

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

**IN RE BRCA1- AND BRCA2- BASED
HEREDITARY CANCER TEST PATENT
LITIGATION**

STIPULATED PROTECTIVE ORDER

Case No. 2:14-MD-02510-RJS

Honorable Robert J. Shelby

WHEREAS University of Utah Research Foundation, Trustees of the University of Pennsylvania, HSC Research and Development Limited Partnership, Endorecherche, Inc., Myriad Genetics, Inc., Ambry Genetics Corporation, Counsyl, Inc., GeneDx, Inc., Invitae Corporation, Laboratory Corporation of America Holdings, Pathway Genomics Corporation, Quest Diagnostics Incorporated, and Quest Diagnostics Nichols Institute (collectively referred to as the “PARTIES”) are parties to various cases that have been consolidated in the above captioned case for pretrial purposes;

WHEREAS, the PARTIES believe that certain information that is or will be encompassed by discovery involves the production or disclosure of trade secrets, confidential business information or other proprietary information;

And WHEREAS, the PARTIES seek a Protective Order limiting disclosure in accordance with Federal Rule of Civil Procedure 26(c) and for good cause;

THEREFORE, it is hereby stipulated among the PARTIES and ORDERED THAT:

1. Scope of Protection

This Stipulated Protective Order shall govern any record of information produced in this action and designated pursuant to this Stipulated Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Stipulated Protective Order shall also govern any designated record of information produced in this ACTION pursuant to required disclosures under any federal procedural rule or local rule of the Court and any supplementary disclosures thereto.

This Stipulated Protective Order shall apply to the PARTIES and to any nonparty from whom discovery may be sought who desires the protection of this Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term ACTION refers to all cases consolidated for pretrial purposes and collectively reported under Case No. 2:14-MD-02510-RJS in the United States District Court for the District of Utah.

(b) The term DEFENDANT and DEFENDANTS shall refer to any party in these consolidated proceedings who has been accused of infringement, or who has sought relief by initiating a suit for a declaratory judgment. At the time the PARTIES entered into this Stipulated Protective Order, DEFENDANTS include Ambry Genetics Corporation, Counsyl, Inc., GeneDx, Inc., Invitae Corporation, Laboratory Corporation of America Holdings, Quest Diagnostics Incorporated, and Quest Diagnostics Nichols Institute.

(c) The term AMICUS shall mean any entity, not one of the PARTIES as identified herein, that has or will enter an appearance in any of the various cases that have been consolidated herein.

(d) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information, or any other inherently confidential information designated as such by the producing party according to the CONFIDENTIAL INFORMATION, CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY and CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S

EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS designation defined herein.

(e) The term CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor’s products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor’s products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Stipulated Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(f) The term CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall mean PROTECTED INFORMATION that is CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY information that so designated by the producing DEFENDANT. The designation CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS specifically indicates that disclosure shall not be made to outside counsel representing any other DEFENDANT to this ACTION consolidated for pretrial purposes, or any TECHNICAL ADVISOR or other representatives of that (those) other DEFENDANT(S). For the avoidance of doubt, no third party may use this designation.

(g) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS.¹

(h) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party’s PROTECTED INFORMATION, including material designated as CONFIDENTIAL INFORMATION, or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS. Each party’s TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party’s counsel, are reasonably necessary for development and presentation of that party’s case. These persons include outside experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party’s TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A. Copies of any disclosure agreement in the form of Exhibit A signed by any person or entity to whom PROTECTED INFORMATION is

¹ Nothing in this Stipulated Protective Order shall prevent a party that has designated its information as CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS from voluntarily disclosing such information to the outside counsel of any other DEFENDANT, and such disclosure shall neither be deemed a violation of any other provision of this Stipulated Protective Order, nor a waiver of the prohibition against disclosure of the information to any other DEFENDANT. For the avoidance of doubt, a producing party’s decision to voluntarily disclose information designated CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS to the outside counsel of any other DEFENDANT does not mean that said DEFENDANT can thereafter disclose the information to another DEFENDANT. Any information designated as CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS that is voluntarily disclosed by the producing party to another DEFENDANT, or to the outside counsel of such DEFENDANT, such information may thereafter be respectively disclosed to that same defendant or to its outside counsel in the ACTION.

disclosed shall be provided to the PARTIES promptly after execution by electronic delivery. No disclosures shall be made to a TECHNICAL ADVISOR for a period of five (5) business days after the disclosure agreement is provided to the PARTIES.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than five (5) business days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. The notice described herein will describe any employment, business, consulting or financial relationship that the TECHNICAL ADVISOR has had with any of the PARTIES, and the dates of any such relationship. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within five (5) business days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within five (5) business days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within ten (10) business days of receiving the notice for an Order of the Court preventing the disclosure. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within five (5) business days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness subject to the Federal Rules of Civil Procedure, any applicable local rules, or the terms of discovery set forth in any scheduling order entered by the Court. A fact deposition of a TECHNICAL ADVISOR may be taken provided that the party seeking such deposition has a good faith, demonstrable basis independent of the disclosure agreement of Exhibit A or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION by placing on each page, each document (whether in paper or electronic² form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION –

² Attached hereto as Exhibit B is the parties' agreement for the production of electronically stored information.

