that necessitates the entry of the Discovery Confidentiality Order.

4. Absent a suitable protective order, third parties may also face a significant risk of competitive injury should Attorneys' Eyes Only information become available to their customers, members, suppliers, or competitors. Plaintiffs have already served discovery requests on 11 physician buying groups, including document requests for contracts between Sanofi and physician buying groups that contain confidential pricing information and contractual terms. Plaintiffs have also indicated that they intend to serve discovery requests on Merck, another manufacturer of pediatric vaccines, and Sanofi intends to serve discovery requests on Novartis, GSK, and potentially other competing manufacturers of pediatric vaccines. The need to obtain competitively sensitive information from such third parties constitutes an additional legitimate interest that warrants the entry of the Discovery Confidentiality Order.

B. *Procedures Under the Discovery Confidentiality Order.*

5. Under the Discovery Confidentiality Order, the parties may presumptively designate all discovery materials as "Attorney's Eyes Only," thereby eliminating the need for producing parties to engage in expensive document-by-document confidentiality designations. Given the broad scope of the parties' discovery requests — and the realities of modern day e-discovery — such a procedure is necessary in order to efficiently process the millions of documents likely to be produced in this case.

6. Information designated as Attorney's Eyes Only can be shared with a full range of persons that have a legitimate need to review the information in order for the parties to litigate this case, including (i) counsel of record, (ii) the court (subject to sealing requirements), (iii) mediators, (iv) experts, (v) litigation vendors, (vi) authors and recipients, (v) former employees of the producing parties (if within the scope of his or her former employment), and (vi) deposition or trial witnesses, including during preparation for testimony.

7. The Discovery Confidentiality Order also provides a mechanism for the non-designating party to challenge a document's designation should the party require additional uses for the confidential information. This mechanism provides for Court intervention only if the parties are unable to reach an agreement after conferring in good faith on the challenged document's designation. If the parties are unable to reach an agreement, either party may present the dispute to the Court initially by telephone or letter, in accordance with Local Civil Rule 37.1, before filing a formal motion for an order regarding the challenged designation.

8. Counsel for Sanofi has conferred with counsel for Plaintiffs, and Counsel for Plaintiffs does not oppose the entry of the Discovery Confidentiality Order.

9. I hereby certify under penalty of perjury that the foregoing is true and correct.

Dated: July 16, 2012
Newark, New Jersey

By /s/ John P. Barry
John P. Barry
Proskauer Rose LLP
One Newark Center, 18th Floor
Newark, New Jersey 07102
Telephone: 973.274.3200
Fax: 973-274-3299
jbarry@proskauer.com

Attorney for Sanofi Pasteur Inc.