

NOTE CHANGES MADE BY THE COURT.

NOTE CHANGES MADE BY THE COURT.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

WILDFIREWEB, INC., a Delaware
corporation,

Plaintiff,

vs.

TINDER, INC., a Delaware
corporation; IAC/INTERACTIVE
CORP, a Delaware corporation; and
DOES 1-5,
Defendants.

CASE NO. 2:15-CV-945-MMM
(AGR~~x~~)

**JOINT STIPULATION AND
[PROPOSED] PROTECTIVE
ORDER GOVERNING THE
PRODUCTION AND EXCHANGE
OF CONFIDENTIAL
INFORMATION**

Trial Date: None set

NOTE CHANGES MADE BY THE COURT.

1 BE IT KNOWN THAT Plaintiff WildFireWeb, Inc., and Defendants Tinder,
2 Inc. and IAC/InterActiveCorp, by and through their respective counsel of record,
3 HEREBY STIPULATE AND AGREE as follows:

4 WHEREAS, the parties believe that discovery and pretrial activities in the
5 above-captioned action may entail the disclosure of personal, business, financial, or
6 other information that is confidential, proprietary, commercially sensitive, and/or a
7 trade secret;

8 WHEREAS, the information sought in discovery may also include third-party
9 confidential, sensitive, and proprietary business and/or financial information;

10 WHEREAS, the parties believe that confidentiality is in their own best
11 interests and the public interest because of the need for the parties to conduct their
12 respective businesses and maintain their confidential and commercially sensitive
13 information free from disclosure and, further, because of the potential need to
14 protect personal data identifiers or other private financial or proprietary information
15 with respect to documents involved in this litigation;

16 WHEREAS, the parties have agreed to enter into a confidentiality agreement
17 and protective order in accordance with the terms herein;

18 NOW THEREFORE, in light of the foregoing, the parties HEREBY
19 STIPULATE AND AGREE as follows:

20 1. This Stipulation and Protective Order is being entered into to facilitate the
21 production, exchange and discovery of documents and information that the parties
22 agree merit confidential treatment. This Protective Order shall govern the handling
23 of documents, depositions, deposition exhibits, interrogatory responses, other
24 discovery responses, admissions, pleadings, and any other information or material
25 produced, given or exchanged by and among the parties and any non-parties to the
26 above-captioned action (the "Litigation") in connection with discovery in the
27 Litigation (such information or material hereinafter referred to as "Discovery
28 Material").

1 2. Any Producing Party (as defined below) may designate Discovery Material in
2 connection with this Litigation as "Confidential," either by notation on the
3 document (without obscuring or defacing the material), statement on the record of
4 the deposition, written notification to the counsel for the parties hereto, or by other
5 appropriate means. The parties agree to exercise good faith in evaluating whether
6 materials should be designated "Confidential" pursuant to this Protective Order.

7 3. As used herein:

8 (a) "Confidential Information" shall mean all Discovery Material, and all
9 information contained therein, and other information designated as confidential, if
10 such Discovery Material contains trade secrets, proprietary business information,
11 competitively sensitive information, or other information the disclosure of which
12 would, in the good faith judgment of the party designating the material as
13 confidential, be detrimental to the conduct of that party's business or the business or
14 personal interests of any of that party's customers or clients.

15 (b) "Producing Party" shall mean the parties to this Litigation and any non-
16 parties producing Confidential Information in connection with discovery in this
17 matter or the party asserting the confidentiality designation, as the case may be.

18 (c) "Receiving Party" shall mean the parties to this Litigation and/or any
19 non-party receiving Confidential Information in connection with discovery in this
20 matter.

21 4. The Receiving Party may notify the Producing Party that the Receiving Party
22 does not concur in the designation of Discovery Material as Confidential
23 Information. If the Producing Party does not agree to declassify such Discovery
24 Material, the Receiving Party may move the Court for an order declassifying that
25 Discovery Material. Unless and until all parties and relevant non-parties shall have
26 agreed in writing or an order of the Court shall have been entered and become
27 enforceable which provides that any challenged Confidential Information may be
28 used or disclosed in a manner different from that specified in this Protective Order,

1 the parties shall treat and protect all material designated as "Confidential" in
2 accordance with this Protective Order. In the event of any such disagreement, the
3 Producing Party shall bear the burden of proving by clear and convincing evidence
4 that the designated item may be protected from public disclosure under applicable
5 law.

