UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BAUSCH & LOMB, INC.; BAUSCH & LOMB IRELAND LIMITED; and EYE THERAPIES, LLC, Plaintiffs, v. SLAYBACK PHARMA LLC AND SLAYBACK PHARMA INDIA LLP, Defendants.	Civil Action No. 21-16766 (MAS) (DEA)

STIPULATED DISCOVERY CONFIDENTIALITY ORDER

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Civil Rule 5.3 Plaintiffs Bausch & Lomb, Inc., Bausch & Lomb Ireland Limited, and Eye Therapies, LLC (collectively, "Plaintiffs") and Defendants Slayback Pharma LLC and Slayback Pharma India LLP (collectively, "Defendants") (Plaintiffs and Defendants collectively, "the Parties"), through their respective counsel, hereby stipulate and agree that discovery in the above-captioned action is likely to involve the disclosure of certain documents, things and information that constitute or contain trade secrets or other confidential research, development or commercial information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), which must be protected in order to preserve legitimate business interests. Accordingly, good cause exists for entry of this Discovery Confidentiality Order pursuant to Fed. R. Civ. P. 26(c) and Local Civil Rule 5.3 to protect against improper disclosure or use of confidential information produced or disclosed in this case. Plaintiffs and Defendant therefore further stipulate and agree, subject to approval of the Court, that the terms and conditions of this Discovery Confidentiality Order ("Order") shall govern the handling of documents, depositions, pleadings, exhibits and all other information exchanged by the Parties in

this litigation, or provided by or obtained from non-parties in this litigation, and this Order shall apply regardless of whether such information was produced prior to or after entry of this Order.

1. Any Party to this litigation and any third-party shall have the right to designate as "Counsels' Eyes Only" in accordance with, and subject to, this Order any information, document, or thing, or portion of any document or thing: (a) that contains trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, (b) that contains private or confidential personal information, (c) that contains information received in confidence from third parties, (d) which the producing Party otherwise believes in good faith to be entitled to protection under Fed. R. Civ. P. 26(c)(1)(G) and Local Civil Rule 5.3, or (e) that contains highly sensitive business or proprietary information, the disclosure of which is highly likely to cause significant harm to the business or competitive position of the designating Party. Any Party to this litigation or any third party covered by this Order, who produces or discloses any Counsels' Eyes Only material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with any of the following legends: "COUNSELS' EYES ONLY," "COUNSELS' EYES ONLY – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER" (hereinafter, "Counsels' Eyes Only"). The Parties agree that any materials that have been or will be produced by any Party in the above-captioned action prior to the entry of this Order, and designated as confidential pursuant to L. Pat. R. 2.2, shall, upon entry of this order, be considered designated as Counsel's Eyes Only pursuant to this Order and treated as such.

2. All Counsels' Eyes Only material shall be used by the receiving Party solely for the purposes of the prosecution or defense of this action or any appeal therefrom. Counsels' Eyes Only material shall not be used by the receiving Party for any other business, commercial,

competitive, or personal purpose. For the avoidance of doubt, individuals who receive Counsels' Eyes Only materials may engage in work before the United States Patent and Trademark Office ("USPTO") except for those activities explicitly prohibited under Paragraph 5, provided no documents or information designated Counsels' Eyes Only are used or disclosed in connection with such work. Counsels' Eyes Only material shall not be disclosed by the receiving Party to anyone other than those set forth in Paragraph 3, unless and until the restrictions herein are removed either by written agreement of counsel for the Parties or by Order of the Court. It is, however, understood that counsel for a Party may give advice and opinions to his or her client solely relating to the above-captioned action and any appeal therefrom based on his or her evaluation of Counsels' Eyes Only material, provided that such advice and opinions shall not reveal the content of such Counsels' Eyes Only material, except by prior written agreement of counsel for the Parties or by Order of the Court. Nothing in this Order precludes a producing Party from using or disseminating its own Counsels' Eyes Only information. If IPR2022-00142 and/or IPR2022-00146 is instituted, the Parties will confer regarding the need for, and appropriate terms of, an agreement permitting the cross-use of Counsel's Eyes Only information in IPR2022-00142 and/or IPR2022-00146.

