

Filed on behalf of: Facet Technologies, LLC

Entered: December 19, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.,
Petitioner,

v.

FACET TECHNOLOGIES, LLC,
Patent Owner.

IPR2023-00712
Patent 8,840,635

**PATENT OWNER FACET TECHNOLOGIES, LLC'S
UNOPPOSED MOTION TO FILE DOCUMENTS UNDER SEAL
AND FOR A PROTECTIVE ORDER**

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Facet Technologies, LLC (“Facet”) respectfully requests the Board authorize the filing under seal of Patent Owner’s Response and Exs. 2023, 2024, 2030, 2040, 2044, 2045, 2050-2052, and 2058 (collectively, “Confidential Exhibits”).¹ In addition, Facet respectfully requests the Board enter the Joint Proposed Protective Order, a copy of which is attached hereto as Appendix A.

The Confidential Exhibits contain Facet’s and LifeScan’s highly confidential information that either Facet or LifeScan has designated as confidential materials, under either the designation “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the attached Joint Proposed Protective Order. The designated materials Facet seeks to seal include highly confidential technical and financial information, including financial data, design documents, and business information. These materials relate to the core of Facet’s and LifeScan’s business.

¹ Facet will file a redacted public version of Exhibit 2030 concurrently with this motion, as it contains only Facet’s protective order material. Facet will file redacted copies of Patent Owner’s Response and Exs. 2023, 2024, 2040, 2044, 2045, and 2050-2052 (all of which require at least some redactions by LifeScan to protect LifeScan’s protective order material) as soon as it receives LifeScan’s redactions.

Public disclosure of this information would significantly harm Facet's and LifeScan's competitive position because it would allow competitors to access sensitive technical information.

Importantly, the parties have both produced and are continuing to produce such sensitive information in the related currently-pending district court litigation, *Facet Technologies, LLC v. LifeScan, Inc.*, No. 2:22-cv-01717-MCS-MAR (C.D. Cal.). The parties previously arrived at a mutual agreement that such information is highly confidential information relating to their core businesses, and that public disclosure of this information could significantly harm their competitive positions (collectively, "Protective Order Material"). To that end, in the related currently-pending district court action between the parties involving the patent-at-issue in this proceeding, the parties negotiated, and the district court signed and entered, a protective order that is in effect, a copy of which is attached as Appendix B. The parties have jointly agreed to model the Joint Proposed Protective Order for this proceeding (Appendix A) on the district court order (Appendix B). *See* Consolidated Trial Practice Guide at 116 ("When a proceeding before the Board involves the same parties and subject matter as a parallel district court proceeding, parties may propose that a protective order entered by the district court be adopted by the Board.").

Facet respectfully submits that the status of the parties as mutual competitors; the district court's approval, notwithstanding the public interest in general in court

proceedings being public, of the parties' negotiated confidentiality protections for this Protective Order Material; the fact that LifeScan joins in the Joint Proposed Protective Order; the wide acceptance of the fact that highly sensitive and confidential technical information should be afforded protections from disclosure; and the confidential nature of the information that is the subject of the Joint Proposed Protective Order all weigh strongly in favor of granting this motion.

Moreover, importantly, Facet submits that the negotiated specific protections in the existing protective order in district court with respect to the Protective Order Material should be preserved. The parties negotiated these terms for several months prior to arriving at an agreed-upon protective order in the district court litigation. Specifically, sensitive business information and technical documents have been produced in the district court action under specific provisions to preserve its confidentiality. For example, under the protective order in the district court, sensitive business information and technical documents are not permitted to be seen by the non-producing party or more than a limited number of its in-house counsel. These documents may be seen by outside counsel of record, their employees, outside consultants or experts, and the Court. Facet requests that this limitation on access to the Protective Order Material, which was negotiated between and agreed to by both Facet and LifeScan in the district court litigation and in this proceeding, should likewise be approved by the Board in this proceeding. This restriction applies only

to information that would already be sealed from the public view by the other provisions of the Joint Proposed Protective Order.²

Attached as Appendix A is a copy of the Joint Proposed Protective Order, that the parties jointly request be entered. Facet respectfully requests that the Joint Proposed Protective Order, attached as Appendix A, govern these materials in this proceeding to the extent they are found to contain Protective Order Material. Facet will abide by the terms of the Joint Proposed Protective Order.

Pursuant to 37 C.F.R. § 42.54, Facet certifies that it conferred in good faith with LifeScan regarding this motion and the scope of the Joint Proposed Protective Order for this *inter partes* review. LifeScan does not oppose this motion to seal and the parties agree to the terms of the Joint Proposed Protective Order attached as Appendix A.

II. THE BOARD SHOULD SEAL THE CONFIDENTIAL EXHIBITS

A. Good Cause Exists to Seal the Confidential Exhibits

² If the Board disagrees that these protections in the district court should be preserved, Facet respectfully requests an opportunity to either supplement its motion as to this question, or to withdraw its filed Confidential Exhibits to prevent its disclosure beyond the disclosure permitted in the district court.

The Trial Practice Guide provides that “the rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, the rules “identify confidential information in a manner consistent with Fed. R. Civ. P. 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54).

Here, good cause exists to allow Facet to file the Patent Owner Response and Confidential Exhibits under seal. As described in more detail below, the information in these materials that Facet seeks to seal falls into the same general categories: (1) non-public financial and business information (e.g., internal records of revenue and profits and agreements); and (2) non-public technical information relating to the design and functionality of Facet’s and LifeScan’s lancets (e.g., internal communications regarding design and design files) As explained in detail for each exhibit below, good cause exists to seal the Confidential Exhibits for several reasons. First, each contains highly sensitive, non-public, commercial information, disclosure of which would create an elevated risk of commercial or apparent harm to Facet or LifeScan. Second, all of the Confidential Exhibits are designated under the protective order in the related district court litigation as being confidential or highly confidential and restricted to attorneys’ eyes only. Third, the parties have conferred,

and LifeScan does not oppose Facet's designation of its confidential information pursuant to the attached Joint Proposed Protective Order.

The Board should grant this motion in its entirety and enter the attached Joint Proposed Protective Order.

B. The Patent Owner Response and Confidential Exhibits Contain Confidential Information That Should Be Sealed

As explained above, in order to strike the appropriate balance and ensure that only truly confidential information is being sealed, Facet provides the following detailed descriptions of the information in the Patent Owner Response and the Confidential Exhibits that it seeks to seal; identifies the portions of each that it seeks to seal; and explains why the Board should seal these specific portions.

1. Patent Owner Response

Facet requests that the Board seal the Patent Owner Response, which contains references to Facet's and LifeScan's confidential, non-public business information. The Patent Owner Response provides an analysis of commercial success and copying that refers to Facet's and LifeScan's highly sensitive, non-public confidential business information, including financial data, agreements and product development documents that have been designated under the Protective Order in the district court litigation.

The Board should seal the information in the Patent Owner Response for several reasons. First, it includes non-public, confidential information that is highly

sensitive to Facet and LifeScan. For example, the technical information is the result of significant resources by Facet and LifeScan in developing, maintaining, and improving the technology underlying their respective lancet products; public disclosure of this information would allow competitors more easily copy their technology and development process. Second, disclosure of this information could cause Facet or LifeScan serious competitive harm by, for example, providing competitors with a strategic and unfair business advantage against either party in the marketplace. Third, this information is derived from documents designated “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the protective order entered in the related district court litigation. Fourth, Facet will submit a redacted version of the Patent Owner Response after receiving input from LifeScan regarding its confidential information—which will redact only the confidential information—and thus strikes the appropriate “balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 77 Fed. Reg. 48756, 48760, 48770 (Aug. 14, 2012).