6 5. Except with the prior written consent of the Producing Party or by Order of
7 the Court, Confidential Information shall not be furnished, shown or disclosed to
8 any person or entity except to:

9 (a) The parties and personnel of the parties actually engaged in assisting in
10 the preparation of this Litigation for trial or other proceeding herein and who have
11 been advised of their obligations hereunder;

12 (b) former personnel of the parties actually engaged in assisting in the
13 preparation of this Litigation for trial or other proceedings herein who have
14 consented in writing, in the form of Exhibit A attached hereto, to comply with and
15 be bound by the terms of this Protective Order;

16 (c) counsel of record for the parties to this Litigation and their associated
17 attorneys, paralegals and other professional personnel (including support staff) who
18 are directly assisting such counsel in the preparation of this Litigation for trial or
19 other proceedings herein, are under the supervision or control of such counsel, and
20 who have been advised by such counsel of their obligations hereunder;

21 (d) expert witnesses or consultants retained by the parties or their counsel
22 to furnish technical or expert services in connection with this Litigation or to give
23 testimony with respect to the subject matter of this Litigation at the trial of this
24 Litigation or other proceedings herein; provided, however, that such Confidential
25 Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;

26 (e) the Court, ^{and its} court personnel, and the jury in the department to which this
27 ~~action is assigned, and persons present in the courtroom during the trial of this~~
28 ~~matter, if pursuant to paragraph 12 or paragraph 25 hereof;~~

1 (f) an officer before whom a deposition is taken, including stenographic
2 reporters, videographers and any necessary secretarial, clerical or other personnel of
3 such officer or videographer necessary for purposes of preparing deposition
4 transcripts or videos;

5 (g) witnesses during their depositions to whom disclosure is reasonably
6 necessary and who execute the certificate in the form of Exhibit A attached hereto.
7 Pages of transcribed deposition testimony or exhibits to depositions that reveal
8 Confidential Information must be separately bound by the court reporter and may
9 not be disclosed to anyone except as permitted under this Protective Order;

10 (h) any person(s) whose name(s) appear on the face of or in metadata
11 associated with Confidential Information as having originally prepared, sent and/or
12 received Confidential Information;

13 (i) any Discovery Referee or settlement conference officer assigned to this
14 matter; and

15 (j) any other person agreed to in writing by the parties, or ordered by the
16 Court.

17 6. Confidential Information shall be utilized by the Receiving Party and its
18 counsel only for purposes of this Litigation and for no other purposes.

19 7. Before any disclosure of Confidential Information is made to an expert
20 witness or consultant pursuant to paragraph 5(d) hereof, counsel for the Receiving
21 Party shall obtain the expert's written certification, in the form of Exhibit A attached
22 hereto, to comply with and be bound by the terms of this Protective Order. Counsel
23 for the party obtaining the certificate shall supply a copy to counsel for the other
24 party at the time of the disclosure of the information required to be disclosed by Fed.
25 R. Civ. P. 26(a)(2), except that any certificate signed by an expert or consultant who
26 is not expected to be called as a witness at trial is not required to be supplied.

27 8. All depositions shall presumptively be treated as Confidential Information
28 and subject to this Protective Order during the deposition and for a period of

1 fourteen (14) days after a transcript of said deposition is received by counsel for
 2 each of the parties. At or before the end of such fourteen-day period, the deposition,
 3 or pages thereof, may be classified as Confidential Information by any party.

4 9. Should ~~the need arise for any of the parties to~~ ^{party} disclose Confidential
 5 Information during ~~any hearing before the Court, including through argument or the~~ ^{a discovery}
 6 presentation of evidence, ~~such party may do so only after taking such steps as the~~ ^a
 7 Court, ~~upon motion of the disclosing party, shall deem necessary to preserve the~~ ^{move the}
 8 confidentiality of such Confidential Information.

