

1
2
3
4
5
6
7
8
9
10
11
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
ADSUPPLY, INC., a California
corporation,

Plaintiff,

v.

ADVERTISE.COM, INC., a California
corporation,

Defendant.

Case No.: 2:16-cv-08921 PSG(Ex)

The Honorable Charles F. Eick
Courtroom 750, 7th Floor (Roybal)

DISCOVERY MATTER

[PROPOSED] ORDER APPROVING
STIPULATION FOR PROTECTIVE
ORDER

COMPLAINT FILED: DECEMBER 1, 2016

TRIAL DATE: MARCH 20, 2018

Plaintiff AdSupply, Inc. ("Plaintiff") and Defendant Advertise.com ("Defendant"), by their undersigned counsel, hereby stipulate to entry of the following protective order ("Protective Order") pursuant to Fed. R. Civ. P. 26(c):

1. PURPOSES AND LIMITATIONS

The parties to this litigation are in the online advertising industry and one or both of the parties possess confidential information concerning computer code and/or programming language or other matters that have substantial competitive value.

1 Disclosure and discovery activity in this action are likely to involve production of
2 confidential, proprietary, or private information for which special protection from
3 public disclosure and from use for any purpose other than prosecuting this litigation
4 may be warranted. Accordingly, the parties hereby stipulate to and petition the Court
5 to enter the following Stipulated Protective Order. The parties acknowledge that this
6 Stipulated Protective Order does not confer blanket protections on all disclosures or
7 responses to discovery and that the protection it affords from public disclosure and use
8 extends only to the limited information or items that are entitled to confidential
9 treatment under the applicable legal principles. The parties further acknowledge, as set
10 forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them
11 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
12 procedures that must be followed and the standards that will be applied when a party
13 seeks permission from the court to file material under seal.

14 **2. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation
16 of information or items under this Stipulated Protective Order.

17 2.2 "CONFIDENTIAL": The designation "CONFIDENTIAL" may be
18 applied by a party to this ACTION or third party to any type of information which that
19 a party or third party believes in good faith to contain trade secrets, private or
20 confidential personal information, or information received in confidence from a third
21 party.

22 2.2.1 "ATTORNEYS' EYES ONLY": The designation "ATTORNEYS'
23 EYES ONLY" may be applied by a party to this ACTION or third party only to
24 highly confidential and competitively sensitive technical, marketing, financial, or sales
25 information or other proprietary or confidential business information, or extremely
26 sensitive confidential computer code or scripts and associated comments,
27 communications, and revision histories, formulas, engineering specifications, or
28

1 schematics (“Source Code Material”) that were created on or before December 31,
2 2016, and that define or otherwise describe in detail the algorithms or structure of
3 software or hardware designs that party or third party believes in good faith could be
4 used by others to obtain unfair competitive advantage against the Producing Party.
5 The Parties agree that Source Code Material created after December 31, 2016 need not
6 be provided in discovery at this time.

7 The Parties stipulate that in the event either Party later requests computer code
8 or scripts and associated comments, communications, and revision histories, formulas,
9 engineering specifications, or schematics created after December 31, 2016, the Parties
10 will meet and confer in good faith to attempt, if necessary, to agree upon a
11 supplemental proposed stipulated protective order to govern the exchange of such
12 documents and information.

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House
14 Counsel (as well as their support staff).

15 2.4 Disclosure or Discovery Material: all items or information, regardless of
16 the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced or
18 generated in disclosures or responses to discovery in this matter.

19 2.5 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who (1) has been retained by a Party or its Counsel to serve
21 as an expert witness or as a consultant in this action, (2) is not a past or current
22 employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not
23 anticipated to become an employee of a Party or of a Party’s competitor.

24 2.6 Non-Party: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.7 Outside Counsel of Record: attorneys who are not employees of a party
27 to this action but are retained to represent or advise a party to this action and have
28

1 appeared in this action as counsel of record on behalf of that party, including support
2 staff of Outside Counsel of Record.