3. Counsels' Eyes Only material and the contents of Counsels' Eyes Only material may be disclosed only to the following individuals under the following conditions:

a. Outside trial counsel (herein defined as any attorney at Gibbons P.C.; Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.; Windels, Marx, Lane & Mittendorf, LLP; or any other counsel who makes an appearance in the case);

b. Outside experts or consultants (including their staff) retained by outside trial counsel for purposes of this action, provided they have signed a non-disclosure agreement in the

form attached hereto as Exhibit A, and provided that the following are served on opposing counsel of record at least seven (7) calendar days prior to such disclosure: (1) the signed non-disclosure agreement, and (2) a copy of the individuals' *curriculum vitae* or equivalent resume disclosing the individual's employment history and past or present relationship with any of the Parties, including a list of any consulting relationships that the expert or consultant has had with any Party to this action within the past five (5) years (excluding non-testifying litigation consulting, the existence of which is protected by attorney work product immunity);

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

d. The Court and court personnel and all appropriate courts of appellate jurisdiction;

e. Any deponent or witness, during the course of preparing for a deposition or testimony, or during the course of a deposition or testimony, may be shown or examined on any information, document or thing designated Counsels' Eyes Only if it could be reasonably concluded that the deponent or witness authored or received a copy of it in the ordinary course of business, was involved in the subject matter described therein or is employed (or was employed during the relevant time of the document) by the Party who produced the information, document or thing, or if the producing Party consents to such disclosure. A person who is designated to testify on behalf of a producing Party pursuant to Fed. R. Civ. P. 30(b)(6) may be shown Counsels' Eyes Only material of the producing Party during the course of the deposition;

f. Vendors retained by or for the Parties to assist in document hosting or production, and vendors retained by or for the Parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, virtual trial and hearing vendors,

litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and

g. Two designated in-house counsel or representatives collectively for Bausch & Lomb, Inc. and Bausch & Lomb Ireland Limited, one designated in-house counsel or representative for Eye Therapies, LLC, and two designated in-house counsel or representatives collectively for Slayback Pharma LLC and Slayback Pharma India LLP, each of whom has responsibilities in overseeing the conduct of this litigation or participates in decisions with reference to this lawsuit and who are identified via e-mail to opposing counsel of record by name, job title, and a general description of their duties, together with a completed and signed non-disclosure agreement in the form attached hereto as Exhibit A, at least seven (7) calendar days prior to such disclosure. If a Party elects to designate an in-house counsel or representative located outside of the United States, the in-house counsel or representative shall agree to submit to the jurisdiction of the United States District Court for the District of New Jersey for purposes of enforcing the terms of this Order and shall agree to be subject to any sanctions or other remedies that may be imposed by the Court for any violation of the terms of this Order. An in-house counsel or representative may be substituted upon written notification via e-mail to opposing counsel of record identifying the substitute by name, job title, and a general description of the substitute's duties, together with a completed and signed, non-disclosure agreement in the form attached hereto as Exhibit A, and can start to receive Counsels' Eyes Only material or the contents of Counsels' Eyes Only material upon the expiration of seven (7) calendar days of such written notification. A Party may object to the

designation or substitution of an in-house counsel or representative during the aforementioned seven-day (7-day) periods in accordance with the procedure set forth in Paragraph 9 of this Order;

4. **FDA Bar:** Any individual designated under Paragraph 3(a) or 3(g) who receives access to Counsels' Eyes Only material shall not, until the expiration of a period of one year following a final, non-appealable judgment in this litigation, engage directly or indirectly, formally or informally, in the preparation and submission of any Citizen Petition to the FDA or any equivalent foreign agency concerning brimonidine or any formulations containing brimonidine. Notwithstanding the foregoing, such persons may engage in work related solely to obtaining or maintain approval of the receiving Party's own NDA or ANDA. The restrictions under this paragraph ("FDA Bar") will take effect when Counsels' Eyes Only information is received by the impacted individual. The Parties expressly agree that the FDA Bar is personal to the affected individual and shall not be imputed to any attorneys, in-house legal personnel, or other persons at the affected individual's firm or company. It is expressly agreed that attorneys, in-house legal personnel, or other persons who work on this matter who do not receive Counsels' Eyes Only information shall not be subject to the FDA Bar.