OUTSIDE COUNSEL'S EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY

(c) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS

(d) During discovery a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(e) A party may designate information disclosed at a deposition, in whole or in part, as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS by requesting the reporter to so designate the transcript at the time of the deposition.

(f) A producing party shall designate, in whole or in part, its discovery responses, responses to requests for admission, briefs, memoranda and all other papers sent to the court or to opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL

INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS when such papers are served or sent.

(g) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS by requesting the Court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(h) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS that is not entitled to such designation or which is generally available to the public.

5. Disclosure and Use of Confidential Information

All PROTECTED INFORMATION that has been designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall be disclosed by the receiving party only to QUALIFIED RECIPIENTS, defined below. All QUALIFIED RECIPIENTS shall hold such information received from the disclosing party in confidence, shall use the information only for purposes of this ACTION and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any type) or patent reissue or reexamination request, or to amend or add claims in any proceeding (e.g., an inter partes review proceeding, post-grant review proceeding, or reexamination), and shall not disclose it to any person, except as hereinafter provided. All information that has been

designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall be carefully maintained as directed so as to preclude access by persons who are not qualified to receive such information under the terms of this Stipulated Protective Order.

All PROTECTED INFORMATION designated as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to any outside attorney of record or other representative of any AMICUS. The PARTIES expressly stipulate that attorneys of record of any AMICUS or other representatives of any AMICUS are excluded from the definition QUALIFIED RECIPIENTS provided below.

6. Qualified Recipients

For purposes of this Order, “QUALIFIED RECIPIENT” means

(a) For material designated as CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS:

(1) Outside counsel of record for Plaintiffs to this ACTION (University of Utah Research Foundation, Trustees of the University of Pennsylvania, HSC Research and Development Limited Partnership, Endorecherche, Inc., and Myriad Genetics, Inc.), and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this ACTION (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record for Plaintiffs, identified above, subject to the requirements of Paragraph 3 above;

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS to the officers, directors, and managerial level employees of the producing party that produced CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS, or to any employee of the producing party who has access to such CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS in the ordinary course of such employee’s employment; and

(6) Any other person the producing party specifically identifies and confirms in writing may have access to materials it has designated as CONFIDENTIAL INFORMATION

– OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS.

(b) For material designated as CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY:

(1) Outside counsel of record for the PARTIES to this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this ACTION (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record for the PARTIES, subject to the requirements in Paragraph 3 above;

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact

receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee’s employment; and

(6) Any other person the producing party specifically identifies and confirms in writing may have access to materials it has designated as CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY.

(c) For material designated as CONFIDENTIAL INFORMATION:

(1) Those persons listed in paragraph 6(b);

(2) In-house counsel for the PARTIES to this ACTION who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretarial and paralegal assistants of such counsel to the extent reasonably necessary;

(3) The insurer of any of the PARTIES in this ACTION employees of such insurer to the extent reasonably necessary to assist the party’s counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes;

(4) Party employees reasonably necessary to prosecute the individual litigations in the ACTION; and

(5) Any other person the producing party specifically identifies and confirms in writing may have access to materials it has designated as CONFIDENTIAL INFORMATION.

7. Use of Protected Information

(a) In the event that any receiving party’s briefs, memoranda, discovery requests, requests for admission or other papers of any kind which are served or filed shall include another party’s CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE

COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS, the papers shall be appropriately designated pursuant to paragraphs 4(a) through 4(c), and pursuant to DUCivR 5.2, and shall be treated accordingly.

(b) All documents, including attorney notes and abstracts, which contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS, shall be handled as if they were designated pursuant to paragraphs 4(a) through 4(c).

(c) Documents, papers and transcripts filed with the Court which contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall be filed in sealed envelopes and labeled according to DUCivR 5-2, and shall be treated accordingly.

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised

of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS at the request of such party, all persons who are not allowed to obtain such information pursuant to this Stipulated Protective Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Stipulated Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this ACTION and, in the course thereof, from relying in a general way upon the examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such outside counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to Paragraph 4, it may later designate by notifying the receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) Notwithstanding the definitions supplied in Paragraphs 2(e) through 2(g), any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may request the producing party in writing to change the designation, stating the reasons in that request. The producing party shall then have five (5) business days from the date of receipt of the notification to:

- (i) advise the receiving parties whether or not it persists in such designation; and
- (ii) if it persists in the designation, to explain the reason for the particular designation.