Facet requests that the Board seal the Patent Owner Response given that it contains Facet’s and LifeScan’s nonpublic financial, marketing, and technical information. Again, Facet will submit the parties’ jointly redacted version of the POR so to provide to provide the public with access.

2. Financial Information

Facet requests that the Board seal Exhibits 2030 and 2040, which contain Facet's and LifeScan's highly sensitive, non-public financial information, including profits and revenues. Exhibit 2030 is a financial report containing Facet's revenues and profits. Exhibit 2040 is a financial report containing LifeScan's revenues and profits.

The Board should seal Exhibits 2030 and 2040 because of the significant potential harm that would come from disclosure. First, the financial information in these exhibits is highly sensitive to Facet and LifeScan, respectively. Second, disclosure of this financial information could cause Facet and LifeScan serious competitive harm by, for example, providing competitors with a strategic and unfair advantage against the two. In addition, Facet has filed a public, redacted version of Exhibit 2030 concurrent with the filing of its Patent Owner Response, and will file a public, redacted version of Exhibit 2040 upon receiving LifeScan's redactions.

3. Business Information

Facet requests that the Board seal Exhibits 2023, 2024, 2052, and 2058 which contain Facet's and LifeScan's highly sensitive, non-public business information, including a third-party agreement. Exhibit 2023 is LifeScan's confidential response to an interrogatory in the district court litigation containing LifeScan's confidential business information and know-how. Exhibit 2024 is the deposition transcript from

the related district court litigation of a former Facet employee who was involved with the development of LifeScan's Delica Plus lancets, and may contain LifeScan's and/or a third-party's confidential business information and know-how. Exhibit 2052 and 2058 are confidential agreements entered into by LifeScan and Facet, respectively.

The Board should seal Exhibits 2023, 2024, 2052, and 2058 because of the potential harm from disclosure substantially outweighs the public's interest in maintaining a complete and understandable file history for several reasons. First, the business information in these exhibits is highly sensitive to LifeScan. Second, disclosure of this business information contained in the market analyses could cause LifeScan serious competitive harm by, for example, providing competitors with a strategic and unfair business advantage against them. In addition, Facet file a public, redacted version of these exhibits upon receiving LifeScan's redactions regarding LifeScan's protective order material.

4. Documents Relating to Design and Development

Facet requests that the Board seal Exhibits 2044, 2045, and 2050-2051, which contain LifeScan's, Facet's, and a third-party's highly sensitive, non-public technical information, including documents relating to the design and development of their respective lancet products. Exhibits 2044 and 2045 are confidential emails produced by a third party containing information relating to the design and

development of the Delica Plus product. Exhibits 2050 and 2051 are confidential emails containing information relating to the design and development of Facet's products.

The Board should seal Exhibits 2044, 2045, and 2050-2051 because of the significant potential harm that would come from public disclosure. First, the technical information and information relating to the design of their lancets is highly sensitive to Facet and LifeScan. Second, disclosure of this information could cause Facet or LifeScan serious competitive harm by, for example, providing competitors with a strategic and unfair advantage against them. Facet invests significant resources in developing, maintaining, and improving the technology underlying its competitive lancets, and public disclosure of this information would allow competitors more easily to copy Facet's technology and allow them unfairly to market competing products without making the same research and development investment as Facet. In addition, Facet file a public, redacted version of these exhibits upon receiving LifeScan's and the third party's redactions regarding their protective order material.

III. CONCLUSION

For the foregoing reasons, Facet respectfully requests the PTAB grant this motion and enter the Joint Proposed Protective Order attached as Appendix A.

Respectfully submitted,

Dated: December 19, 2023

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 19th day of December, 2023, a copy of **Patent Owner Facet Technologies, LLC's Unopposed Motion To File Documents Under Seal And For A Protective Order with appendices** were served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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APPENDIX A

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JOINT PROPOSED PROTECTIVE ORDER

[PROPOSED] Protective Order

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. INTRODUCTION

1.1 Purposes and Limitations.

Disclosure and discovery activity in this Action (defined below) are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this Action may be warranted. Accordingly, the Parties have stipulated to and moved the PTAB to enter this Stipulated Protective Order. The Parties acknowledge that this Stipulated Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 and the Standing Order for Civil Cases Assigned to Judge Mark C. Scarsi sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the PTAB to file material under seal.

1.2 Good Cause Statement.

This Action is likely to involve trade secrets, customer and pricing lists and other valuable research, design, development, marketing, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this Action is warranted. Such confidential and proprietary materials and information consist of,

among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, design, marketing, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, PTAB rules or guidelines, case decisions, or common law. Specifically, information such as proprietary technical documents and information, design specifications, design drawings, product development documents, sales volumes, sales units, costs of goods sold, price structures, business costs, profit margins, marketing strategies, confidential agreements with third parties, and competitive business plans may need to be disclosed only to a Party's outside counsel due to the potential for competitive harm.

Accordingly, to expedite the flow of information and items, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the Parties are entitled to keep confidential, to ensure that the Parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the Action, and to serve the ends of justice, a protective order for such information is justified in this matter. To adequately protect information the Parties are entitled to keep confidential and to prevent competitive harm two tiers of confidentiality designations, "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY," are required. It is the intent of the Parties that information and items will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: this pending *inter parties* review proceeding, *i.e.*, IPR2023-00712.

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

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that a Designating Party believes, in good faith, qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel (as well as their support staff) and House Counsel (as well as their support staff).

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

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

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the Action who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action, (2) is not a current employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

2.8 Final Disposition: the later of (1) dismissal of all claims in this Action, with or without prejudice; or (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, or, if no appeal is taken, when the time for filing of an appeal has run.

2.9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

Information or Items: “‘CONFIDENTIAL’ Information or Items” (defined above) that is considered to be extremely sensitive by the Designating Party who holds a good-faith belief that the disclosure of such “‘CONFIDENTIAL’ Information or Items” to another Party or Non-Party would create a substantial risk of competitive harm that could not be avoided by less restrictive means, including but not limited to trade secret or other confidential research and development, financial, or other commercial information.

2.10 House Counsel: attorneys who are employees of a Party to this Action. House Counsel also specifically includes Facet’s outside counsel Mark Farber of Farber LLC, but does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Action.

2.12 The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office

2.13 Outside Counsel: attorneys who are not employees of a Party to this Action but are retained to represent or advise a Party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party and include their support staffs.

2.14 Party: any party named as a party to this Action, including all of its officers, directors, employees, consultants, retained experts, House Counsel (and their support staff), Outside Counsel of Record (and their support staff).

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

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

2.17 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.18 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

This Protective Order shall apply to all Protected Material (as defined above), regardless of the medium or manner in which it is generated, stored, or maintained, that is produced, disclosed or generated either by a Party or Non-party in connection with discovery or Rule 26(a) disclosures in this Action. The protections conferred by this Stipulated Protective Order cover not only Protected Material, but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties that might reveal Protected Material or items that have been designated in accordance with the procedures set forth herein.

However, the protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information or items that are in the public domain at the time of disclosure to a Receiving Party or becomes part of the public

domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information or items known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information or items lawfully and under no obligation of confidentiality to the Designating Party.

Nothing in this Protective Order shall (i) affect the right of the Producing Party to disclose or use its own Protected Material for any purpose, or (ii) prevent or otherwise restrict Counsel from rendering legal advice to their client and in the course thereof, relying on the Protected Material, provided, however that in relying on such Protected Material, Counsel shall not disclose, reveal, or describe the content of any Protected Material except insofar as allowed, if at all, under the terms of this Protective Order.