5. **Prosecution Bar:** Any individual designated under Paragraph 3(a) or 3(g) who receives access to Counsels' Eyes Only material shall not, until the expiration of a period of one year following a final, non-appealable judgment in this litigation, engage directly or indirectly, formally or informally, in prosecution of a patent application directed to processes or methods of manufacturing brimonidine or brimonidine ophthalmic solutions. For the avoidance of doubt, the restrictions under this paragraph ("Prosecution Bar") do not otherwise prohibit involvement in prosecution of a patent application, including drafting or amending

claims, directed to other subject matter. "Prosecution" includes reissue, reexamination, or supplemental examination, but excludes representing a party in a patent challenge before a domestic or foreign agency (including, but not limited to, an interference, *ex parte* reexamination, an *inter partes* review proceeding brought under 35 U.S.C. § 311 *et seq.*, or post-grant review brought under 35 U.S.C. § 321 *et seq*.). The restrictions under this Prosecution Bar will take effect when Counsels' Eyes Only information is received by the impacted individual. The Parties expressly agree that the Prosecution Bar is personal to the affected individual and shall not be imputed to any attorneys, in-house legal personnel, or other persons at the affected individual's firm or company. It is expressly agreed that attorneys, in-house legal personnel, or other persons who work on this matter who do not receive Counsels' Eyes Only information shall not be subject to the Prosecution Bar. Moreover, nothing shall prevent any attorney or in-house legal personnel from sending prior art to an attorney or in-house legal personnel involved in patent prosecution for purposes of ensuring that such prior art is submitted to the USPTO or foreign equivalent to assist a patent applicant in complying with its duty of candor.

6. Counsels' Eyes Only material shall be used only by individuals permitted access to it under Paragraph 3. Counsels' Eyes Only material, copies thereof, and the information contained therein, shall not be disclosed in any manner to any other individual, until and unless (a) outside trial counsel for the Party asserting confidentiality waives the claim of confidentiality, or (b) the Court orders such disclosure.

7. The recipient of any Counsels' Eyes Only material shall maintain such information in a secure and safe area and shall exercise reasonable and proper care with respect to the storage, custody, use, and/or dissemination of such Counsels' Eyes Only material.

8. With respect to any deposition that may involve a disclosure of Counsels' Eyes Only material of a Party to this action, such Party shall have until thirty (30) days after receipt of the deposition transcript within which to inform all other Parties that portions of the transcript are to be designated Counsels' Eyes Only ("Transcript Designation Period"). The Transcript Designation Period may be extended beyond thirty (30) days by agreement of the Parties and shall terminate before the expiration of thirty (30) days upon a Party informing all other Parties that portions of the transcript are to be designated Counsels' Eyes Only (for example, by designation at the deposition). Unless permitted by agreement of the Parties, no such deposition transcript shall be disclosed to any individual other than the individuals described in Paragraph 3 above and the deponent during the Transcript Designation Period, and no individual attending such a deposition shall disclose the contents of the deposition to any individual other than those described in Paragraph 3 above during the Transcript Designation Period. Upon being informed that certain portions of a deposition are to be designated as Counsels' Eyes Only, all Parties shall immediately cause each copy of the transcript in its custody or control to be appropriately marked and limit disclosure of that transcript in accordance with Paragraphs 3 and 9.

