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17 **UNITED STATES DISTRICT COURT**  
 18 **CENTRAL DISTRICT OF CALIFORNIA**  
 19 **WESTERN DIVISION**

21 SPARK NETWORKS USA, LLC,  
 22 Plaintiff,  
 23 vs.  
 24 HUMOR RAINBOW, INC., ZOOSK,  
 INC.,  
 25 Defendants.

CASE NO. 2:11-CV-01430 JHN (JEM)

**[PROPOSED] STIPULATED  
 PROTECTIVE ORDER**

[Discovery Document: referred to  
 Magistrate Judge John E. McDermott]

Discovery Cutoff: November 15, 2011  
 Trial Date: April 17, 2012

1 **PROTECTIVE ORDER**

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3 The parties to the above-captioned action desire to expedite the flow of  
4 discovery materials, to facilitate the prompt resolution of disputes over  
5 confidentiality of discovery materials, to adequately protect information the parties  
6 are entitled to keep confidential, to ensure that only materials the parties are entitled  
7 to keep confidential are subject to such treatment, and to ensure that the parties are  
8 permitted reasonable necessary uses of such materials in preparation for and in the  
9 conduct of trial. Accordingly, pursuant to Fed. R. Civ. P. 26(c) and any other  
10 applicable rule of this Court, it is hereby stipulated by and between the parties  
11 through their respective counsel of record, and **ORDERED THAT** the following  
12 protective order (“Protective Order”) be entered to give effect to the agreed-upon  
13 terms and conditions to protect confidential information during discovery and trial.  
14 Unless modified, superseded or terminated pursuant to the terms contained in this  
15 Order, this Protective Order shall remain in effect through the conclusion of this  
16 litigation and thereafter as set forth below.

17 **Good Cause Statement**

18 The parties believe that good cause exists for the entry of this Protective  
19 Order because they are competitors in the marketplace and because, in addition to  
20 materials designated “Confidential Material,” materials designated as “Confidential  
21 – Outside Counsel Only” or “Highly Restricted Confidential” (Computer Source  
22 Code) constitute trade secret or other confidential information the disclosure of  
23 which is likely to have the effect of harming the competitive position of the  
24 Designating Party or violating an obligation of confidentiality to a third party.

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1 In support of this Protective Order, THE COURT FINDS THAT:

2 I. Documents and/or information containing confidential research,  
3 development, business and/or commercial information and/or trade secrets within  
4 the meaning of Rule 26(c) (“Confidential Information”) are likely to be disclosed or  
5 produced during the course of discovery in this litigation;

6 II. The parties to this litigation, Plaintiff Spark Networks USA, LLC  
7 (“Plaintiff”) and Defendant Zoosk, Inc. (“Defendant”), may assert that public  
8 dissemination and disclosure of Confidential Information could severely injure or  
9 damage the party disclosing or producing the Confidential Information and/or could  
10 place that party at a competitive disadvantage;

11 III. Counsel for the party or parties receiving Confidential Information are  
12 presently without sufficient information to accept the representation(s) made by the  
13 party or parties producing Confidential Information as to the confidential,  
14 proprietary, and/or trade secret nature of such Confidential Information; and

15 IV. To protect the respective interests of the parties and to facilitate the  
16 progress of disclosure and discovery in this case, the following Protective Order  
17 should be entered.

18 IT IS THEREFORE ORDERED THAT:

19 1. This Protective Order shall apply to all information, documents and  
20 things subject to discovery in this Action produced either by a party or a non-party  
21 in discovery in this Action (“Action” shall include without limitation this litigation  
22 and any adjunct subpoena proceedings incident hereto before any tribunal)  
23 including, without limitation, testimony adduced at deposition upon oral  
24 examination or upon written questions, answers to interrogatories, documents and  
25 things produced, information obtained from inspection of premises or things, and  
26 answers to requests for admission, or information disclosed pursuant to subpoena  
27 under Fed. R. Civ. P. 45 (“Discovery Material”). This Protective Order shall apply  
28 to non-parties, who shall be treated for purposes of this Protective Order as parties.