Any use of Protected Material at trial shall be governed by a separate agreement or order and other applicable authorities. Counsel for Parties will work together to discuss how to handle Protected Material that is to be presented at hearings or at trial. This Order does not govern the use of Protected Material at trial.

4. DURATION

Even after Final Disposition of this Action, the confidentiality obligations and protections of this Protective Order shall remain in effect until all Designating Parties agree otherwise in writing or a court or PTAB otherwise directs. The PTAB shall retain jurisdiction for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.
Each Party or Non-Party that designates Disclosure or Discovery Material (as

defined above) for protection under this Order shall exercise restraint and must take care to limit any such designation to specific information or items that qualify under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

5.2 Manner and Timing of Designations. Designation in conformity with this Order requires the following:

a) *for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial proceedings),* that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted. Disclosure or Discovery

Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

b) *For information produced in Native form:* Disclosures or Discovery Materials that is produced in native electronic format shall be designated by appending to the file names an indication of the appropriate designation or by implementing any other reasonable method for designating materials produced in native electronic format. If such Disclosure or Discovery Material are printed, such as for use at a deposition or in a PTAB proceeding, the party printing the materials shall label or mark each page of the printed materials with the designation of the electronic file.

c) *for information produced in some form other than documentary and for any other tangible items,* that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted. Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

d) *for materials made available for inspection,* a Party or Non-Party that makes materials available for inspection need not designate them for protection until after the initial inspection and after the inspecting Party has indicated which materials it would like copied or photographed and produced. For purposes of the initial inspection, all of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Only persons authorized under the terms of this Order to receive “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” are permitted to inspect the materials made

available for inspection.

After the inspecting Party has identified the materials that it wants copied, photographed, and/or videoed and produced, the Producing Party must determine which materials, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

e) *for testimony given in deposition or in other pretrial proceedings*, that the Designating Party identify on the record, before the conclusion of the deposition, hearings, or other proceeding, all Protected Material and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 30 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 30 days shall be covered by the provisions of this Order. Alternatively, a Designating Party may specify, at the deposition or up to 30 days afterwards if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Nothing in this paragraph shall contravene the

PTAB's practices, procedures, and orders regarding the designation and treatment of Protected Information during hearings, pretrial proceedings, or trial.

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 30-day period for designation shall be treated during that period as if it had been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated. Nothing in this paragraph shall contravene the PTAB's practices, procedures, and orders regarding the designation and treatment of Protected Information during hearings, pretrial proceedings, or trial.

f) Information obtained through Written Discovery

Written discovery responses and information contained therein shall be designated by means of a statement specifying the level of designation prior to each response that contains Protected Material or any other means of identifying the designation level of a particular response(s). Moreover, the title page of such written discovery responses shall also include an obvious legend indicating that the response contains Protected Material.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information, transcripts, or items, or an inadvertent failure to identify confidential testimony on the record at a deposition, does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material.

Any information or items that are inadvertently produced or disclosed without

a designation or are inadvertently produced or disclosed under-or over-designated may be corrected by the Producing Party providing written notice to Counsel for the Receiving Party, and the Receiving Party shall thereafter treat that information or items as properly designated. Within five (5) business days of such written notice, the Producing Party shall produce to the Receiving Party replacement copies of the information or items with the proper designation and such information or items shall be protected under this Protective Order as if it had been initially so designated.

Upon timely correction of a designation, the Designating Party and the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order., including efforts to assure that the material is affixed with the proper legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at any time, including within 60 days of Final Disposition of this Action. Unless a prompt challenge to a confidentiality designation is necessary to avoid a foreseeable, substantial and unnecessary burden on a Party or a significant disruption or delay in litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed. A Party’s failure to challenge a confidentiality designation is not an admission, and is not evidence, that Protected Material qualifies for the designation given by the Designating Party.

6.2 Written Notice. Any challenge to a confidentiality designation (i) shall be in writing, (ii) shall be served on Counsel of the Designating Party, (iii) shall particularly identify the information or items (including page numbers as appropriate) that the Challenging Party alleges should be differently designated, and (iv) shall describe the basis for each challenge.

6.3 Meet-and-Confer. Within seven (7) business days of service of the written notice, the Parties shall confer in an attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient). In conferring, the Designating Party must review the designated material being challenged, consider the basis for the challenge, and, if no change in designation is offered, to explain the basis for the chosen designation.

A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet-and-confer process first or the Designating Party failed to timely participate in the meet-and-confer process in a timely manner as required by Local Rule 37-1.

6.4 Judicial Intervention. If the Parties cannot resolve a challenge without PTAB intervention, either Party may seek resolution from the PTAB in accordance with the PTAB's procedures and guidelines governing such disputes. For purposes of moving forward with the challenge to the confidentiality designation, it is the responsibility of the Challenging Party to timely file the moving papers and fulfill any applicable pre-filing requirements imposed by the PTAB.

6.5 Burdens and Status of Confidentiality Designation Pending a Challenge.

During the meet-and-confer stage described in Section 6.2 above, the original designation of the material being challenged shall continue to apply, unless and until the Designating Party agrees to withdraw or change the challenged designation in accordance with the Challenging Party's request. A Designating Party's failure to respond to the written notice or failure to meet-and-confer shall not, in itself, remove or lower the original confidentiality designation of the material being challenged. Such failure, however, shall be a consideration during the judicial intervention stage described in Section 6.3.

During the judicial intervention stage described in Section 6.3, the Challenging Party shall bear the burden of presenting the challenge to the PTAB. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.

The burden of persuasion shall be on the Designating Party to prove that the challenged material is entitled to protection. A Designating Party's failure to respond to the Challenging Party's presentment or failure to otherwise carry its burden of persuasion shall not operate to remove or lower the original confidentiality designation of the challenged material before the PTAB rules on the challenge. In case of an appeal (including reconsideration), the original designation of the challenged material shall be maintained until the appeal (or reconsideration) is decided.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action is finally disposed, a Receiving Party must comply with the provisions of Section 14 below (FINAL DISPOSITION).

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

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the PTAB or permitted in writing by the Designating Party, a

Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

(b) House Counsel of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before being disclosed the “CONFIDENTIAL” information or item;

(c) Experts and their employees (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before the being disclosed the “CONFIDENTIAL” information or item; (d) the PTAB, the Office, and its personnel;

(e) court reporters, videographers, and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before being disclosed the “CONFIDENTIAL” information or item;

(g) during their depositions, witnesses in the Action and attorneys for such witnesses to whom disclosure is reasonably necessary provided that the witness is an officer, director, Rule 30(b)(6) designee, or employee of the Designating Party, a person who is reasonably believed to be an author or recipient of the “CONFIDENTIAL” information or who reasonably appears to have knowledge relating thereto, or a consultant or expert retained on behalf of the Designating Party for this Action who has signed Exhibit A. Pages of transcribed deposition testimony or exhibits to depositions shall be treated in accordance with Section 5;

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(i) any mediator or settlement officers and their supporting personnel, mutually agreed upon by the Parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the PTAB or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

(b) Experts (as defined in this Order) and their employees, of the Receiving Party (1) to whom disclosure is reasonably necessary for this Action, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before being disclosed the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or item, and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

(c) the PTAB, the Office, and its personnel;

(d) court reporters, stenographers, videographers, and their staff;

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before being disclosed the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or item;

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator or settlement officers and their supporting personnel, mutually agreed upon by the Parties engaged in settlement discussions.

