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<p>FILED CLERK, U.S. DISTRICT COURT</p> <p>AUG 30 2011</p> <p>CENTRAL DISTRICT OF CALIFORNIA BY  DEPUTY</p>
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT WARCHOLIK, CHARLES
BRAND, SHELLY CRAMER,
KIMBERLY BECK and DONNA
DIAZ, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

VIZIO, INC., a California corporation,
Defendant.

Case No. CV11-03485 VBF (Ex)

~~PROPOSED~~ ORDER
GRANTING STIPULATED
PROTECTIVE ORDER

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[PROPOSED] ORDER

Having read and considered the parties' joint stipulation re protective order, and good cause shown, the Court hereby enters the following protective order:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action will involve production of confidential, proprietary or otherwise private manufacturing, procurement, financial, design, marketing and other information for which special protection from public disclosure and from use for any purpose other than litigating this action may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order (the "Order"). The parties acknowledge that this Order does not confer blanket protection on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 11 hereof, that this Order creates no entitlement to file confidential information under seal; Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the Court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including, for corporate entities, all officers, directors, employees, consultants, retained experts and counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored or maintained (including, inter alia, testimony, transcripts, electronically stored information and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.3 "CONFIDENTIAL" Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection

1 under the standards developed pursuant to Rule 26(c) of the Federal Rules of Civil
2 Procedure.

3 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party in this action.

5 2.5 Producing Party: a Party or non-party that produces Disclosure or
6 Discovery Material in this action.

7 2.6. Designating Party: a Party or non-party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL.”

10 2.7 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.8. Counsel: attorneys who are retained to represent or advise a Party in this
13 action, including in-house counsel (and their support staff).

14 2.9 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as
16 an expert witness or consultant in this action and who is not a past or a current
17 employee of a Party, or a current employee of a competitor of a Party and who, at
18 the time of retention, is not anticipated to become an employee of a Party or a
19 competitor of a Party. This definition includes a professional jury or trial
20 consultant retained in connection with this litigation.

21 2.10 Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying; videotaping; translating; preparing exhibits or
23 demonstrations; organizing, storing, retrieving and processing data in any form or
24 medium) and their employees and subcontractors.

25 3. SCOPE

26 The protections conferred by this Order cover not only Protected Material but
27 also any information copied or extracted in whole or in part therefrom, as well as all
28 copies, excerpts, summaries or compilations thereof, plus testimony, conversations

1 or presentations by Parties or Counsel in court or other settings that might reveal
2 Protected Material. However, the protections conferred by this Stipulation and
3 Order do not cover the following information: (a) any information that is in the
4 public domain at the time of disclosure to a Receiving Party or becomes part of the
5 public domain after its disclosure to a Receiving Party as a result of publication not
6 involving a violation of this Order, including becoming part of the public record
7 through trial or otherwise; and (b) any information known to the Receiving Party
8 prior to the disclosure or obtained by the Receiving Party after the disclosure from a
9 source who obtained the information lawfully and under no obligation of
10 confidentiality to the Designating Party. Any use of Protected Material at trial shall
11 be governed by a separate agreement or order.

12 **4. DURATION**

13 Even after the final disposition of this litigation, the confidentiality
14 obligations imposed by this Order shall remain in effect until a Designating Party
15 agrees otherwise in writing or a court order otherwise directs. Final disposition
16 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
17 action, with or without prejudice; or (2) final judgment herein after the completion
18 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
19 including the time limits for filing any motions or applications for extension of time
20 pursuant to applicable law.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**
23 Each Party or non-party that designates information or items for protection under
24 this Order must take care to limit any such designation to the specific material that
25 qualifies under the appropriate standards.

26 The Designating Party must designate for protection only those parts of
27 material, documents, items, or oral or written communications that qualify – so that
28 other portions of the material, documents, items, or communications for which

1 protection is not warranted are not swept unjustifiably within the ambit of this
2 Order.