1           5.     The parties may designate as CONFIDENTIAL – OUTSIDE  
2 CONFIDENTIAL ONLY those Confidential Materials that contain Confidential  
3 Information that is especially sensitive and could cause significant competitive harm  
4 if disclosed to an unauthorized person, including, without limitation, pending but  
5 unpublished patent applications, information concerning research, development and  
6 other activities related to unreleased products, license agreements and other highly  
7 confidential technical, research and development, business strategy, and financial  
8 information. These designations shall be made in good faith. The parties shall label  
9 or mark each such document or thing with the following term:

10                                   **“CONFIDENTIAL – OUTSIDE COUNSEL ONLY”**

11           6.     The parties may designate as HIGHLY RESTRICTED  
12 CONFIDENTIAL those Confidential Materials that contain Computer Source Code.  
13 As used herein, the term “Computer Source Code” means computer source code or  
14 similarly highly confidential programming statements and/or instructions that in  
15 general are converted into machine language – or used in support of converting  
16 source code into machine language – by compilers, assemblers, or interpreters, and  
17 source code comments revision histories, and data that are held by a party within its  
18 source code control system. These designations shall be made in good faith. Design  
19 documents, product and program specifications, and similar documents such as flow  
20 charts and functional diagrams, generally are not “Computer Source Code,” shall  
21 not be designated as HIGHLY RESTRICTED CONFIDENTIAL, and shall be  
22 treated and produced consistent with documents designated at levels of  
23 confidentiality lower than the HIGHLY RESTRICTED CONFIDENTIAL  
24 designation. The parties acknowledge that because of the highly sensitive nature of  
25 Computer Source Code and because of the ease with which electronic media may be  
26 copied, transported, or stolen, a distinct level of protection is required for Computer  
27 Source Code as to which CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
28 designation would not provide adequate protection to the interests of the designating

1 party and whose wrongful dissemination could result in irreparable harm to the  
2 designating party. The parties shall label or mark each such document or thing with  
3 the following term:

4 **“HIGHLY RESTRICTED CONFIDENTIAL”**

5 7. The labeling or marking of a document or tangible thing with the  
6 designation CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL ONLY,  
7 or HIGHLY RESTRICTED CONFIDENTIAL shall be made when a copy of the  
8 document or thing is provided to the receiving party by placing the legend  
9 “CONFIDENTIAL,” “CONFIDENTIAL – OUTSIDE COUNSEL ONLY,” or  
10 “HIGHLY RESTRICTED CONFIDENTIAL,” on the face of each such document  
11 or thing. Any such designation that is inadvertently omitted or misdesignated may  
12 be corrected by written notification to counsel for the receiving party, and the  
13 receiving party shall thereafter mark and treat the materials as CONFIDENTIAL,  
14 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED  
15 CONFIDENTIAL, as appropriate, and such material shall be subject to this  
16 Protective Order as if it had been initially so designated. If, prior to receiving such  
17 notice, the receiving party has disseminated the Confidential Material to individuals  
18 not authorized to receive it hereunder, it shall make a reasonable effort to retrieve  
19 the Confidential Material or to otherwise assure that the recipient(s) properly mark  
20 the Confidential Material and maintain the confidentiality of the Confidential  
21 Material, but shall have no other responsibility or obligation with respect to the  
22 information disseminated.

23 8. In the case of deposition upon oral examination or written questions,  
24 such testimony shall be deemed CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
25 until the expiration of thirty (30) days after receipt by the designating party of the  
26 final deposition transcript unless otherwise designated at the time of the deposition  
27 or during the thirty (30) day period. Pages or entire transcripts of testimony given at  
28 a deposition or hearing may be designated as containing CONFIDENTIAL,

1 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED  
2 CONFIDENTIAL information by an appropriate statement either at the time of the  
3 giving of such testimony or by written notification within thirty (30) days after  
4 receipt by the designating party of the final the final deposition. If the testimony is  
5 not otherwise designated at the time of the deposition or during the thirty (30) day  
6 period after receipt by the designating party of the final deposition transcript, the  
7 testimony will be deemed to not be Confidential Material.