(h) any author, recipient or custodian of the Protected Material or any individual currently employed by the Designating Party.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

(a) Unless otherwise ordered by the PTAB or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to Section 7.3 first must make a written request to the Designating Party that includes (i) the full name of the Expert and the city and state of his or her primary residence, (ii) the present employer and title of the person; (iii) a copy of the Expert’s current resume, (iv) identifies the Expert’s current employer(s), (v) the persons or entity(ies) from whom the Expert has consulted, including in connection with a litigation with a the name and number of the case, filing date, and location of court and including through a declaration, report, or testimony at a deposition or trial, during the preceding four years, but excluding legal consulting roles whose existence is protected from disclosure under the attorney work-product doctrine; and (vi) a signed copy of Exhibit A.

(b) A Party that makes a request and provides the information specified in the preceding paragraph 7.4(a) may disclose the subject Protected Material to the identified or Expert unless, within five (5) business days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must be in good faith and set forth in detail the grounds on which it is based. In the absence of any objection at the end of the five (5) business day period,

the expert or consultant shall be deemed approved under this Agreement. There shall be no disclosure of Protected Material to the Expert prior to the expiration of this five (5) business day period absent express consent from the non-Designating Party.

(c) A Party that receives a timely written objection shall initiate the dispute resolution process under and must meet and confer with the Designating Party (through direct voice-to-voice dialogue) to try to resolve the matter by agreement within four days of the written objection. If no agreement is reached, within 14 days of the last conference, either Party may seek resolution from the PTAB in accordance with the PTAB's procedures governing such disputes. For purposes of moving forward with the challenge to the confidentiality designation, it is the responsibility of the Challenging Party to timely file the moving papers required by fulfill any applicable pre-filing requirements imposed by the PTAB.

In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert. Confidential Information shall not be disclosed to the expert or consultant until the objection is resolved or if no motion is filed within the 14-day period.

8. PROSECUTION BAR

For purposes of this paragraph, Prosecution Bar Information is information that is designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" except that the Prosecution Bar Information does not include financial information. Absent written consent from the Designating Party, any individual who receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" materials of a technical nature shall not be involved in the prosecution of patents or patent applications relating to lancets, lancing devices, or lancing system, including without limitation the patents asserted in this Action and any patent or application claiming

priority to or otherwise related to the patents asserted in this Action, before any foreign or domestic agency, including the United States Patent and Trademark Office. For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, or advising others who are drafting or amending the scope of said patent claims in original prosecution, reissue, reexamination, *inter partes* review or post grant review proceedings. To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party in a proceeding in which a party challenges the validity of a patent before a domestic or foreign agency (including, but not limited to, *inter partes* review or post grant review). All persons who receive Prosecution Bar Information are prohibited from performing, or providing (verbally or in tangible form, in whole or in part) such Confidential Information received under this Order to any person involved in performing the following tasks: (1) drafting or supervising or providing advice regarding drafting, new or amended claims in any such proceedings; (2) “supervising” refers to directing others how to draft, prosecute, or provide advice regarding the drafting or prosecution, of any patents and applications in the scope of the Prosecution Bar; merely having authority to perform the prohibited tasks does not amount to being ‘involved in’ such tasks for purposes of this Prosecution Bar; and (3) “having claims or disclosures directed to lancet devices, and methods and devices for the delivery thereof” refers to claims and/or disclosures that specifically mention in words or substance lancet devices, and methods and devices for the delivery thereof. This Prosecution Bar does not apply to any in-house counsel designated above who is only provided access to “CONFIDENTIAL” information of an opposing party.

This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material of a technical nature is first received by the affected individual and shall end two (2) years after Final Disposition of this Action.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

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

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

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

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

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

10.A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS ACTION

10.1 Application. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or

“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this Action is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

10.2 Notification. In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

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

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

(c) make the information requested available for inspection by the Non-Party.

10.3 Conditions of Production. If the Non-Party fails to seek a protective order from this PTAB within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the PTAB. Absent a PTAB order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this PTAB of its Protected Material.

11.UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party or a Producing Party learns that, by inadvertence or

otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, such Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

The Parties have agreed that, in this lawsuit, they do not intend to disclose privileged information. Pursuant to Federal Rule of Evidence 502(d) and 28 U.S. Code § 1738, any disclosure of privileged information (“Disclosed Privileged Information”) shall not constitute in this or any other action a waiver or forfeiture of any privilege otherwise attaching to the Disclosed Privileged Information and its subject matter.

Nothing in this Order overrides any attorney’s ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Disclosing Party that such materials have been produced.

Any party receiving materials that reasonably appear to be privileged information shall not copy, distribute, or otherwise use such materials in any manner and shall provide prompt notice to the Producing Party to afford an opportunity to request return of the materials.

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the Parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the Parties may incorporate their agreement in the stipulated protective order submitted to the PTAB.

Within five (5) business days of receiving such a request, a Receiving Party shall return to the Producing Party, or certify the destruction of, all Disclosure or Discovery Material identified by the Producing Party as being protected by a privilege and/or immunity and inadvertently produced. A Receiving Party shall not utilize or disseminate the information contained in the inadvertently produced Disclosure or Discovery Material for any purpose, except for contesting the claimed privilege or immunity.

If the Receiving Party wishes to contest the claimed privilege or immunity, the Receiving Party shall provide written notice thereof to the Producing Party within five (5) business days of receipt of the notice of disclosure. The Receiving Party may retain one (1) copy of each Disclosure or Discovery Material at issue, but any such retained copies shall be sequestered and shall not be used for any purpose except to meet and confer with the Producing Party regarding the claimed privilege or immunity and/or to the present information to the PTAB for a determination regarding the claimed privilege or immunity.

Rule 502. Federal Rule of Evidence (“FRE”) 502(b) is inapplicable to Disclosed Privileged Information, which shall receive the maximum protection afforded by FRE 502(d). Under FRE 502(d) and 28 U.S. Code § 1738, this Order shall be enforceable and granted full faith and credit in all other state and federal proceedings. Any subsequent conflict of law analysis shall apply the law most

protective of privilege and work product.

13.MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the PTAB in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with file a motion to seal with the Board. Protected Material may only be filed under seal pursuant to a PTAB order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the PTAB, then the Receiving Party may file the information in the public record unless otherwise instructed by the PTAB.

14.FINAL DISPOSITION

Within 60 days after the Final Disposition of this Action, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected 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 (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are

entitled to retain an archival copy 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 Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.,
Petitioner,

v.

FACET TECHNOLOGIES, LLC,
Patent Owner.

IPR2023-00712
Patent 8,840,635

Standard Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order filed in Case IPR2023-00712; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose, except that any portion of the Protected Material that is obtained by other, appropriate means, such as through discovery in a district court or other proceeding, that portion of the confidential material may be used in the other proceeding, subject to any confidentiality terms applicable to that portion of the confidential material in the other proceeding; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that

I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Central District of California for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

Dated: _____

Signature: _____

APPENDIX B

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

FACET TECHNOLOGIES, LLC,

Plaintiff,

v.

LIFESCAN, INC.,

Defendant.

CASE NO. 2:22-cv-01717-MCS-MARx

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

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1 Pursuant to the Parties' stipulation, and good cause appearing therefor, the
2 Court makes the following findings and enters the following Stipulated Protective
3 Order pursuant to Federal Rule of Civil Procedure 26(c).

4 **1.INTRODUCTION**

5 1.1 Purposes and Limitations.