3 Designations shall be made in good faith; indiscriminate or routinized
4 designations are prohibited.

5 If it comes to a Party's or a non-party's attention that information or items
6 that it designated for protection do not qualify for protection, that Party or non-
7 party must promptly notify all other parties that it is withdrawing the mistaken
8 designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order, or as otherwise stipulated or ordered, material that qualifies for
11 protection under this Order must be clearly so designated before the material is
12 disclosed or produced. Designation in conformity with this Order requires:

13 (a) for information in documentary form (apart from transcripts of
14 depositions or other pretrial or trial proceedings), that the Producing Party affix the
15 legend "CONFIDENTIAL" at the top or bottom of each page that contains
16 Protected Material. If only a portion or portions of the material on a page qualifies
17 for protection, the Producing Party also must clearly identify the protected
18 portion(s) (i.e., by making appropriate markings in the margins).

19 (b) for testimony given in deposition or in other pretrial or trial proceedings,
20 that the Party or non-party offering or sponsoring the testimony identify in one of
21 two ways all portions of the testimony that qualify as "CONFIDENTIAL": (1)
22 identify on the record, before the close of the deposition, hearing or other
23 proceeding, all portions of the testimony that qualify as "CONFIDENTIAL;" or (2)
24 identify in writing within twenty (20) business days of receipt of the final transcript
25 those specific portions of the testimony that qualify as "CONFIDENTIAL."
26 Following the deposition, hearing or other proceeding, all portions of the transcript,
27 and all exhibits thereto, shall be afforded "CONFIDENTIAL" treatment until the
28 Designating Party identifies in writing those portions as to which protection is

1 being asserted, or until the 20-business day period has passed, whichever comes
2 first.

3 (c) for information produced in some form other than documentary, and for
4 any other tangible items, that the Producing Party affix in a prominent place on the
5 exterior of the container(s) in which the information or item is stored the legend
6 “CONFIDENTIAL.” If only portions of the information or item warrant
7 protection, the Producing Party, to the extent practicable, shall identify the
8 protected portions.

9 5.3 Inadvertent Failures to Designate. Inadvertent failure to designate
10 qualified information or items as “CONFIDENTIAL” shall not waive the
11 Designating Party’s right to secure protection under this Order for such material. If
12 material is appropriately designated as “CONFIDENTIAL” within five (5) business
13 days of discovery of the failure to so designate the material, the Receiving Party(s),
14 on timely notification of the designation, shall make all reasonable efforts to ensure
15 that the material is treated in accordance with the provisions of this Order.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
18 Party’s confidentiality designation is necessary to avoid foreseeable substantial
19 unfairness, unnecessary economic burdens or a later significant disruption or delay
20 of the litigation, a Party does not waive its right to challenge a confidentiality
21 designation by electing not to mount a challenge promptly after the original
22 designation is disclosed.

23 6.2 Meet and Confer. Any dispute concerning confidentiality designations
24 will be subject to the meet and confer requirements of Local Rule 37-1.

25 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
26 Court intervention, disputes concerning confidentiality designations shall be
27 submitted to the Court pursuant to Local Rule 37-2 (and in compliance with Local
28 Rule 79-5, if applicable). Until the Court rules on the challenge, all Parties shall

1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party's designation.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a non-party in connection with this
6 case only for prosecuting, defending or attempting to settle this litigation. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. After final disposition of the litigation, a
9 Receiving Party must comply with the provisions of Section 12 hereof (FINAL
10 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 Counsel, as well as employees of said Counsel to
19 whom it is reasonably necessary to disclose the information for this litigation and
20 who have signed the "Agreement to Be Bound by Protective Order" attached hereto
21 as Exhibit A;

