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June 3, 2020

VIA AIS FILING

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Court Clerk
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Columbia, SC 29211

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SC Court of Appeals

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**RE: Charleston Laboratories, Inc. v. Womble, Carlyle, Sandridge & Rice, LLP
Appellate Case No. 2020-000232**

Dear Ms. Kitchings:

Attached herewith for filing is Appellant Charleston Laboratories, Inc.'s Record on Appeal. Documents 15 through 24, 26 through 41, 43 through 44 and 46 as listed on the Index to the Record on Appeal are CONFIDENTIAL and have been stamped as such per the Consent Confidentiality Order filed February 15, 2018 in the Circuit Court case. The filed Confidentiality Order is attached to this letter for your reference. I have also attached to this filing the Proof of Service certifying that the Record on Appeal has been duly served upon counsel for the Respondents via Email in accordance with The South Carolina Supreme Court Order regarding Operations of the Appellate Court during the Corona Virus Emergency.

Please do not hesitate to contact me if you should have any questions regarding this matter.

Very Truly Yours,

s/Eric S. Bland

Eric S. Bland

ESB/mfs
Enclosure

cc: (via Email)
Robert E. Stepp, Esquire
Benjamin R. Gooding, Esquire
Jasmine D. Smith, Esquire

(via email)
Client
Ronald L. Richter, Jr., Esquire
Scott M. Mongillo, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No. 2017-CP-10-3768
)	
Plaintiff,)	
)	
v.)	CONSENT CONFIDENTIALITY
)	ORDER
Womble, Carlyle, Sandridge & Rice,)	
LLP,)	
)	
Defendant.)	
)	

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 FILED
 CLERK OF COURT

Whereas, the above-referenced parties to this Consent Confidentiality Order have stipulated that certain discovery material is and should be treated as confidential, and have agreed to the terms of this order. Accordingly, it is this 13th day of February, 2018, ORDERED:

1. **Scope.** All documents produced in the course of discovery, all responses to discovery requests, and all deposition testimony and deposition exhibits and any other materials that may be subject to discovery (collectively, “documents”) shall be subject to this Order concerning confidential information as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word “CONFIDENTIAL” on the document in a manner that will not interfere with the legibility of the document and which will permit complete removal of the Confidential designation or, in the case of files that cannot be marked “CONFIDENTIAL,” such as spreadsheets, by adding the word “CONFIDENTIAL” to the title of the file. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate

documents as confidential as otherwise allowed by this Order.

3. **Documents That May be Designated Confidential.** Any party may designate documents as confidential but only after review of the documents by an attorney¹ who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. The certification shall be made concurrently with the disclosure of the documents, using the form attached hereto at **Attachment A**, which shall be executed subject to the standards of Rule 11 of the South Carolina Rules of Civil Procedure. Information or documents that are available in the public sector may not be designated as confidential.

4. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within ten (10) business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

5. **Protection of Confidential Material.**

a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (§ 5.b.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation).

b. **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under

¹ The attorney who reviews the documents and certifies them to be CONFIDENTIAL must be admitted to the Bar of at least one state but need not be admitted to practice in the State of South Carolina and need not apply for *pro hac vice* admission. By signing the certification, counsel submits to the jurisdiction of this court in regard to the certification.

the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment B hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL pursuant to this Order:

- (1) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;
- (2) parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;
- (3) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;
- (4) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and
- (5) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

c. **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this order.

d. **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of documents designated as Confidential under this

Order or any portion of such a document, shall be immediately affixed with the designation “CONFIDENTIAL” if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

6. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.*, in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in Rule 41.1 of the South Carolina Rules of Civil Procedure, or such other rule or procedure as may apply in the relevant jurisdiction. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the court after proper motion pursuant to Rule 41.1 of the South Carolina Rules of Civil Procedure.

7. **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

a. The burden of proving the necessity of a Confidential designation remains with the

party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the Confidential designation.

c. Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

(1) the party who claims that the documents are confidential withdraws such designation in writing;

(2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 7.b. above; or

(3) the court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

8. **Clawback Agreement.** The parties agree that:

Production of any document that, prior to production, was subject to any applicable privilege shall not constitute a waiver of the privilege, provided that the parties comply with the

provisions of this Agreement.

Producing Party

Upon learning that an inadvertent production has occurred, the producing party shall notify the requesting party that the document was inadvertently produced and should have been withheld as privileged. The notice shall identify the document, the portions of the document that were inadvertently produced, and the first known date the document was produced. If the party that produced a document claims that only a portion of the document was inadvertently produced, the party shall provide with the notice of inadvertent production a new copy of the document with the allegedly privileged portions redacted.

Requesting Party

The requesting party is under a good faith obligation to promptly alert the producing party if a document appears on its face or in light of facts known to the requesting party to be privileged.

Upon receipt of the notice of inadvertent production, the requesting party promptly should secure the specified document, any copies of it, and any notes that reproduce, copy, or otherwise disclose the substance of the privileged information. If the requesting party chooses not to contest the assertion of privilege, the requesting party shall promptly return the specified document to the producing party, any copies of it, and any notes that reproduce, copy or other disclose the substance of the privileged information.