9 10. This Protective Order does not preclude presenting the original of a
 10 deposition transcript in its entirety to the deponent for review, correction and
 11 signing, nor does it preclude delivery by the reporter of copies of deposition
 12 transcripts containing and/or annexing Confidential Information, in their entirety to
 13 outside counsel for parties to this Protective Order, which transcripts shall then be
 14 maintained by such outside counsel in accordance with the provision of this
 15 Protective Order.

16 11. A Receiving Party who seeks to file with the Court any Discovery Material,
 17 or any pleadings, briefs or memoranda which reproduce, paraphrase or disclose any
 18 documents, that have previously been designated as comprising or containing
 19 Confidential Information shall either (a) redact all such Confidential Information
 20 before filing or (b) file such Confidential Information ^{with an application to file} under seal as provided by the
 21 Federal Rules of Civil Procedure and the Local Rules ⁷⁹⁻⁵ for the Central District of
 22 California. If a Receiving Party's request to file material containing Confidential
 23 Information under seal is denied by the Court, the Receiving Party may file such
 24 material in the public record unless otherwise instructed by the Court, and further
 25 subject to the Producing Party's right to seek further relief from the Court or from
 26 an appellate court.

27

28

1 12. Any person receiving Confidential Information shall not reveal or discuss
2 such information to or with any person not entitled to receive such information
3 under the terms hereof.

4 13. Any Discovery Material that may contain Confidential Information that has
5 been inadvertently produced without identification as to its "Confidential" nature
6 may be so designated by the party asserting the confidentiality privilege by written
7 notice to the undersigned counsel for the Receiving Party identifying the Discovery
8 material as Confidential Information within a reasonable time following the
9 discovery that the document or information has been produced without such
10 designation and the prompt transmittal of replacement copies with appropriate
11 designations. The party receiving such written notice shall treat materials so
12 designated as Confidential Information and such materials shall be fully subject to
13 this Protective Order as if they had been initially so designated. Upon receipt of
14 replacement copies, the Receiving Party shall destroy the undesignated copies
15 immediately and within no more than ten (10) business days following receipt of
16 designated replacement copies. A person or party who has disclosed information
17 that is subsequently designated Confidential Information shall in good faith assist
18 the party designating the information in retrieving such information from all
19 recipients not entitled to receive such information under the terms of this Protective
20 Order and preventing further disclosures except as authorized under the terms of this
21 Protective Order.

22 14. Extracts, summaries, notes, compilations, copies, electronic images, or
23 databases containing Confidential Information shall also be treated as confidential in
24 accordance with the provisions of this Protective Order.

25 15. The production or disclosure of Confidential Information shall in no way
26 constitute a waiver of each party's right to object to the production or disclosure of
27 other information in this Litigation or in any other action.

28

1 16. A Producing Party may also designate Discovery Material as “Highly
2 Confidential Information/Attorneys’ Eyes Only.” This designation shall signify that
3 (1) at the time of the designation the Discovery Material contains or constitutes
4 trade secrets or highly confidential and sensitive business or financial information,
5 (2) there is a substantial and imminent risk that, absent such designation, its
6 disclosure to the Receiving Party could cause competitive and/or economic harm to
7 the Producing Party, and (3) such Discovery Material would not otherwise be
8 adequately protected under the procedures set forth herein for “Confidential
9 Information.” The provisions of this Protective Order, including all usage,
10 dissemination, and disclosure limitations, shall be applicable to “Highly
11 Confidential Information/Attorneys’ Eyes Only” in the same manner as
12 “Confidential Information,” except notwithstanding any other provision of this
13 Protective Order, no disclosure of “Highly Confidential Information/Attorneys’
14 Eyes Only” may be made to any party or current or former personnel of any party.
15 For purposes of this subsection of this Protective Order, a party’s in-house counsel
16 and the paralegals and support personnel working for such in-house counsel do not
17 constitute a “party.” However, disclosure to in-house counsel shall be limited to
18 those counsel providing legal advice in connection with this Litigation, and Highly
19 Confidential Information/Attorneys’ Eyes Only disclosed to in-house counsel may
20 not be used for any business or other purpose unrelated to the prosecution or defense
21 of this Litigation. Highly Confidential Information/Attorneys’ Eyes Only may not
22 be disclosed to any other officers, directors, employees, or agents of a party,
23 including other in-house counsel. The parties may submit Highly Confidential
24 Information/Attorneys’ Eyes Only to the Court in accordance with paragraph 11
25 hereof. Nothing in this subsection shall preclude counsel from giving advice to his
26 or her client in this Litigation that includes a general evaluation of Highly
27 Confidential Information/Attorneys’ Eyes Only, provided that counsel shall not
28