8 9. In the case of written discovery responses and the information  
9 contained therein, the responses may be designated as containing CONFIDENTIAL,  
10 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED  
11 CONFIDENTIAL information by means of a statement prominently associated with  
12 each response that contains such information specifying the level of designation of  
13 the Confidential Information and by placing a legend on the front page of such  
14 discovery responses stating: “CONTAINS [the highest level of designation  
15 contained in the answers].” Any such designation that is inadvertently omitted or  
16 misdesignated may be corrected within thirty (30) days of service of such discovery  
17 responses by written notification to counsel for the receiving party, and the  
18 receiving party shall thereafter mark and treat the materials as CONFIDENTIAL,  
19 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED  
20 CONFIDENTIAL, as appropriate, and such material shall be subject to this  
21 Protective Order as if it had been initially so designated. If, prior to receiving such  
22 notice, the receiving party has disseminated the Confidential Material to individuals  
23 not authorized to receive it hereunder, it shall make a reasonable effort to retrieve  
24 the Confidential Material or to otherwise assure that the recipient(s) properly mark  
25 and maintain the confidentiality of the Confidential Material, but shall have no other  
26 responsibility or obligation with respect to the information disseminated.

27 10. In the case of Confidential Information not reduced to documentary or  
28 tangible form or which cannot be conveniently designated as set forth above, such

1 information may be designated CONFIDENTIAL, CONFIDENTIAL – OUTSIDE  
2 COUNSEL ONLY, or HIGHLY RESTRICTED CONFIDENTIAL information by  
3 informing the receiving party of the designation in writing either at the time of  
4 transfer of such information or within thirty (30) days after the transfer of such  
5 information.

6 11. Any documents or tangible things made available for inspection prior  
7 to producing copies of selected items shall initially be deemed CONFIDENTIAL –  
8 OUTSIDE COUNSEL ONLY unless otherwise designated at the time of inspection  
9 and shall be subject to this Protective Order. Thereafter, the producing party shall  
10 have a reasonable time to review and designate the documents as set forth in  
11 paragraph 7 above prior to furnishing copies to the receiving party.

12 12. Disclosure of CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
13 Material. Material designated as CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
14 and any information contained therein shall be disclosed only to the following  
15 persons:

16 a. Counsel of record in this action for the receiving party, including  
17 both local and trial counsel.

18 b. Employees and agents of such counsel including paralegals,  
19 litigation support services, secretarial and clerical staff as well as the  
20 following categories of persons provided that such persons have no  
21 involvement in addressing any matter regarding the substantive issues in the  
22 case: independent legal translators retained to translate in connection with this  
23 action; independent stenographic reporters and videographers retained to  
24 record and transcribe testimony in connection with this action; graphics,  
25 translation, or design services retained by counsel of record for purposes of  
26 preparing demonstrative or other exhibits for deposition, trial, or other court  
27 proceedings in this action; and non-technical jury or trial consulting services  
28 (expressly excluding mock jurors);



1 c. The Court, its personnel and stenographic reporters (with such  
2 CONFIDENTIAL – OUTSIDE COUNSEL ONLY Material having been filed  
3 under seal or with other suitable precautions as determined by the Court);

4 d. At a deposition or at trial, any person who authored or previously  
5 received the Confidential Material and, subject to timely objection including  
6 objection that such person is not internally authorized to receive such  
7 information, any person currently employed by the designating party; and

8 e. Any independent experts or consultants, and employees and  
9 assistants under the control of such expert or consultant, who (1) are engaged  
10 by counsel of record in this action, whether or not such expert or consultant is  
11 paid directly by a party, and (2) are not regularly employed by or associated  
12 with a party hereto, other than by the designating party, provided however  
13 that disclosure to such persons shall be made only on the conditions set forth  
14 in paragraphs 15 and 16 below.

15 13. Disclosure of CONFIDENTIAL Material. CONFIDENTIAL material  
16 and any information contained therein may be disclosed to the persons designated in  
17 paragraphs 12(a)-(e) above.