In the event the requesting party disputes the assertion of privilege, the parties shall meet and confer and the requesting party shall either: (a) return the material to the producing party or (b) present the information to the Court for an *in camera* inspection or under seal for a determination as to whether the material is protected from disclosure.

Thereafter, the requesting party shall make no direct use of the document or its contents,

unless:

1. The Court declares that the privilege has been waived or the material is not privileged;
2. The parties agree to the use of the document or material; or
3. The document or its contents are obtained by other means, including, but not limited to, other investigation, other discovery process, or a court order.

9. **Treatment on Conclusion of Litigation.**

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Return of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (¶5.d.) shall be returned to the producing party unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be Confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the confidential documents.

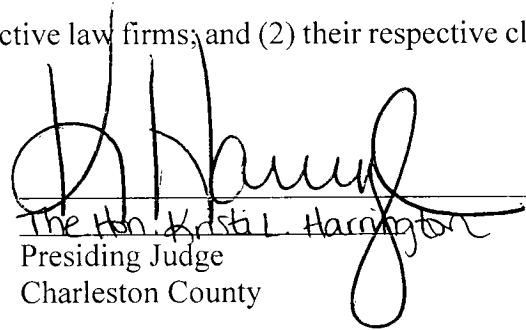
10. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to

intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon: (1) counsel who signed below and their respective law firms; and (2) their respective clients.

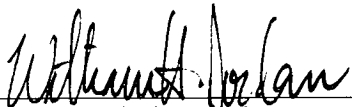
IT IS SO ORDERED.


The Hon. Kristal Harrington
Presiding Judge
Charleston County

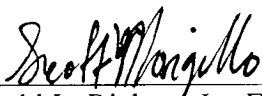
February 13, 2018
Charleston, South Carolina

WE SO MOVE AND CONSENT:

ATTORNEYS FOR THE DEFENDANT

By: 
Tina M. Cundari, Esquire
William H. Jordan, Esquire
SOWELL GRAY ROBINSON STEPP &
LAFFITTE, LLC
1310 Gadsden Street
Columbia, SC 29201

ATTORNEYS FOR THE PLAINTIFF

By: 
Ronald L. Richter, Jr., Esquire
Eric S. Bland, Esquire
Scott M. Mongillo, Esquire
BLAND RICHTER, LLP
18 Broad Street, Mezzanine Level
Charleston, SC 29401

by [signature] at express permission.

ATTACHMENT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No. 2017-CP-10-3768
)	
Plaintiff,)	
)	
v.	)	CERTIFICATION BY COUNSEL OF
	)	DESIGNATED CONFIDENTIAL
	)	INFORMATION
Womble, Carlyle, Sandridge & Rice,)	
LLP,)	
)	
Defendant.)	
)	

Documents produced herewith **[whose bates numbers are listed below (or) which are listed on the attached index]** have been marked as CONFIDENTIAL subject to the Confidentiality Order entered in this action which Order is dated _____.

By signing below, I am certifying that I have personally reviewed the marked documents and believe, based on that review that they are properly subject to protection under the terms of Paragraph 3 of the Confidentiality Order.

Check and complete one of the two options below.

- I am a member of the Bar of the State of South Carolina. My Bar number is _____.

- I am not a member of the South Carolina Bar but am admitted to the bar of one or more states. The state in which I conduct the majority of my practice is _____ where my Bar number is _____. I understand that by completing this certification I am submitting to the jurisdiction of this South Carolina court as to any matter relating to this certification.

Date: _____

Signature of Counsel

ATTACHMENT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No. 2017-CP-10-3768
)	
Plaintiff,)	
)	
v.	)	ACKNOWLEDGMENT OF
	)	UNDERSTANDING AND
Womble, Carlyle, Sandridge & Rice,	)	AGREEMENT TO BE BOUND
LLP,)	
)	
Defendant.)	
_____)	

The undersigned hereby acknowledges that he or she has read the Consent Confidentiality Order dated _____, in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of South Carolina state courts in matters relating to the Consent Confidentiality Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Stipulated Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____

Signature



**SOWELL GRAY
ROBINSON**

Litigation + Business

WILLIAM H. JORDAN

DIRECT 803 231.7815 DIRECT FAX 803 231.7867

wjordan@sowellgray.com

February 5, 2018

The Honorable Kristi Lea Harrington
Chief Administrative Judge, Ninth Judicial Circuit
300B California Avenue
Monks Corner, South Carolina 29461

Re: Charleston Laboratories, Inc. v. Womble, Carlyle, Sandridge & Rice, LLP
Civil Action No.: 2017-CP-10-3768
SGR File No.: 7055/1500

Dear Judge Harrington:

Enclosed for your consideration please find a proposed Consent Confidentiality Order in the above-referenced matter. If the order meets with your approval, please sign it and file it with the Clerk of Court.

Please let me know if you need anything further.

Sincerely,

William H. Jordan

Enclosure

cc: By e-mail:
Ronald L. Richter, Jr., Esq.
Scott M. Mongillo, Esq.
Eric S. Bland, Esq.