9. If counsel for a Party receiving documents or information designated as Counsels' Eyes Only hereunder objects to such designation of any or all of such items, or if counsel for a Party objects to the designation of any individual under Paragraph 3(b) or 3(g) within the seven-day (7-day) periods specified therein, the following procedure shall apply:

a. Counsel for the objecting Party shall serve on the designating Party or third Party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating Party or third party shall respond in writing to such objection within 14 days, and shall state with

particularity the grounds for designating the individual under Paragraph 3(b) or 3(g), or asserting that the document or information is Counsels' Eyes Only. If no timely written response is made to the objection, the challenged designation will be deemed to be void. If the designating Party or third party makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith in an effort to resolve the dispute.

b. If a dispute as to a designation of an individual under Paragraph 3(b) or 3(g) or a Counsels' Eyes Only designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court initially by telephone or letter, in accordance with Local Civil Rule 37.1(a)(1), before filing a formal motion for an order regarding the challenged designation. With respect to an individual designated under Paragraph 3(b) or 3(g), disclosure shall not be made to the individual pending resolution of the dispute. With respect to the designation of a document or item of information, the document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

10. All requests to seal documents filed with the Court shall comply with Local Civil Rule 5.3. If a Party files a pleading, brief, declaration, or other document that discloses the substance or content of any materials designated Counsels' Eyes Only (including confidential portions of documents or transcripts) in connection with a motion or other written submission, hearing, or trial in this action, the filing Party shall submit the filing under seal, and the Parties shall thereafter comply with the provisions of Local Civil Rule 5.3(c).

11. If the need arises during trial or at any public Hearing or Conference before the Court for any Party to disclose Counsels' Eyes Only information, it may do so only after giving notice to the producing Party and as directed by the Court.

12. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Counsels' Eyes Only material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a Party's claim of confidentiality, either as to the specific information, document or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all Parties to whom the material was disclosed that the material should have been designated Counsels' Eyes Only within a reasonable time after disclosure. Such notice shall constitute a designation of the information, document or thing as Counsels' Eyes Only under this Order. The inadvertent production of documents subject to attorney-client privilege or work product immunity will not waive attorney-client privilege or work product immunity. In addition, the fact that a document was inadvertently produced shall not be used in any manner as evidence in support of any such alleged waiver of attorney-client privilege or work product immunity. If a Party has inadvertently produced a document that it believes in good-faith is subject to a claim of attorney-client privilege or work product immunity, the producing Party shall make a representation in writing that such documents may be subject to the attorney-client privilege or work product doctrine. Any such claim by the producing Party shall be made with sufficient information to meet the requirements of Fed. R. Civ. P. 26(b)(5)(A), including the information subject to the claim, the author, date, address of recipient of the document (if applicable), the claim of privilege or protection being asserted, and the basis for that claim of privilege or protection. If a Party has inadvertently produced a document subject to a claim of attorney-client privilege or work product immunity, upon request, the document and all copies thereof shall be destroyed or returned promptly,

and in no event later than seven (7) calendar days, after a request is made by the producing Party, in accordance with Fed. R. Civ. P. 26(b)(5)(B). Moreover, any notes or summaries, other than those expressly permitted under this section, referring to or relating to any such inadvertently produced document subject to a claim of attorney-client privilege or work product immunity shall be destroyed. Nothing herein shall prevent the receiving Party from preparing a record for its own use containing the date, author, address(es) and such other information as is reasonably necessary to identify the document and generally describe its nature to the Court in any motion to compel production of the document. Such a record of the identity and nature of the document may not be used for any purpose other than for preparing and supporting a motion to compel production of that document in this action. After the return or destruction of the document(s), the receiving Party may challenge the producing Party's claim(s) of attorney-client privilege or work product immunity by raising the issue with the Court.

13. In the event of disclosure of material designated Counsels' Eyes Only to any person not authorized access under this Order, the Party responsible for having made such disclosure, and each Party with knowledge thereof, shall immediately inform counsel for the Party whose material has been disclosed of all known relevant information concerning the nature and circumstances of the disclosure. The Party responsible for improperly disclosing such material shall also promptly take all reasonable measures to retrieve the improperly disclosed material and ensure that no further or greater unauthorized disclosure and/or use thereof is made.