18 14. Disclosure of HIGHLY RESTRICTED CONFIDENTIAL Material.  
19 HIGHLY RESTRICTED CONFIDENTIAL material and any information contained  
20 therein may be disclosed only to the following persons and in strict accordance with  
21 the following procedures:

22 a. HIGHLY RESTRICTED CONFIDENTIAL material, to the  
23 extent in electronic format, may at the option of the producing party be  
24 provided on two standalone computers with all ports, software and other  
25 avenues that could be used to copy or transfer such data blocked (“Standalone  
26 Computers”). The Standalone Computers will enable two persons separately  
27 to access simultaneously copies of the Computer Source Code. The  
28 Standalone Computers shall be maintained in the sole control and custody of

1 counsel of record for the producing party and shall be maintained in the  
2 United States at an office of counsel of record for the producing party that is  
3 at a convenient location for the receiving party or at such other location as  
4 shall be mutually agreed to by the parties. A designating party shall make its  
5 Computer Source Code available for inspection by those individuals acting  
6 for the receiving party who are authorized under this Order to have access to  
7 information designated HIGHLY RESTRICTED CONFIDENTIAL.

8 b. HIGHLY RESTRICTED CONFIDENTIAL material, to the  
9 extent not in electronic format, shall be designated using the same processes  
10 applied to CONFIDENTIAL and CONFIDENTIAL – OUTSIDE COUNSEL  
11 ONLY materials described in paragraphs 7-10 above.

12 c. Only persons designated under paragraph 12(a) and 12(e) above  
13 shall have access to the Standalone Computers, provided, however, that the  
14 following additional restrictions shall apply to such access:

15 i. The designating party must allow access to the Standalone  
16 Computers containing its Computer Source Code on reasonable terms  
17 and after reasonable notice by the requesting party. Generally,  
18 reasonable terms and notice are as follows: the Computer Source Code  
19 should be made available during regular business hours (9:00 a.m. to  
20 6:00 p.m. local time), so long as notice is provided to the designating  
21 party by not later than 10:00 a.m. local time two days prior to the day  
22 upon which access is desired. The requesting party shall make its best  
23 efforts to restrict its access to normal business hours. Counsel of record  
24 for the receiving party shall provide with the notice a list of individuals,  
25 including attorneys, seeking to access such Standalone Computers and  
26 the designating party shall have the right to object to such access in  
27 accordance with paragraph 16 herein; and  
28

1           ii.       Each time a person accesses the Standalone Computers,  
2           the person shall sign a sign-in sheet prior to, and a sign-out sheet  
3           subsequent to, accessing the Standalone Computers, including the name  
4           of the person accessing, the date and time in and out, and whether any  
5           hard copies were made.

6           d.       The receiving party shall not have the right to, and agrees not to,  
7           copy, transmit or duplicate HIGHLY RESTRICTED CONFIDENTIAL  
8           materials in any manner, including scanning or otherwise creating an  
9           electronic image of the HIGHLY RESTRICTED CONFIDENTIAL materials,  
10          except as set forth herein:

11           i.       A laser printer with an adequate paper supply shall be  
12          attached to the Standalone Computers and the receiving party shall  
13          make no more than 500 total pages of hard copies of HIGHLY  
14          RESTRICTED CONFIDENTIAL material that they in good faith  
15          consider to be necessary to proving the elements of their case. In the  
16          event that the receiving party feels that this disclosure is inadequate, it  
17          may ask the producing party to permit additional pages of hard copies  
18          of HIGHLY RESTRICTED CONFIDENTIAL materials. If the  
19          producing party refuses, the receiving party may petition the Court for  
20          additional pages after reasonable time for review by the receiving  
21          party's expert.

22           ii.       Whenever hard copies are made, copies of the hard copies  
23          shall be provided to counsel for the producing party along with an  
24          identification of when the copies were made and who made them.

25           iii.       Any hard copies shall be conspicuously marked HIGHLY  
26          RESTRICTED CONFIDENTIAL in conformity with paragraphs 6-10  
27          above, and the producing party shall have the right to annotate the hard  
28          copies with production Bates numbers.

1           iv.       The receiving party shall keep a log including: (a) the  
2           custodian of each copy of any HIGHLY RESTRICTED  
3           CONFIDENTIAL materials; and (b) the name of all persons accessing  
4           the HIGHLY RESTRICTED CONFIDENTIAL materials.

5           e.       All HIGHLY RESTRICTED CONFIDENTIAL materials,  
6           including all copies, in the possession of the receiving party shall be  
7           maintained in a secured, locked area.