6 Disclosure and discovery activity in this Action (defined below) are likely to
7 involve production of confidential, proprietary, or private information for which
8 special protection from public disclosure and from use for any purpose other than
9 prosecuting this Action may be warranted. Accordingly, the Parties have stipulated to
10 and petitioned the Court to enter this Stipulated Protective Order. The Parties
11 acknowledge that this Stipulated Protective Order does not confer blanket protections
12 on all disclosures or responses to discovery and that the protection it affords from
13 public disclosure and use extends only to the limited information or items that are
14 entitled to confidential treatment under the applicable legal principles. The Parties
15 further acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective
16 Order does not entitle them to file confidential information under seal; Civil Local
17 Rule 79-5 and the Standing Order for Civil Cases Assigned to Judge Mark C. Scarsi
18 sets forth the procedures that must be followed and the standards that will be applied
19 when a Party seeks permission from the Court to file material under seal.

20 1.2 Good Cause Statement.

21 This Action is likely to involve trade secrets, customer and pricing lists and
22 other valuable research, design, development, marketing, commercial, financial,
23 technical and/or proprietary information for which special protection from public
24 disclosure and from use for any purpose other than prosecution of this Action is
25 warranted. Such confidential and proprietary materials and information consist of,
26 among other things, confidential business or financial information, information
27 regarding confidential business practices, or other confidential research, design,
28

1 marketing, development, or commercial information (including information
2 implicating privacy rights of third parties), information otherwise generally
3 unavailable to the public, or which may be privileged or otherwise protected from
4 disclosure under state or federal statutes, court rules, case decisions, or common law.
5 Specifically, information such as proprietary technical documents and information,
6 design specifications, design drawings, product development documents, sales
7 volumes, sales units, costs of goods sold, price structures, business costs, profit
8 margins, marketing strategies, confidential agreements with third parties, and
9 competitive business plans may need to be disclosed only to a Party's outside counsel
10 due to the potential for competitive harm.

11 Accordingly, to expedite the flow of information and items, to facilitate the
12 prompt resolution of disputes over confidentiality of discovery materials, to
13 adequately protect information the Parties are entitled to keep confidential, to ensure
14 that the Parties are permitted reasonable necessary uses of such material in
15 preparation for and in the conduct of trial, to address their handling at the end of the
16 Action, and to serve the ends of justice, a protective order for such information is
17 justified in this matter. To adequately protect information the Parties are entitled to
18 keep confidential and to prevent competitive harm two tiers of confidentiality
19 designations, "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL-
20 ATTORNEYS' EYES ONLY," are required. It is the intent of the Parties that
21 information and items will not be designated as confidential for tactical reasons and
22 that nothing be so designated without a good faith belief that it has been maintained
23 in a confidential, non-public manner, and there is good cause why it should not be
24 part of the public record of this case.

25 **2. DEFINITIONS**

26 2.1 Action: this pending federal lawsuit, i.e., *Facet Technologies, LLC v.*
27 *LifeScan, Inc.*, Case No. 2:22-cv-01717-MSC-MAR (C.D. Cal.).

1 2.2 Challenging Party: a Party that challenges the designation of information
2 or items under this Order.

3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
4 how it is generated, stored, or maintained) or tangible things that a Designating Party
5 believes, in good faith, qualify for protection under Federal Rule of Civil Procedure
6 26(c), and as specified above in the Good Cause Statement.

7 2.4 Counsel: Outside Counsel of Record (as well as their support staff) and
8 House Counsel (as well as their support staff).

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

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

17 2.7 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the Action who (1) has been retained by a Party or its counsel to serve
19 as an expert witness or as a consultant in this Action, (2) is not a current employee
20 of a Party or of a Party’s competitor, and (3) at the time of retention, is not
21 anticipated to become an employee of a Party or of a Party’s competitor.

22 2.8 Final Disposition: the later of (1) dismissal of all claims in this Action,
23 with or without prejudice; or (2) final judgment herein after the completion and
24 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
25 including the time limits for filing any motions or applications for extension of time
26 pursuant to applicable law, or, if no appeal is taken, when the time for filing of an
27 appeal has run.

1 2.9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

2 Information or Items: “‘CONFIDENTIAL’ Information or Items” (defined above)
3 that is considered to be extremely sensitive by the Designating Party who holds a
4 good-faith belief that the disclosure of such “‘CONFIDENTIAL’ Information or
5 Items” to another Party or Non-Party would create a substantial risk of competitive
6 harm that could not be avoided by less restrictive means, including but not limited to
7 trade secret or other confidential research and development, financial, or other
8 commercial information.

9 2.10 House Counsel: attorneys who are employees of a Party to this Action.
10 House Counsel also specifically includes Facet’s outside counsel Mark Farber of
11 Farber LLC, but does not otherwise include Outside Counsel of Record or any other
12 outside counsel.

13 2.11 Non-Party: any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this Action.

15 2.12 Outside Counsel of Record: attorneys who are not employees of a Party
16 to this Action but are retained to represent or advise a Party to this Action and have
17 appeared in this Action on behalf of that party or are affiliated with a law firm which
18 has appeared on behalf of that party and include their support staffs.

19 2.13 Party: any party named as a party to this Action, including all of its
20 officers, directors, employees, consultants, retained experts, House Counsel (and
21 their support staff), Outside Counsel of Record (and their support staff).

22 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this Action.

24 2.15 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
27 and their employees and subcontractors.
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1 2.16 Protected Material: any Disclosure or Discovery Material that is
 2 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
 3 ATTORNEYS’ EYES ONLY.”

4 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
 5 from a Producing Party.

6 **3. SCOPE**

7 This Protective Order shall apply to all Protected Material (as defined above),
 8 regardless of the medium or manner in which it is generated, stored, or maintained,
 9 that is produced, disclosed or generated either by a Party or Non-party in connection
 10 with discovery or Rule 26(a) disclosures in this Action. The protections conferred by
 11 this Stipulated Protective Order cover not only Protected Material, but also (1) any
 12 information copied or extracted from Protected Material; (2) all copies, excerpts,
 13 summaries, or compilations of Protected Material; and (3) any testimony,
 14 conversations, or presentations by Parties that might reveal Protected Material or
 15 items that have been designated in accordance with the procedures set forth herein.

16 However, the protections conferred by this Stipulated Protective Order do not
 17 cover the following information: (a) any information or items that are in the public
 18 domain at the time of disclosure to a Receiving Party or becomes part of the public
 19 domain after its disclosure to a Receiving Party as a result of publication not involving
 20 a violation of this Order, including becoming part of the public record through trial or
 21 otherwise; and (b) any information or items known to the Receiving Party prior to the
 22 disclosure or obtained by the Receiving Party after the disclosure from a source who
 23 obtained the information or items lawfully and under no obligation of confidentiality
 24 to the Designating Party.

25 Nothing in this Protective Order shall (i) affect the right of the Producing Party
 26 to disclose or use its own Protected Material for any purpose, or (ii) prevent or
 27 otherwise restrict Counsel from rendering legal advice to their client and in the course
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1 thereof, relying on the Protected Material, provided, however that in relying on such
2 Protected Material, Counsel shall not disclose, reveal, or describe the content of any
3 Protected Material except insofar as allowed, if at all, under the terms of this
4 Protective Order.

5 Any use of Protected Material at trial shall be governed by a separate agreement
6 or order and other applicable authorities. Counsel for Parties will work together to
7 discuss how to handle Protected Material that is to be presented at hearings or at trial.
8 This Order does not govern the use of Protected Material at trial.

9 **4. DURATION**

10 Even after Final Disposition of this Action, the confidentiality obligations and
11 protections of this Protective Order shall remain in effect until all Designating Parties
12 agree otherwise in writing or a court order otherwise directs. The United States
13 District Court for the Central District of California shall retain jurisdiction for the
14 purpose of enforcing the terms of this Stipulated Protective Order, even if such
15 enforcement proceedings occur after termination of this action.