1 disclose the contents of any Highly Confidential Information/Attorneys' Eyes Only
2 contrary to the terms of this Protective Order.

3 17. A Producing Party's inadvertent disclosure in connection with this Litigation
4 of one or more documents that such Producing Party believes constitute, contain or
5 reflect information otherwise protected by the attorney-client privilege, the work
6 product doctrine, or any other privilege or immunity from discovery ("Privileged
7 Documents"), shall not constitute a waiver with respect to such Privileged
8 Documents or generally of such privilege or immunity. If a Receiving Party
9 receives materials that appear to be subject to an attorney-client privilege or
10 otherwise protected by a discovery privilege or immunity and it is reasonably
11 apparent that the materials were provided or made available through inadvertence,
12 the Receiving Party must refrain from examining the materials and shall
13 immediately notify the Producing Party in writing that he or she possesses material
14 that appears to be privileged. In the event of inadvertent disclosure of alleged
15 Privileged Documents, the Producing Party may provide notice to the other parties
16 advising of the disclosure and requesting return of the alleged Privileged
17 Documents. Upon such notice, the Receiving Party shall make no further use of the
18 alleged Privileged Documents and shall immediately segregate them in a manner
19 that will prevent further disclosure or dissemination of their contents, and within ten
20 (10) business days of receiving such notice of inadvertent production of Privileged
21 Documents, the Receiving parties shall return or destroy all documents identified by
22 the Producing Party in such notice and shall expunge from any other document
23 information or material derived from the inadvertently produced Privileged
24 Documents. Within ten (10) business days of the return or destruction of the
25 inadvertently produced information or documents, the designating party shall
26 provide the Receiving Party information supporting the claim of privilege as
27 required by the applicable court rules or pursuant to any agreement of the parties
28 reached pursuant to paragraph 18 below. Nothing herein shall prevent a party from

1 challenging the propriety of the attorney-client privilege or attorney work product
2 protection designation by submitting a written challenge to the Court. In the event
3 that there is a dispute over whether the documents at issue are protected from
4 disclosure by virtue of a privilege or immunity from discovery, the documents shall
5 nevertheless be immediately returned to the Producing Party, and all counsel shall
6 undertake reasonable efforts to resolve the issue without court intervention within
7 ten (10) business days of receipt of the privilege log for the inadvertently produced
8 documents. To the extent counsel cannot resolve the issue within ten (10) business
9 days, the Receiving Parties may bring a motion to compel production of the alleged
10 Privileged Documents, but may not assert as a ground for compelling production the
11 fact or circumstance that the alleged Privileged Documents have already been
12 produced except in the case of repeated production, representations made by the
13 Producing Party to the contrary or the known use of such documents in a manner
14 inconsistent with a claim of privilege. Alleged Privileged Documents shall remain
15 segregated and protected against further disclosure and use during the pendency of
16 any dispute over the status of any alleged Privileged Documents.

17 18. The parties shall meet and confer in good faith to develop a protocol for any
18 privilege logs.

19 19. If a party who received Confidential Information learns that, by inadvertence
20 or otherwise, Confidential Information has been disclosed to any person or in any
21 circumstance not authorized under this Protective Order, the party must promptly:
22 (a) notify counsel for the party who produced the confidential information of the
23 unauthorized disclosures and provide to such counsel all known relevant
24 information concerning the nature and circumstances of such disclosure; (b) use its
25 best efforts and take all reasonable measures to retrieve all copies of the improperly
26 disclosed Confidential Information and to ensure that no further or greater
27 unauthorized disclosures and/or use thereof are made; (c) inform the person or
28 persons to whom unauthorized disclosures and/or use thereof are made; and (d)

1 request such person or persons to execute the certificate attached hereto as Exhibit
2 A. Unauthorized or inadvertent disclosure does not change the status of
3 Confidential Information or waive the right to hold the disclosed information as
4 protected.