8           f.       All HIGHLY RESTRICTED CONFIDENTIAL materials  
9           utilized during a deposition or marked as an exhibit at a deposition will be  
10          retrieved by the party conducting the deposition at the end of each day. At no  
11          time will any HIGHLY RESTRICTED CONFIDENTIAL material be given  
12          to or left with the Court Reporter or any other individual.

13          g.       The receiving party shall not convert any of the information  
14          contained in the hard copies into an electronic format, except when  
15          reproducing excerpts of the information in an expert report or a court filing,  
16          and then only according to the additional restrictions on HIGHLY  
17          RESTRICTED CONFIDENTIAL materials contained in this Order.

18          h.       At least sixty (60) days prior to the scheduled trial date, the  
19          parties shall meet and confer to discuss whether alternative arrangements  
20          should be made for the production of the Computer Source Code just prior to,  
21          and during, trial.

22          i.       Modification of Source Code Provisions. The parties stipulated  
23          to the treatment of Computer Source Code in an effort to balance the parties'  
24          security concerns against their burdens in having to review and produce the  
25          information. Should one or more of the parties come to believe that these  
26          provisions do not achieve this objective after a reasonable trial period, they  
27          may seek to modify these provisions pursuant to paragraph 24 and the trial  
28          period shall not prejudice their rights to seek such relief.

1           15. Any person employed by the Plaintiff or Defendant and any of their  
2 officers, any attorney representing or who acts in a legal capacity for a party,  
3 whether in-house or outside counsel, and any person retained by a party or attorneys  
4 of a party, who obtains, receives, has access to, or otherwise learns, in whole or in  
5 part, technical information (which includes pending but unpublished patent  
6 applications, information concerning research, development and other activities  
7 related to unreleased products, and confidential product development, design and  
8 operation information) designated by another party as CONFIDENTIAL,  
9 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED  
10 CONFIDENTIAL under this Protective Order shall not prepare, prosecute,  
11 supervise, or assist in the prosecution of any patent application pertaining to the  
12 subject matter of the patent-in-suit during the pendency of the litigation and for two  
13 (2) years after conclusion of the litigation (including any appeals). Notwithstanding  
14 the foregoing, outside litigation counsel of record subject to this provision may  
15 participate in any reexaminations of the patent-in-suit, unless such reexamination is  
16 initiated by or on behalf of Spark during the pendency of this litigation, with the  
17 understanding that such persons may in no way utilize any information designated  
18 by another party as CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL  
19 ONLY, or HIGHLY RESTRICTED CONFIDENTIAL under this Protective Order  
20 for any purpose related to the reexamination.

21           16. Trial counsel desiring to disclose Confidential Materials to experts or  
22 consultants specified in paragraphs 12(e) or 13 above shall first obtain a signed  
23 undertaking, in the form of Exhibit A attached hereto, from each such expert or  
24 consultant, and such counsel shall retain in his/her files the original of each such  
25 signed undertaking. A copy of the proposed undertaking shall be forwarded to  
26 opposing counsel with the current curriculum vitae (including a disclosure of prior  
27 expert trial or deposition testimony given over the last four (4) years) for such expert  
28 or consultant and a list identifying all persons or entities for whom or for which such

1 expert or consultant has been engaged during the past four (4) years and the general  
2 subject matter and nature of such engagements. No Confidential Materials shall be  
3 disclosed to such expert or consultant until after the expiration of a five (5) business  
4 day period commencing with the service of a copy of the proposed undertaking and  
5 curriculum vitae, provided, however, that if during that five (5) business day period  
6 opposing counsel makes an objection to such disclosure, there shall be no disclosure  
7 of Confidential Materials to such expert or consultant, except by mutual agreement  
8 of the parties or further order of the Court. The party desiring disclosure of such  
9 Confidential Materials shall have the burden of filing a motion with the Court  
10 seeking leave to make such disclosure.

11       17. The restrictions on the use of Confidential Materials established by this  
12 Protective Order are applicable only to the use of information received by a party  
13 from another party or from a nonparty. A party is free to use its own information as  
14 it pleases.