16 **5. DESIGNATING PROTECTED MATERIAL**

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.
18 Each Party or Non-Party that designates Disclosure or Discovery Material (as defined
19 above) for protection under this Order shall exercise restraint and must take care to
20 limit any such designation to specific information or items that qualify under the
21 appropriate standards. To the extent it is practical to do so, the Designating Party must
22 designate for protection only those parts of material, documents, items, or oral or
23 written communications that qualify so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order.

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

4 If it comes to a Designating Party's attention that information or items that it
 5 designated for protection do not qualify for protection at all or do not qualify for the
 6 level of protection initially asserted, that Designating Party must promptly notify all
 7 other Parties that it is withdrawing the inapplicable designation.

8 5.2 Manner and Timing of Designations. Designation in conformity with this
 9 Order requires the following:

10 a) *for information in documentary form (e.g., paper or electronic*
 11 *documents, but excluding transcripts of depositions or other pretrial proceedings)*,
 12 that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY
 13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains
 14 Protected Material. If only a portion or portions of the material on a page qualifies for
 15 protection, the Producing Party also must clearly identify the protected portion(s)
 16 (e.g., by making appropriate markings in the margins) and must specify, for each
 17 portion, the level of protection being asserted. Disclosure or Discovery Material that
 18 qualifies for protection under this Order must be clearly so designated before the
 19 material is disclosed or produced.

20 b) *For information produced in Native form*: Disclosures or Discovery
 21 Materials that is produced in native electronic format shall be designated by
 22 appending to the file names an indication of the appropriate designation or by
 23 implementing any other reasonable method for designating materials produced in
 24 native electronic format. If such Disclosure or Discovery Material are printed, such
 25 as for use at a deposition or in a court proceeding, the party printing the materials shall
 26 label or mark each page of the printed materials with the designation of the electronic
 27 file.

1 c) *for information produced in some form other than documentary and for*
2 *any other tangible items*, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information or item is stored the
4 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY.” If only a portion or portions of the information or item warrant protection,
6 the Producing Party, to the extent practicable, shall identify the protected portion(s)
7 and specify the level of protection being asserted. Disclosure or Discovery Material
8 that qualifies for protection under this Order must be clearly so designated before the
9 material is disclosed or produced.

10 d) *for materials made available for inspection*, a Party or Non-Party that
11 makes materials available for inspection need not designate them for protection until
12 after the initial inspection and after the inspecting Party has indicated which materials
13 it would like copied or photographed and produced. For purposes of the initial
14 inspection, all of the material made available for inspection shall be deemed
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Only persons
16 authorized under the terms of this Order to receive “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” are permitted to inspect the materials made available
18 for inspection.

19 After the inspecting Party has identified the materials that it wants copied,
20 photographed, and/or videoed and produced, the Producing Party must determine
21 which materials, or portions thereof, qualify for protection under this Order. Then,
22 before producing the specified documents, the Producing Party must affix the
23 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only
25 a portion or portions of the material on a page qualifies for protection, the Producing
26 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
27 markings in the margins) and must specify, for each portion, the level of protection
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1 being asserted.

2 e) *for testimony given in deposition or in other pretrial proceedings*, that
3 the Designating Party identify on the record, before the conclusion of the deposition,
4 hearings, or other proceeding, all Protected Material and specify the level of
5 protection being asserted. When it is impractical to identify separately each portion
6 of testimony that is entitled to protection and it appears that substantial portions of
7 the testimony may qualify for protection, the Designating Party may invoke on the
8 record (before the deposition, hearing, or other proceeding is concluded) a right to
9 have up to 30 days to identify the specific portions of the testimony as to which
10 protection is sought and to specify the level of protection being asserted. Only those
11 portions of the testimony that are appropriately designated for protection within the
12 30 days shall be covered by the provisions of this Order. Alternatively, a
13 Designating Party may specify, at the deposition or up to 30 days afterwards if that
14 period is properly invoked, that the entire transcript shall be treated as
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY.” Nothing in this paragraph shall contravene the Court’s practices,
17 procedures, and orders regarding the designation and treatment of Protected
18 Information during hearings, pretrial proceedings, or trial.

19 Transcripts containing Protected Material shall have an obvious legend on the
20 title page that the transcript contains Protected Material, and the title page shall be
21 followed by a list of all pages (including line numbers as appropriate) that have been
22 designated as Protected Material and the level of protection being asserted by the
23 Designating Party. The Designating Party shall inform the court reporter of these
24 requirements. Any transcript that is prepared before the expiration of a 30-day period
25 for designation shall be treated during that period as if it had been designated
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
27 otherwise agreed. After the expiration of that period, the transcript shall be treated
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1 only as actually designated. Nothing in this paragraph shall contravene the Court's
2 practices, procedures, and orders regarding the designation and treatment of Protected
3 Information during hearings, pretrial proceedings, or trial.

4 f) *Information obtained through Written Discovery*

5 Written discovery responses and information contained therein shall be
6 designated by means of a statement specifying the level of designation prior to each
7 response that contains Protected Material or any other means of identifying the
8 designation level of a particular response(s). Moreover, the title page of such written
9 discovery responses shall also include an obvious legend indicating that the response
10 contains Protected Material.

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
12 failure to designate qualified information, transcripts, or items, or an inadvertent
13 failure to identify confidential testimony on the record at a deposition, does not,
14 standing alone, waive the Designating Party's right to secure protection under this
15 Order for such material.

16 Any information or items that are inadvertently produced or disclosed without
17 a designation or are inadvertently produced or disclosed under-or over-designated
18 may be corrected by the Producing Party providing written notice to Counsel for the
19 Receiving Party, and the Receiving Party shall thereafter treat that information or
20 items as properly designated. Within five (5) business days of such written notice, the
21 Producing Party shall produce to the Receiving Party replacement copies of the
22 information or items with the proper designation and such information or items shall
23 be protected under this Protective Order as if it had been initially so designated.

24 Upon timely correction of a designation, the Designating Party and the
25 Receiving Party must make reasonable efforts to assure that the material is treated in
26 accordance with the provisions of this Order., including efforts to assure that the
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1 material is affixed with the proper legend (“CONFIDENTIAL” or “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party may challenge a designation of
5 confidentiality at any time, including within 60 days of Final Disposition of this
6 Action. Unless a prompt challenge to a confidentiality designation is necessary to
7 avoid a foreseeable, substantial and unnecessary burden on a Party or a significant
8 disruption or delay in litigation, a Party does not waive its right to challenge a
9 confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed. A Party’s failure to challenge a confidentiality
11 designation is not an admission, and is not evidence, that Protected Material qualifies
12 for the designation given by the Designating Party.

13 6.2 Written Notice. Any challenge to a confidentiality designation (i) shall be
14 in writing, (ii) shall be served on Counsel of the Designating Party, (iii) shall
15 particularly identify the information or items (including page numbers as appropriate)
16 that the Challenging Party alleges should be differently designated, and (iv) shall
17 describe the basis for each challenge.

18 6.3 Meet-and-Confer. Within seven (7) business days of service of the written
19 notice, the Parties shall confer in an attempt to resolve each challenge in good faith
20 and must begin the process by conferring directly (in voice-to-voice dialogue; other
21 forms of communication are not sufficient). In conferring, the Designating Party must
22 review the designated material being challenged, consider the basis for the challenge,
23 and, if no change in designation is offered, to explain the basis for the chosen
24 designation.

25 A Challenging Party may proceed to the next stage of the challenge process
26 only if it has engaged in this meet-and-confer process first or the Designating Party
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1 failed to timely participate in the meet-and-confer process in a timely manner as
2 required by Local Rule 37-1.