3 2.8 Party: any party to this action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.9 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this action.

8 2.10 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.11 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY".

14 2.12 Receiving Party: a Party that receives Disclosure or Discovery Material
15 from a Producing Party.

16 **3. SCOPE**

17 The protections conferred by this Stipulated Protective Order cover not only
18 Protected Material (as defined above), but also (1) any confidential information copied
19 or extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material.
22 However, the protections conferred by this Stipulated Protective Order do not cover
23 the following information: (a) any information that is in the public domain at the time
24 of disclosure to a Receiving Party or becomes part of the public domain after its
25 disclosure to a Receiving Party as a result of publication not involving a violation of
26 this Stipulated Protective Order, including becoming part of the public record through
27 trial or otherwise; (b) any information that was lawfully possessed by the Receiving
28

1 Party prior to the disclosure, or (c) any information obtained by the Receiving Party
 2 after the disclosure from a source who obtained the information lawfully and under no
 3 obligation of confidentiality to the Producing Party. *Any use of Protected Material at*
 4 *trial shall be governed by the orders of the trial judge. This Order does not govern*
 5 *the use of Protected Material at trial.*

6 **4. DURATION**

7 Even after “Final Disposition” of this litigation, the confidentiality obligations
 8 imposed by this Stipulated Protective Order shall remain in effect until a Producing
 9 Party agrees otherwise in writing or a Court order otherwise directs. “Final
 10 Disposition” shall be deemed to be the later of (1) dismissal of all claims and defenses
 11 in this action, with or without prejudice; and (2) final judgment herein after the
 12 completion and exhaustion of, or, if applicable, expiration of the right to pursue, all
 13 appeals, rehearings, remands, trials, or reviews of this action, including the time limits
 14 for filing any motions or applications for extension of time pursuant to applicable law.

15 **5. DESIGNATING PROTECTED MATERIAL**

16 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

17 Each Party or Non-Party that designates information or items for protection
 18 under this Stipulated Protective Order must take care to limit any such designation to
 19 specific material that qualifies under the appropriate standards. To the extent it is
 20 practical to do so, the Producing Party must designate for protection only those parts
 21 of material, documents, items, or oral or written communications that qualify – so that
 22 other portions of the material, documents, items, or communications for which
 23 protection is not warranted are not swept unjustifiably within the ambit of this
 24 Stipulated Protective Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations
 26 that are shown to be clearly unjustified or that have been made for an improper
 27 purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to
 28

1 impose unnecessary expenses and burdens on other parties) are not permitted. If this
2 occurs, the parties will meet & confer regarding a retraction of such improper
3 designations. If it comes to a Producing Party's attention that information or items that
4 it designated for protection do not qualify for protection at all, that Producing Party
5 must promptly notify all other parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Stipulated Protective Order (*see, e.g.*, second paragraph of section 5.2(a) below),
8 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
9 for protection under this Order must be clearly so designated before the material is
10 disclosed or produced. Designation in conformity with this Stipulated Protective
11 Order requires:

12 (a) for information in documentary form (*e.g.*, paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
15 "ATTORNEYS' EYES ONLY" to each page that contains protected material. If only
16 a portion or portions of the material on a page qualifies for protection, the Producing
17 Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
18 markings in the margins).

19 A Party or Non-Party that makes original documents or materials available for
20 inspection need not designate them for protection until after the inspecting Party has
21 indicated which material it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed "ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
24 documents it wants copied and produced, the Producing Party must determine which
25 documents, or portions thereof, qualify for protection under this Stipulated Protective
26 Order. Then, before producing the specified documents, the Producing Party must
27 affix the appropriate legend ("CONFIDENTIAL" or "ATTORNEYS' EYES ONLY")
28

1 to each page that contains Protected Material. If only a portion or portions of the
2 material on a page qualifies for protection, the Producing Party also must clearly
3 identify the protected portion(s) (e.g., by making appropriate markings in the
4 margins).