15       18. Any party may file or lodge with the Court documents or tangible items  
16 designated as CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL  
17 ONLY, or HIGHLY RESTRICTED CONFIDENTIAL. Any briefs, transcripts,  
18 exhibits, depositions, or documents which are filed with the Court which comprise,  
19 embody, summarize, discuss, or quote from documents or tangible things designated  
20 as CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or  
21 HIGHLY RESTRICTED CONFIDENTIAL material shall be sealed pursuant to the  
22 Court’s Civil Local Rules. Where reasonably practicable, only the portions of  
23 documents consisting of such items or information shall be lodged under seal. Such  
24 items or information shall be filed or lodged in sealed envelopes or other appropriate  
25 sealed containers. Each sealed envelope or container shall be endorsed with the title  
26 and case number of this action, and a statement in substantially the following form:

27                   CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.  
28

1 THE MATERIALS CONTAINED HEREIN HAVE BEEN  
2 DESIGNATED AS CONFIDENTIAL [CONFIDENTIAL –  
3 OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED  
4 CONFIDENTIAL] PURSUANT TO PROTECTIVE ORDER AND  
5 MAY NOT BE EXAMINED OR COPIED EXCEPT BY THE  
6 COURT OR PURSUANT TO COURT ORDER.

7 19. The acceptance by a party of documents designated as  
8 CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY  
9 RESTRICTED CONFIDENTIAL shall not constitute an agreement, admission or  
10 concession, or permit an inference, that the material(s) are in fact properly the  
11 subject for protection under Fed. R. Civ. P.26 (c), or some other basis. Documents  
12 designated CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL ONLY,  
13 or HIGHLY RESTRICTED CONFIDENTIAL shall be treated in accordance with  
14 the provisions of this Protective Order, except that any party may at any time seek  
15 an Order from the Court determining that specified information or categories of  
16 information are not properly designated as CONFIDENTIAL, CONFIDENTIAL –  
17 OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED CONFIDENTIAL,  
18 provided that prior to making such a motion the parties shall meet and confer in  
19 good faith to resolve any differences over the designation. In response to the filing  
20 of such a motion, the party claiming confidentiality shall have the burden of proving  
21 that the Confidential Material in question is protectable under Fed. R. Civ. P.26 (c)  
22 or some other basis, or, as the case may be, that the designation of  
23 CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY  
24 RESTRICTED CONFIDENTIAL is not necessary under the circumstances. A party  
25 shall not be obligated to challenge the propriety of a designation of Confidential  
26 Material at the time made, and failure to do so shall not preclude subsequent  
27 challenge. Should any party (or non-party) seek an Order from the Court to  
28 determine whether specified information or categories of information are not

1 properly designated as CONFIDENTIAL, CONFIDENTIAL – OUTSIDE  
2 COUNSEL ONLY, or HIGHLY RESTRICTED CONFIDENTIAL, the claimed  
3 designation shall remain operative and respected by all the parties and non-parties  
4 pending the Court’s ruling.

5       20. Nothing in this Protective Order shall require disclosure of material that  
6 a party contends is protected from disclosure by the attorney-client privilege or the  
7 attorney work-product immunity or any other applicable privilege. This shall not  
8 preclude any party from moving the Court for an Order directing the disclosure of  
9 such material.

10       21. Inadvertent disclosure, by production, inspection, or otherwise, of  
11 documents or information subject to the attorney-client privilege, work product  
12 immunity or any other applicable privilege shall not constitute a waiver of, nor a  
13 prejudice to, any claim that such or related material is privileged or protected by the  
14 work product immunity or any other applicable privilege, provided that the  
15 disclosing party promptly notifies the receiving party in writing after discovery of  
16 such disclosure. Such disclosed documents or information, including all copies  
17 thereof, shall be returned to the producing party immediately upon request, except  
18 that the receiving party may maintain one (1) copy of the disclosed documents or  
19 information solely for the purpose of challenging any claim that such material is  
20 privileged or protected by the work product immunity or any other applicable  
21 privilege. Such documents shall be segregated from the other documents produced  
22 in this litigation. No use shall be made of such documents or information during  
23 deposition or at trial, nor shall such documents or information be shown to anyone  
24 who has not already been given access to them subsequent to the request that they  
25 be returned. In the case of a produced document, the producing party shall then  
26 provide or amend a privilege log identifying such produced document. The  
27 receiving party may move the Court for an Order compelling production of any  
28



1 disclosed document or information in accordance with Rule 26(b)(5)(B), Fed. R.  
2 Civ. P.