3 6.4 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, either Party may seek resolution from the Court in accordance with
5 the Local Rules and the Court's procedures governing discovery disputes. For
6 purposes of moving forward with the challenge to the confidentiality designation, it
7 is the responsibility of the Challenging Party to timely file the moving papers required
8 by Local Rule 37-2 and fulfill any applicable pre-filing requirements imposed by the
9 Court.

10 6.5 Burdens and Status of Confidentiality Designation Pending a Challenge.

11 During the meet-and-confer stage described in Section 6.2 above, the original
12 designation of the material being challenged shall continue to apply, unless and until
13 the Designating Party agrees to withdraw or change the challenged designation in
14 accordance with the Challenging Party's request. A Designating Party's failure to
15 respond to the written notice or failure to meet-and-confer shall not, in itself, remove
16 or lower the original confidentiality designation of the material being challenged.
17 Such failure, however, shall be a consideration during the judicial intervention stage
18 described in Section 6.3.

19 During the judicial intervention stage described in Section 6.3, the Challenging
20 Party shall bear the burden of presenting the challenge to the Court. Frivolous
21 challenges and those made for an improper purpose (e.g., to harass or impose
22 unnecessary expenses and burdens on other parties) may expose the Challenging Party
23 to sanctions.

24 The burden of persuasion shall be on the Designating Party to prove that the
25 challenged material is entitled to protection. A Designating Party's failure to respond
26 to the Challenging Party's presentment or failure to otherwise carry its burden of
27 persuasion shall not operate to remove or lower the original confidentiality
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1 designation of the challenged material before the Court rules on the challenge. In case
2 of an appeal (including reconsideration), the original designation of the challenged
3 material shall be maintained until the appeal (or reconsideration) is decided.

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

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 Action only for prosecuting, defending, or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the Action is finally disposed, a Receiving
10 Party must comply with the provisions of Section 14 below (FINAL DISPOSITION).

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

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the Court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 “CONFIDENTIAL” only to:

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

21 (b) House Counsel of the Receiving Party to whom disclosure is reasonably
22 necessary for this Action and who have signed the “Acknowledgment and Agreement
23 to Be Bound” (Exhibit A) before being disclosed the “CONFIDENTIAL” information
24 or item;

25 (c) Experts and their employees (as defined in this Order) of the Receiving
26 Party to whom disclosure is reasonably necessary for this Action and who have signed
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1 the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before being
2 disclosed the “CONFIDENTIAL” information or item; (d) the Court and its
3 personnel;

4 (e) court reporters, videographers, and their staff;

5 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
6 to whom disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A) before being disclosed
8 the “CONFIDENTIAL” information or item;

9 (g) during their depositions, witnesses in the Action and attorneys for such
10 witnesses to whom disclosure is reasonably necessary provided that the witness is an
11 officer, director, Rule 30(b)(6) designee, or employee of the Designating Party, a
12 person who is reasonably believed to be an author or recipient of the
13 “CONFIDENTIAL” information or who reasonably appears to have knowledge
14 relating thereto, or a consultant or expert retained on behalf of the Designating Party
15 for this Action who has signed Exhibit A. Pages of transcribed deposition testimony
16 or exhibits to depositions shall be treated in accordance with Section 5;

17 (h) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information; and

19 (i) any mediator or settlement officers and their supporting personnel, mutually
20 agreed upon by the Parties engaged in settlement discussions.

21 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in
23 writing by the Designating Party, a Receiving Party may disclose any information or
24 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
25 to:

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

2 (b) Experts (as defined in this Order) and their employees, of the Receiving
3 Party (1) to whom disclosure is reasonably necessary for this Action, (2) who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before being
5 disclosed the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
6 information or item, and (3) as to whom the procedures set forth in paragraph 7.4(a),
7 below, have been followed;

8 (c) the Court and its personnel;

9 (d) court reporters, stenographers, videographers, and their staff;

10 (e) professional jury or trial consultants, mock jurors, and Professional Vendors
11 to whom disclosure is reasonably necessary for this Action and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A) before being disclosed
13 the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or
14 item;

15 (f) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information; and

17 (g) any mediator or settlement officers and their supporting personnel, mutually
18 agreed upon by the Parties engaged in settlement discussions.

19 (h) any author, recipient or custodian of the Protected Material or any
20 individual currently employed by the Designating Party.

21 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

23 (a) Unless otherwise ordered by the Court or agreed to in writing by the
24 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order)
25 any information or item that has been designated “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY” pursuant to Section 7.3 first must make a written
27 request to the Designating Party that includes (i) the full name of the Expert and the
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1 city and state of his or her primary residence, (ii) the present employer and title of the
2 person; (iii) a copy of the Expert's current resume, (iv) identifies the Expert's current
3 employer(s), (v) the persons or entity(ies) from whom the Expert has consulted,
4 including in connection with a litigation with a the name and number of the case,
5 filing date, and location of court and including through a declaration, report, or
6 testimony at a deposition or trial, during the preceding four years, but excluding legal
7 consulting roles whose existence is protected from disclosure under the attorney
8 work-product doctrine; and (vi) a signed copy of Exhibit A.

9 (b) A Party that makes a request and provides the information specified in the
10 preceding paragraph 7.4(a) may disclose the subject Protected Material to the
11 identified or Expert unless, within five (5) business days of delivering the request, the
12 Party receives a written objection from the Designating Party. Any such objection
13 must be in good faith and set forth in detail the grounds on which it is based. In the
14 absence of any objection at the end of the five (5) business day period, the expert or
15 consultant shall be deemed approved under this Agreement. There shall be no
16 disclosure of Protected Material to the Expert prior to the expiration of this five (5)
17 business day period absent express consent from the non-Designating Party.

18 (c) A Party that receives a timely written objection shall initiate the dispute
19 resolution process under Local Rule 37-1 *et seq.* and must meet and confer with the
20 Designating Party (through direct voice-to-voice dialogue) to try to resolve the matter
21 by agreement within four days of the written objection. If no agreement is reached,
22 within 14 days of the last conference, either Party may seek resolution from the Court
23 in accordance with the Local Rule and the Court's procedures governing discovery
24 disputes. For purposes of moving forward with the challenge to the confidentiality
25 designation, it is the responsibility of the Challenging Party to timely file the moving
26 papers required by Local Rule 37-2 and fulfill any applicable pre-filing requirements
27 imposed by the Court.
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1 In any such proceeding, the Party opposing disclosure to the Expert shall bear
2 the burden of proving that the risk of harm that the disclosure would entail (under
3 the safeguards proposed) outweighs the Receiving Party's need to disclose the
4 Protected Material to its Expert. Confidential Information shall not be disclosed to
5 the expert or consultant until the objection is resolved or if no motion is filed within
6 the 14-day period.