14. No information shall be deemed or considered to be Counsels' Eyes Only material under this Order to the extent that the information is in the public domain, or enters

the public domain through no act or failure to act by the receiving Party, or is already known by the receiving Party through proper means, or is or becomes available to the receiving Party from a source other than the Party asserting confidentiality, rightfully in possession of such information on a non-confidential basis, or is shown to have been independently developed by the receiving Party, or was previously produced or disclosed by the producing Party to the receiving Party or any third party without an obligation of confidentiality.

15. This Order shall not deprive any Party of its right to object to discovery by any other Party or on any otherwise permitted ground. This Order is being entered without prejudice to the right of any Party to move the Court for modification or for relief from any of its terms. Nothing in this Order shall be deemed to bar or preclude any producing Party from seeking additional protection, including, without limitation, an order that certain information may not be discovered at all.

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

17. Upon final conclusion of this action or any appeal or possible appeal therefrom, each Party or other individual subject to the terms hereof shall be under an obligation to destroy or to assemble and to return to the originating source all originals and unmarked copies of documents and things containing Counsels' Eyes Only material, such election to be made by the receiving Party; provided, however, that outside trial counsel may retain, for archival purposes, subject to the provisions of this Order, complete copies of, and copies of all exhibits to, all transcripts, papers filed with the Court, contentions, expert reports, discovery requests and responses, correspondence, and their own work product containing Counsels' Eyes Only

material. For the purposes of this paragraph, "termination of the action" shall mean entry of a final decision from which no appeal (other than a petition to the Supreme Court for a writ of certiorari) has been or can be taken, including entry of a stipulation of dismissal, consent judgment, or other agreed upon settlement between the parties. To the extent a party requests the return of Counsels' Eyes Only material from the Court after the termination of the action, the party shall file a motion seeking such relief.

18. If at any time Counsels' Eyes Only material is subpoenaed by any court, or any arbitral, administrative or legislative body, the person to whom the subpoena is directed shall immediately give written notice thereof to all counsel of record for every Party who has produced such Counsels' Eyes Only material and shall provide each such Party with an opportunity to object to the production of such materials. If the producing Party does not move for a protective order within thirty (30) business days of receiving written notice, the Party to whom the referenced subpoena is directed may produce the materials on or after the date set for production in the subpoena but not prior to the end of the thirty (30) business day notice period.

SO ORDERED on this10th day of March 2022,

DOUGLAS E. ARPERT
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BAUSCH & LOMB, INC.; BAUSCH & LOMB IRELAND LIMITED; and EYE THERAPIES, LLC, Plaintiffs, v. SLAYBACK PHARMA LLC AND SLAYBACK PHARMA INDIA LLP, Defendant.	Civil Action No. 21-16766 (MAS) (DEA) **AGREEMENT TO BE BOUND BY DISCOVERY CONFIDENTIALITY ORDER**

I, _____, being duly sworn, state that:

1. My address is _____.

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

3. My present occupation or job description is _____.

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

5. I will hold in confidence and not disclose to anyone not qualified under the Discovery Confidentiality Order any Counsels' Eyes Only material or any words, summaries, abstracts, or indices of Counsels' Eyes Only information disclosed to me.

6. I will limit use of Counsels' Eyes Only material disclosed to me solely for purposes allowed under the Discovery Confidentiality Order.

7. At the time required by the Discovery Confidentiality Order, I will return all Counsels' Eyes Only Material and summaries, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the Party for whom I was employed or retained.

8. I hereby submit myself to the jurisdiction of the United States District Court for the District of New Jersey for the purpose of enforcing the terms of the Discovery Confidentiality Order and this Agreement.

9. I understand that if I violate the provisions of the Discovery Confidentiality Order, I will be in violation of a Court Order and subject to sanctions or other remedies that may be imposed by the Court and may be liable in a civil action for damages and/or injunctive relief.

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

Dated: _____ _____
[Name]