5 20. This Protective Order is entered into without prejudice to the right of any
6 party to seek relief from, or modification of, this Protective Order or any provisions
7 hereof, by properly noticed motion to the Court or to challenge any designation of
8 confidentiality as inappropriate under the Federal Rules of Civil Procedure, Local
9 Rules of the Central District of California, or other applicable law.

10 21. The parties agree that they would not have an adequate remedy at law in the
11 event that a court of competent jurisdiction determines that there is an actual or
12 threatened breach of this Protective Order by either party and agree that under such
13 circumstances the parties ^{may} ~~will~~ be entitled to specific performance, and/or injunctive
14 relief, to enforce the terms hereof – in addition to any remedy to which they may be
15 entitled at law or in equity.

16 22. The provisions of this Protective Order shall be binding upon the parties and
17 shall be governed by and construed in accordance with the laws of the State of
18 California and the United States of America. All modifications of, waivers of and
19 amendments to this Protective Order must be in writing and signed by, or on behalf
20 of, the parties. ~~The Court shall retain jurisdiction to make such amendments,~~
21 ~~modifications, deletions and additions to this Protective Order as the Court may~~
22 ~~from time to time deem necessary or appropriate.~~ All disputes arising under this
23 Protective Order shall be resolved by the United States District Court for the Central
24 District of California. Every party or individual who receives Confidential
25 Information agrees to be subject to the jurisdiction of this Court for the purpose of
26 any proceedings related to performance under, compliance with, or violation of this
27 order.

23. This Protective Order has no effect upon, and shall not apply to, the parties' use of their own Discovery Material for any purpose. Nothing herein shall impose any restrictions on the use or disclosure by a party of documents, materials or information designated as Confidential Information that has been obtained lawfully by such party independently of the proceedings in this Litigation.

24. This Protective Order is not intended to prohibit or limit the use or admissibility of Confidential Information upon trial at this case. Before the trial begins, the parties shall meet and confer in good faith as part of the pre-trial preparation process to put into place a procedure for identification and use of Confidential Information at trial. If the parties reach an agreement on procedure, they will move the Court for an Order approving of the procedure. If the parties do not reach an agreement on procedure, any party may seek an appropriate Court

Order concerning the handling at trial of Confidential Information. ^{Confidential} Any material Information used at trial shall become public absent a separate court order upon motion and sufficient cause shown. ~~designations provided herein until there is a ruling by the Court on the procedures~~

~~for introduction of evidence at trial.~~ Confidential Information not introduced as evidence at trial shall maintain such protections and designations after commencement of any trial in this Litigation.

25. In the event that additional parties join or are joined in this Litigation, neither they nor their counsel, or the experts or consultants retained to assist said counsel shall have access to Discovery Material designated as Confidential Information until the newly-joined party, its counsel, experts and consultants have executed and filed with the Court their agreement to be fully bound by this Protective Order.

26. The parties agree to be bound by the terms of this Protective Order pending the entry by the Court of this Protective Order, and any violation of its terms shall be subject to the same penalties and sanctions, as if this Protective Order had been entered by the Court.

1 27. This Protective Order shall continue to be binding after the conclusion of this
2 Litigation except (a) that there shall be no restriction on documents that are used as
3 exhibits in Court (unless such exhibits were filed under seal); and (b) that a party
4 may seek the written permission of the Producing Party or further order of the Court
5 with respect to dissolution or modification of any of the Protective Order. The
6 provisions of this Protective Order shall, absent prior written consent of all parties or
7 order of a court of competent jurisdiction, continue to be binding after the
8 conclusion of this Litigation. Following termination of this matter, the Court will
9 retain jurisdiction to enforce the terms of this Protective Order.