3       22. In the event of any accidental or inadvertent disclosure of Confidential  
4 Material other than in a manner authorized by this Protective Order, counsel for the  
5 party responsible for the disclosure shall immediately notify opposing counsel of all  
6 the pertinent facts, and make every effort to prevent further unauthorized disclosure  
7 including retrieving all copies of the Confidential Material from the recipient(s)  
8 thereof and securing the agreement of the recipients not to further disseminate the  
9 Confidential Material in any form. Compliance with the foregoing shall not prevent  
10 a party from seeking further relief from the Court.

11       23. In addition the specific requirements set forth in paragraph 14 hereof  
12 regarding the handling of HIGHLY RESTRICTED CONFIDENTIAL materials, the  
13 recipient of any Confidential Material shall maintain such information in a secure  
14 and safe place, and shall exercise at least the same degree of care in handling the  
15 Confidential Material as is exercised by the recipient with respect to its own  
16 Confidential Material and to confidential information of a similar nature, but in no  
17 event less than due care. Each recipient of any Confidential Material hereby agrees  
18 to be subject to the jurisdiction of this Court for purposes of the implementation and  
19 enforcement of this Protective Order.

20       24. This Protective Order shall not prevent the parties from applying to the  
21 Court for relief therefrom or modification thereto, or from applying to the Court for  
22 further or additional relief by way of protective orders or otherwise, or from  
23 agreeing between themselves to modifications of this Protective Order.

24       25. Confidential Materials shall be used solely for the purposes of this  
25 Action and shall not be used for any other purpose except as expressly provided  
26 herein or by further Order of the Court.

27       26. In the event that a party desires to provide access to or disseminate  
28 Confidential Materials to any person not entitled to access under this Protective

1 Order, it may move the Court for an order that such person be given access thereto if  
2 the parties cannot, after negotiating in good faith, agree to such additional access or  
3 dissemination.

4       27. Within thirty (30) days after the dismissal or other conclusion of this  
5 Action (“Termination of Action”) with respect to a producing party, including any  
6 appeals, all Confidential Materials (except HIGHLY RESTRICTED  
7 CONFIDENTIAL materials) produced by that party, and all copies of such  
8 information, shall be returned to the producing party, or counsel of record shall  
9 certify in writing that such material has been destroyed. Within ten (10) days after  
10 the final dismissal or other conclusion of this Action with respect to a producing  
11 party, including any appeals, all HIGHLY RESTRICTED CONFIDENTIAL  
12 materials produced by that party shall be returned to the producing party along with  
13 certification by outside counsel of record and any other individuals who accessed  
14 such materials that all such materials have been returned. Counsel of record may  
15 retain a copy of all correspondence, pleadings, motion papers, discovery responses,  
16 deposition and trial transcripts, legal memoranda and work product.

17       28. This Protective Order shall survive the final termination of this Action  
18 with respect to any retained Confidential Materials.

19       29. Nothing in this Protective Order shall prevent or otherwise restrict  
20 outside counsel from rendering advice to their clients and, in the course thereof,  
21 relying generally on Confidential Material; provided, however, that in rendering  
22 such advice counsel shall not disclose, reveal or describe any such materials except  
23 insofar as allowed (if allowed at all) under the terms of this Order.

24       30. If a party wishes to use Confidential Material at the examination at  
25 deposition or trial of any witness not entitled to have access to such Confidential  
26 Materials, such Party shall obtain the consent of the producing party, in advance,  
27 and the failure of the examining attorney to obtain such consent or order of the  
28 Court shall not be grounds for delaying the deposition or trial or their progress,

1 unless, in the case of a deposition, all persons attending the deposition consent, and  
2 in the case of trial the Court so rules. Where Confidential Material may be revealed  
3 or referred to in a question that will be put to the witness at a deposition upon oral  
4 examination or Confidential Materials will be used as exhibits during the  
5 examination, the producing party may require that all persons in attendance who are  
6 not entitled access to such Confidential Material under this Protective Order leave  
7 the room until such line of inquiry is completed. Where Confidential Material may  
8 be revealed or referred to in a question that will be put to the witness at trial upon  
9 oral examination or Confidential Materials will be used as exhibits during the  
10 examination, the producing party may request that the Court require that all persons  
11 in attendance who are not entitled access to such Confidential Material under this  
12 Protective Order leave the courtroom until such line of inquiry is completed