(c) If the receiving party's request under subparagraph (b) above is turned down, or if no response is made within five (5) business days after receipt of notification, the receiving party may move the Court for Order compelling a change in designation. For any such motion, the burden of proving that the designation is proper shall be upon the producing party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

- (d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:
- (i) the information in question has become available to the public through no violation of this Stipulated Protective Order;
 - (ii) the information was known to any receiving party prior to its receipt from the producing party (where such receiving party possesses such information free of any restrictions on its disclosure pursuant to this Protective Order or otherwise); provided, however, that such information shall not be considered confidential or proprietary only to the producing party and the receiving party to whom the information was made known; or
 - (iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Privileged Documents after the Start of the Litigation

The PARTIES agree that the parameters for exchange of privilege logs will be subject to a separate agreement.

11. Inadvertently Produced Privileged Documents

The PARTIES hereto also acknowledge that, regardless of a producing party's diligence, an inadvertent production of attorney-client privileged or attorney work product protected materials may occur.

In accordance with Federal Rule of Evidence 502(d), the PARTIES agree that such inadvertent disclosure of materials subject to the attorney-client privilege or work product doctrine will not waive those privileges. Such non-waiver governs all persons or entities in all state or federal proceedings, whether or not they are parties to this litigation. Neither the fact that a document or other material was disclosed, nor any content of such document or other

material learned exclusively as a result of such disclosure, shall be used in any manner as evidence in support of any such alleged waiver.

In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, the PARTIES therefore agree that if a producing party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product protection, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product protection and request that the document or thing be returned to the producing party. The receiving party shall return to the producing party such document or thing and all copies within five (5) business days. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product production. Return of the document also shall not foreclose any party from moving the Court pursuant to Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has been improperly designated or should be produced.

After the return of the inadvertently disclosed document(s) or material(s), the receiving party may challenge the disclosing party's claim of attorney-client privilege and/or attorney work product protection by making a motion to the Court. In accordance with Federal Rule of Evidence 502(e), the PARTIES' foregoing stipulation and agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection is binding on the parties regardless of whether or not the Court enters this Order. Nothing within this Order will prejudice the right of any party to object to the production of any discovery material on the grounds that the material is protected from discovery or otherwise inadmissible as evidence because of an operation of the attorney-client privilege or the attorney work product doctrine.

12. Inadvertent Disclosure of PROTECTED INFORMATION

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS to someone other than a QUALIFIED RECIPIENT, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

13. Limitation

This Stipulated Protective Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

14. Conclusion of Action

(a) For each separate case consolidated for pre-trial purposes in this ACTION, at the conclusion of each such case, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party in each such case all materials and documents containing CONFIDENTIAL

INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS and to certify to the producing party such destruction or return. Such return or destruction shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Stipulated Protective Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party’s CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS. Trial counsel’s archive copy shall remain subject to all obligations of this Stipulated Protective Order.

(c) The provisions of this paragraph shall not be binding on the United States, any insurance company, or any other party to the extent that such provisions conflict with applicable Federal or State law. The Department of Justice, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

15. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY produced by third parties according to the terms of this Order.

16. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY or CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL’S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Stipulated Protective Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

17. Jurisdiction to Enforce Stipulated Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Stipulated Protective Order.

18. Modification of Stipulated Protective Order

This Order is without prejudice to the right of any person or entity to seek a modification of this Order at any time either through stipulation or Order of the Court.

19. Confidentiality of Party’s Own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Stipulated Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Stipulated Protective Order shall not preclude a party from showing its own

information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

20. Prior Productions

The PARTIES have already produced documents in this ACTION pursuant to this Court's Standard Protective Order. Documents previously designated according to the Standard Protective Order shall be treated as if designated as follows upon entry of this Stipulated Protective Order:

(a) Documents previously designated "CONFIDENTIAL INFORMATION" shall be treated as if designated CONFIDENTIAL INFORMATION under this Stipulated Protective Order;

(b) Documents previously designated "CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS" shall be treated as if designated CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS under this Stipulated Protective Order;

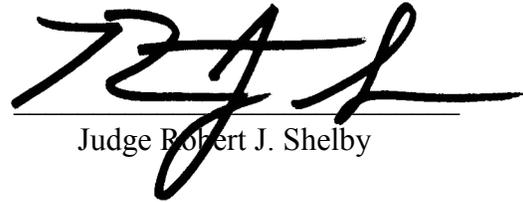
(c) Documents previously designated "CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY" shall be treated as if designated CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY under this Stipulated Protective Order; and

(d) Documents previously designated "CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS" shall be treated as if designated CONFIDENTIAL INFORMATION – OUTSIDE COUNSEL'S EYES ONLY – NOT TO BE DISCLOSED TO OTHER DEFENDANTS under this Stipulated Protective Order.

SO ORDERED AND ENTERED BY THE COURT PURSUANT TO DUCivR 26-2 EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

BY THE COURT:

Date: November 19, 2014



Judge Robert J. Shelby