7 **8. PROSECUTION BAR**

8 For purposes of this paragraph, Prosecution Bar Information is information that
9 is designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
10 except that the Prosecution Bar Information does not include financial information.
11 Absent written consent from the Designating Party, any individual who receives
12 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" materials of
13 a technical nature shall not be involved in the prosecution of patents or patent
14 applications relating to lancets, lancing devices, or lancing system, including without
15 limitation the patents asserted in this Action and any patent or application claiming
16 priority to or otherwise related to the patents asserted in this Action, before any
17 foreign or domestic agency, including the United States Patent and Trademark Office.
18 For purposes of this paragraph, "prosecution" includes directly or indirectly drafting,
19 amending, or advising others who are drafting or amending the scope of said patent
20 claims in original prosecution, reissue, reexamination, *inter partes* review or post
21 grant review proceedings. To avoid any doubt, "prosecution" as used in this paragraph
22 does not include representing a party in a proceeding in which a party challenges the
23 validity of a patent before a domestic or foreign agency (including, but not limited to,
24 *inter partes* review or post grant review). All persons who receive Prosecution Bar
25 Information are prohibited from performing, or providing (verbally or in tangible
26 form, in whole or in part) such Confidential Information received under this Order to
27 any person involved in performing the following tasks: (1) drafting or supervising or
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1 providing advice regarding drafting, new or amended claims in any such proceedings;
2 (2) “supervising” refers to directing others how to draft, prosecute, or provide advice
3 regarding the drafting or prosecution, of any patents and applications in the scope of
4 the Prosecution Bar; merely having authority to perform the prohibited tasks does not
5 amount to being ‘involved in’ such tasks for purposes of this Prosecution Bar; and (3)
6 “having claims or disclosures directed to lancet devices, and methods and devices for
7 the delivery thereof” refers to claims and/or disclosures that specifically mention in
8 words or substance lancet devices, and methods and devices for the delivery thereof.
9 This Prosecution Bar does not apply to any in-house counsel designated above who
10 is only provided access to “CONFIDENTIAL” information of an opposing party.

11 This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL
12 – ATTORNEYS’ EYES ONLY” material of a technical nature is first received by the
13 affected individual and shall end two (2) years after Final Disposition of this Action.

14 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
15 **OTHER LITIGATION**

16 If a Receiving Party is served with a subpoena or a court order issued in other
17 litigation that compels disclosure of any information or items designated in this
18 Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY” that Receiving Party must:

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

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

26 (c) cooperate with respect to all reasonable procedures sought to be pursued by
27 the Designating Party whose Protected Material may be affected.
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1 If the Designating Party timely seeks a protective order, the Receiving Party
2 served with the subpoena or court order shall not disclose any information designated
3 in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” before a determination by the court from which the
5 subpoena or order issued, unless the Receiving Party has obtained the Designating
6 Party’s permission. The Designating Party shall bear the burden and expense of
7 seeking protection in that court of its confidential material – and nothing in these
8 provisions should be construed as authorizing or encouraging a Receiving Party in
9 this Action to disobey a lawful directive from another court.

10 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
11 **PRODUCED IN THIS ACTION**

12 10.1 Application. The terms of this Order are applicable to information
13 produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information
15 produced by Non-Parties in connection with this Action is protected by the remedies
16 and relief provided by this Order. Nothing in these provisions should be construed as
17 prohibiting a Non-Party from seeking additional protections.

18 10.2 Notification. In the event that a Party is required, by a valid discovery
19 request, to produce a Non-Party’s confidential information in its possession, and the
20 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s
21 confidential information, then the Party shall:

22 (a) promptly notify in writing the Requesting Party and the Non-Party that
23 some or all of the information requested is subject to a confidentiality agreement with
24 a Non-Party;

25 (b) promptly provide the Non-Party with a copy of the Stipulated Protective
26 Order in this Action, the relevant discovery request(s), and a reasonably specific
27 description of the information requested; and
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1 (c) make the information requested available for inspection by the Non-Party.

2 10.3 Conditions of Production. If the Non-Party fails to seek a protective order
3 from this Court within 14 days of receiving the notice and accompanying information,
4 the Receiving Party may produce the Non-Party's confidential information responsive
5 to the discovery request. If the Non-Party timely seeks a protective order, the
6 Receiving Party shall not produce any information in its possession or control that is
7 subject to the confidentiality agreement with the Non-Party before a determination by
8 the Court. Absent a court order to the contrary, the Non-Party shall bear the burden
9 and expense of seeking protection in this Court of its Protected Material.

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

11 If a Receiving Party or a Producing Party learns that, by inadvertence or
12 otherwise, it has disclosed Protected Material to any person or in any circumstance
13 not authorized under this Stipulated Protective Order, such Party must immediately
14 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its
15 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
16 the person or persons to whom unauthorized disclosures were made of all the terms
17 of this Order, and (d) request such person or persons to execute the "Acknowledgment
18 and Agreement to Be Bound" that is attached hereto as Exhibit A.

19 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

21 The Parties have agreed that, in this lawsuit, they do not intend to disclose
22 privileged information. Pursuant to Federal Rule of Evidence 502(d) and 28 U.S.
23 Code § 1738, any disclosure of privileged information ("Disclosed Privileged
24 Information") shall not constitute in this or any other action a waiver or forfeiture of
25 any privilege otherwise attaching to the Disclosed Privileged Information and its
26 subject matter.

27 Nothing in this Order overrides any attorney's ethical responsibilities to refrain
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1 from examining or disclosing materials that the attorney knows or reasonably should
2 know to be privileged and to inform the Disclosing Party that such materials have
3 been produced.

4 Any party receiving materials that reasonably appear to be privileged
5 information shall not copy, distribute, or otherwise use such materials in any manner
6 and shall provide prompt notice to the Producing Party to afford an opportunity to
7 request return of the materials.

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

18 Within five (5) business days of receiving such a request, a Receiving Party
19 shall return to the Producing Party, or certify the destruction of, all Disclosure or
20 Discovery Material identified by the Producing Party as being protected by a privilege
21 and/or immunity and inadvertently produced. A Receiving Party shall not utilize or
22 disseminate the information contained in the inadvertently produced Disclosure or
23 Discovery Material for any purpose, except for contesting the claimed privilege or
24 immunity.

25 If the Receiving Party wishes to contest the claimed privilege or immunity, the
26 Receiving Party shall provide written notice thereof to the Producing Party within five
27 (5) business days of receipt of the notice of disclosure. The Receiving Party may retain
28

one (1) copy of each Disclosure or Discovery Material at issue, but any such retained copies shall be sequestered and shall not be used for any purpose except to meet and confer with the Producing Party regarding the claimed privilege or immunity and/or to the present information to the Court for a determination regarding the claimed privilege or immunity.

Rule 502. Federal Rule of Evidence (“FRE”) 502(b) is inapplicable to Disclosed Privileged Information, which shall receive the maximum protection afforded by FRE 502(d). Under FRE 502(d) and 28 U.S. Code § 1738, this Order shall be enforceable and granted full faith and credit in all other state and federal proceedings. Any subsequent conflict of law analysis shall apply the law most protective of privilege and work product.

13. MISCELLANEOUS

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

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

13.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5 and all Court orders. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party’s request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court. Civil Local Rule 79-5’s reference to “documents designated by another as confidential pursuant to a protective order” (or the like) encompasses documents designated as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
2 under this Order.

3 **14. FINAL DISPOSITION**

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

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 By: /s/ Jeff Homrig

By: Gerald W. Griffin

23 **LATHAM & WATKINS**

**CARTER LEDYARD & MILBURN
LLP**

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TECHNOLOGIES, LLC*

*Attorneys for Defendant LIFESCAN,
INC.*

SIGNATURE ATTESTATION

I am the ECF User who identification and password are being used to file the foregoing. Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), I hereby attest that the other signatory has concurred in this filing's content and has authorized the filing.

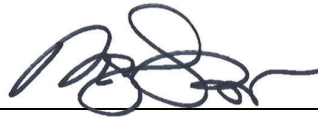
Dated: December 28, 2022

Respectfully submitted,

/s/ Jeff Homrig
Jeff Homrig

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: January 9, 2023



HON. MARGO A. ROCCONI
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *Facet Technologies, LLC v. LifeScan, Inc.*, No. 2:22-cv-01717-MSC-MAR (C.D. Cal.). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of

[print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order. Alternatively, I agree that such service of process may be served upon me by sending it by email to and/or mail to
_____ [mailing address].

Email address: _____

Date: _____

City and State where
sworn and signed: _____

Printed name: _____

Signature: _____