10 28. Nothing herein shall be deemed to waive any privilege recognized by law, or
11 shall be deemed an admission as to the admissibility of any facts or documents
12 revealed in the course of disclosure.

13 29. Within sixty (60) days after the final termination of this Litigation by
14 settlement or exhaustion of all appeals, all Confidential Information produced or
15 designated and all reproductions thereof, shall be returned to the Producing Party or
16 shall be destroyed, at the option of the Receiving Party. No party, expert,
17 consultant, or any other person or entity to which such Confidential Information was
18 produced shall retain any copies of any such Confidential Information.

19 Notwithstanding anything to the contrary, counsel of record for the parties may
20 retain one copy of documents constituting work product, a copy of pleadings,
21 motion papers, other court filings, discovery responses, deposition transcripts and
22 deposition and trial exhibits (regardless of whether such materials contain or
23 reference Confidential Information) provided that such outside counsel shall not
24 disclose Confidential Information to any person or entity except pursuant to court
25 order or agreement with the party who designated the information Confidential.

26 Any such materials or information that are not returned or destroyed shall remain
27 subject to this Protective Order, and the Court shall retain jurisdiction to ensure that
28 ~~the terms hereof are not violated.~~ This Protective Order shall not be interpreted in a

1 manner that would violate any applicable canons of ethics or codes of professional
2 responsibility. Nothing in this Protective Order shall prohibit or interfere with the
3 ability of counsel for any party, or of experts specially retained for this case, to
4 represent any individual, corporation or other entity adverse to any party or its
5 affiliate(s) in connection with any other matters.

6 30. This Protective Order may be changed by further order of this Court, and
7 without prejudice to the rights of a party to move for relief from any of its
8 provisions, or to seek or agree to different or additional protection for any particular
9 material or information.

10 31. Nothing in this Protective Order is intended to prohibit or proscribe the ability
11 of counsel for any party from providing to their respective clients informed and
12 meaningful advice with respect to this case or to prevent counsel from aggregating
13 or summarizing such information for their respective clients so long as such counsel
14 does not reveal or disclose Confidential Information to those unauthorized to have
15 access to such information under this Protective Order.

16 DATED: April 27, 2015

AFFELD GRIVAKES ZUCKER LLP

17

18

19

By /s/ Peter Shimamoto

20

Peter Shimamoto

21

Attorneys for Plaintiff WILDFIREWEB,
INC.

22 DATED: April 27, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

23

24

25

26

By /s/ Daniel C. Posner

27

Daniel C. Posner

28

Attorneys for Defendants TINDER, INC.
and IAC/INTERACTIVECORP

ORDER

GOOD CAUSE appearing, the Court hereby enters this Stipulation and Protective Order.

IT IS SO ORDERED.

DATED: May 6, 2015

Alicia G. Rosenberg

~~HON. MARGARET MORROW~~

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

WILDFIREWEB, INC., a Delaware
corporation,

Plaintiff,

vs.

TINDER, INC., a Delaware
corporation; IAC/INTERACTIVE
CORP, a Delaware corporation; and
DOES 1-5,
Defendants.

CASE NO. 2:15-CV-945-MMM
(AGRx)

**AGREEMENT TO RESPECT
CONFIDENTIAL INFORMATION**

Trial Date: None set

I, _____, state that:

1. My address is _____.

2. My present employer is _____.

3. My present occupation or job description is _____.

4. I have received a copy of the Stipulation and Protective Order for the
Production and Exchange of Confidential Information (the "Protective Order")
entered in the above-entitled action on _____.

5. I have carefully read and understand the provisions of the Protective Order.

6. I will comply with all of the provisions of the Protective Order.

7. I will hold in confidence, will not disclose to anyone not qualified under the
Protective Order, and will use only for purposes of this action, any Confidential
Information that is disclosed to me.

8. Upon request, I will return all Confidential Information that comes into my
possession, and documents or things that I have prepared relating thereto, to counsel
for the party by whom I am employed or retained, or to counsel from whom I
received the Confidential Information.

1 9. I hereby submit to the jurisdiction of this Court for the purpose of
2 enforcement of the Protective Order in this action.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct.

5
6
7 Dated: _____