22 (b) Experts of the Receiving Party to whom disclosure is reasonably
23 necessary for this litigation and who have signed the "Agreement to Be Bound by
24 Protective Order" (Exhibit A). When an Expert of the Receiving Party signs
25 Exhibit A, the Receiving Party shall retain the original, executed Exhibit A. Upon
26 identification of any such Expert, pursuant to Rule 26(a)(2), the Receiving Party
27 shall concurrently provide a copy of the executed Exhibit A;

28 (c) the Court and its personnel;

1 (d) court reporters, their staffs and Professional Vendors to whom disclosure
2 is reasonably necessary for this litigation and who have signed the “Agreement to
3 Be Bound by Protective Order” (Exhibit A);

4 (e) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary and who have signed the “Agreement to Be Bound by
6 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or
7 exhibits to depositions that reveal Protected Material may not be disclosed to
8 anyone except as permitted under this Order; and

9 (f) the author of the document or the original source of the information.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
11 OTHER LITIGATION.

12 If a Receiving Party is served with a subpoena or order issued in other
13 litigation that would compel disclosure of any information or items designated in
14 this action as “CONFIDENTIAL,” the Receiving Party must so notify the
15 Designating Party in writing, immediately and in no event more than three (3)
16 business days after receiving the subpoena or order. Such notification must include
17 a copy of the subpoena or order.

18 The Receiving Party also must immediately and in no event more than three
19 (3) business days after receipt of the subpoena or order inform in writing the party
20 who caused the subpoena or order to issue in the other litigation that some or all the
21 material covered by the subpoena or order is the subject of this Order. The
22 correspondence must include a copy of this Order. The Receiving Party shall not
23 under any circumstances disclose or otherwise make available any Protected
24 Material earlier than the noticed date of production.

25 The purpose of imposing these duties is to alert the interested parties to the
26 existence of this Order and to afford the Designating Party an opportunity to try to
27 protect its confidentiality interests in the court from which the subpoena or order
28 issued. The Designating Party shall bear the burden and the expense of seeking

1 protection in that court of its confidential material, and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this action
3 to disobey a lawful directive from another court. The Producing Party shall
4 reasonably cooperate with the Designating Party in that regard.

5 **9. MATERIAL COVERED BY CONFIDENTIALITY AGREEMENTS WITH**
6 **THIRD PARTIES OR OTHER PROTECTIVE ORDERS**

7 Where information requested is protected by a confidentiality agreement or
8 protective order with a Third Party, such information shall be produced under the
9 guidelines set forth in this Order, unless production would violate an existing
10 agreement with a Third Party or an order issued by another court, in which case the
11 Producing Party shall provide the Receiving Party with a copy of the other
12 agreement and/or court order and a description of the documents being withheld
13 pursuant to such agreement or order.

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

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or entity or in any circumstance not authorized
17 under this Order, the Receiving Party must immediately (a) notify in writing all
18 Parties, including the Designating Party, of the unauthorized disclosures and all
19 facts relating thereto, (b) use its best efforts to retrieve all copies of the Protected
20 Material, (c) inform the person or entity to which unauthorized disclosure was made
21 of the terms of this Order, and (d) request that such person or entity execute the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
23 A. Upon motion, the Court may order such further and additional relief as it deems
24 appropriate and just.

25 **11. FILING PROTECTED MATERIAL**

26 Without written permission from the Designating Party or a court order
27 secured after appropriate notice to all interested persons, a Party may not file in the
28 public record any Protected Material. A Party that seeks to file under seal any

1 Protected Material must comply with Local Rule 79-5. If a Receiving Party's
2 request to file Protected Material under seal pursuant to Local Rule 79-5 is denied
3 by the Court, then the Receiving Party may file the Protected Material in the public
4 record unless otherwise instructed by the Court.