13         31. No copy of any transcript of any deposition which is designated, in part  
14 or in whole, as CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL  
15 ONLY, or HIGHLY RESTRICTED CONFIDENTIAL shall be furnished by the  
16 court reporter to any person other than to counsel of record and counsel for a non-  
17 party, if the furnished transcript is of the non-party’s own deposition. The original  
18 of any transcript of any deposition designated as CONFIDENTIAL,  
19 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED  
20 CONFIDENTIAL, if required to be filed, shall be filed with the Court under seal in  
21 accordance with paragraph 18 hereof, unless otherwise agreed by the producing  
22 party.

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1           32.    The terms of this Protective Order may be applied to the Confidential  
2 Materials of a non-party, as long as that non-party agrees in writing to be bound by  
3 the terms of this Protective Order.  
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5

6                   **IT IS SO ORDERED**

8 DATED: September 22, 2011



Hon. John E. McDermott  
United States Magistrate Judge

12  
13 Dated: September 14, 2011

**DYKEMA GOSSETT LLP**

Craig N. Hentschel  
S. Christopher Winter

**ROPES & GRAY LLP**

Laurence S. Rogers  
Ching-Lee Fukuda

17  
18 By: /s/ Craig N. Hentschel

Craig N. Hentschel  
Attorneys for Plaintiff  
SPARK NETWORKS USA, LLC

21 Dated: September 14, 2011

**WILSON SONSINI GOODRICH &  
ROSATI**

Stefani E. Shanberg  
Natalie J. Morgan  
Caroline E. Wilson

25 By: /s/ Natalie J. Morgan

Natalie J. Morgan  
Attorneys for Defendant  
ZOOSK, INC.

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**EXHIBIT A**

**UNDERTAKING CONCERNING RECEIPT OF  
CONFIDENTIAL MATERIALS SUBJECT TO PROTECTIVE ORDER**

I, \_\_\_\_\_ declare that:

1. My present residential address is \_\_\_\_\_.

2. My present employer is \_\_\_\_\_  
and the address of my present employer is \_\_\_\_\_.

3. My present occupation or job description is \_\_\_\_\_.

4. I have received and carefully read the Protective Order in this Action dated \_\_\_\_\_, and understand its provisions. As a condition precedent to receiving any Confidential Materials, as such are defined in the Protective Order, I agree to subject myself to the personal jurisdiction of this Court with respect to the enforcement of the provisions of the attached Protective Order. I understand that I am obligated, under Order of the Court, to hold in confidence and not to disclose the contents of any document marked or later designated pursuant to the Protective Order as CONFIDENTIAL, CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED CONFIDENTIAL to anyone other than those persons identified in paragraphs 12, 13, and 14 of the Protective Order to the extent that such persons are qualified to review such information. I further understand that I am not to disclose to persons other than those persons identified in paragraphs 12, 13, and 14 of the Protective Order any words, substances, summaries, abstracts or indices of Confidential Materials or transcripts disclosed to me. In addition to the foregoing, I understand that I must abide by all of the provisions of the Protective Order.

1           5.     At the termination of this Action or at any time requested by counsel of  
2 record in this Action, I will return to counsel of record in this Action all documents  
3 and other materials, including notes, computer data, summaries, abstracts, or any  
4 other materials including or reflecting Confidential Materials which have come into  
5 my possession, and will return all documents or things I have prepared relating to or  
6 reflecting such information.

7           6.     I understand that if I violate the provisions of this Protective Order, I  
8 will be in violation of a Court Order and subject to sanctions or other remedies that  
9 may be imposed by the Court and potentially liable in a civil Action for damages by  
10 the disclosing party.

11          7.     I declare under penalty of perjury of the laws of the United States that  
12 the foregoing is true and correct.

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Executed on: \_\_\_\_\_ Signed: \_\_\_\_\_