5 12. FINAL DISPOSITION

6 Unless otherwise ordered or agreed in writing by the Producing Party, within
7 sixty (60) days after the final disposition of this action, each Receiving Party must
8 return to the Producing Party or destroy all Protected Material. As used in this
9 section, "all Protected Material" includes all copies, abstracts, compilations,
10 summaries or any other form of reproducing or capturing, in whole or in part, any
11 Protected Material. Whether the Protected Material is returned or destroyed, the
12 Receiving Party must submit a written certification to the Producing Party (and, if
13 not the same person or entity, to the Designating Party) by the thirty-day deadline
14 that identifies (by category, where appropriate) all Protected Material that was
15 returned or destroyed and that affirms that the Receiving Party has not retained any
16 copies, abstracts, compilations, summaries or other forms of reproducing or
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel
18 are entitled to retain an archival copy of all pleadings, motion papers, transcripts,
19 legal memoranda, correspondence and attorney work product, even if such
20 materials contain Protected Material. Any such archival copies that contain or
21 constitute Protected Material remain subject to this Order.

22 13. MISCELLANEOUS

23 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 Party to seek its modification by the Court in the future.

25 13.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Order, no Party waives any right it otherwise would have to object to disclosing or
27 producing any information or item on any ground not addressed in this Order.

28

1 Similarly, no Party waives any right to object on any ground to use in evidence of
2 any material covered by this Order.

3 13.3 This Order need not be signed and entered by the Court to be effective;
4 the Order shall be effective and binding on the Parties as of and from the date
5 executed by the undersigned counsel.

6 13.4 This Order is intended solely to facilitate the preparation for and trial of
7 this action, and shall not:

8 13.4.1 Operate as an admission by any Party that any Protected
9 Material actually constitutes or contains confidential or proprietary information in
10 contemplation of law;

11 13.4.2 Operate as an admission by any Party that the restrictions and
12 processes set forth herein constitute adequate protection for any particular Protected
13 Material; provided, however, no interpretation of this provision shall render the
14 protections afforded by other provisions of this Order meaningless or inapplicable;

15 13.4.3 Operate as a waiver of any attorney-client privilege, work
16 product protection or other applicable privilege and/or protection, or operate as
17 waiver of the right to protect the inadvertent disclosure of information that is
18 attorney-client privileged or protected under the work product doctrine or other
19 applicable privilege and/or protection;

20 13.4.4 Prejudice in any way the right of any Party to object to the
21 production of Discovery Material they consider not subject to discovery;

22 13.4.5 Prejudice in any way the right of any Party to object to the
23 authenticity or admissibility into evidence of any Discovery Material;

24 13.4.6 Prejudice in any way the right of any Party to request that
25 particular Protected Material be treated more restrictively than otherwise provided
26 for herein, and, absent agreement of the Parties, to petition the Court for a further
27 protective order relating to any such Protected Material;

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1 13.4.7 Prejudice in any way the right of any Party to seek a court
2 determination as to whether Discovery Material should be subject to the terms of
3 this Order; or

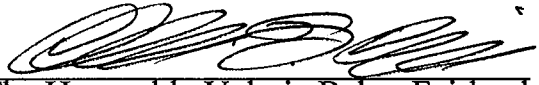
4 13.4.8 Prevent the Parties from agreeing to alter or waive the
5 provisions or protections provided for herein with respect to particular Discovery
6 Material.

7 13.5 Notwithstanding any provision herein to the contrary, this Order shall
8 have no effect upon, and shall not apply to, a Party's use of its own Protected
9 Material;

10 13.6 In the event a new Party joins or is joined in this action, that new Party
11 shall not have access to any Protected Material until it has executed Exhibit A
12 hereto.

13 **IT IS SO ORDERED.**

14
15 DATED: 8/30/11


The Honorable Valerie Baker Fairbank
United States District Judge
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

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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 (the
“Order”) that was issued by the United States District Court for the Central District
of California in the case of *Warcholik v. Vizio, Inc.*, Case No. CV 11-03485 VBF
(Ex). I agree to comply with and to be bound by all the terms of this 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 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
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 Order.

Date: _____
Printed name: _____
Signature: _____

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