5 (b) for testimony given in deposition or in other pretrial or trial proceedings,
6 that the Producing Party identify on the record, before the close of the deposition,
7 hearing, or other proceeding, all protected testimony. When it is impractical to
8 identify separately each portion of testimony that is entitled to protection and it
9 appears that substantial portions of the testimony may qualify for protection, the
10 Producing Party may invoke on the record (before the deposition, hearing, or other
11 proceeding is concluded) the designation of the entire transcript as
12 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”.

13 Parties shall give the other parties notice if they reasonably expect a deposition,
14 hearing or other proceeding to include Protected Material so that the other parties can
15 ensure that only authorized individuals who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
17 document as an exhibit at a deposition shall not in any way affect its designation as
18 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”.

19 Transcripts containing Protected Material shall have an obvious legend on the
20 title page that the transcript contains Protected Material, and the title page shall be
21 followed by a list of all pages (including line numbers as appropriate) that have been
22 designated as Protected Material by the Producing Party.

23 (c) for information produced in some form other than documentary and for any
24 other tangible items, that the Producing Party affix in a prominent place on the
25 exterior of the container or containers in which the information or item is stored the
26 legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”. If only a portion or
27
28

1 portions of the information or item warrant protection, the Producing Party, to the
2 extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If corrected by written notice to all
4 Receiving Parties provided promptly after the Producing Party learns of the
5 Disclosure or Discovery Material that should have been designated, an inadvertent
6 failure to designate qualified information or items does not waive the Producing
7 Party's right to secure protection under this Stipulated Protective Order for such
8 material (and for any other information concerning the same or related subject matter).
9 Upon timely correction of a designation, the Receiving Parties must make reasonable
10 efforts to assure that the material is treated in accordance with the provisions of this
11 Stipulated Protective Order.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court's
15 Scheduling Order. Unless a prompt challenge to a Producing Party's confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
17 economic burdens, or a significant disruption or delay of the litigation, a Party does
18 not waive its right to challenge a confidentiality designation by electing not to mount a
19 challenge promptly after the original designation is disclosed.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process by providing written notice of each designation it is challenging
22 and describing the basis for each challenge. To avoid ambiguity as to whether a
23 challenge has been made, the written notice must recite that the challenge to
24 confidentiality is being made in accordance with this Stipulated Protective Order. The
25 parties shall attempt to resolve each challenge in good faith and must begin the
26 process by conferring directly (in voice to voice dialogue; other forms of
27 communication are not sufficient) within 7 days of the date of service of notice. In
28

1 conferring, the Challenging Party must explain the basis for its belief that the
2 confidentiality designation was not proper and must give the Producing Party an
3 opportunity to review the designated material, to reconsider the circumstances, and, if
4 no change in designation is offered, to explain the basis for the chosen designation. A
5 Challenging Party may proceed to the next stage of the challenge process only if it has
6 engaged in this meet and confer process first or establishes that the Producing Party is
7 unwilling to participate in the meet and confer process in a timely manner.

8 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
9 Court intervention, the Producing Party shall file and serve a motion in the form of a
10 joint stipulation under Local Rule 37-2 to retain confidentiality (and in compliance
11 with Civil Local Rule 79-5) within 14 days of the initial notice of challenge or within
12 7 days of the parties agreeing that the meet and confer process will not resolve their
13 dispute, whichever is later. Each such motion must be accompanied by a competent
14 declaration affirming that the movant has complied with the meet-and-confer
15 requirements imposed in the preceding paragraph. Failure by the Producing Party to
16 make such a motion including the required declaration within the applicable time
17 period shall automatically waive the confidentiality designation for each challenged
18 designation. In addition, the Challenging Party may file a motion (in the form of a
19 joint stipulation under Local Rule 37-2) challenging a confidentiality designation at
20 any time if there is good cause for doing so, including a challenge to the designation
21 of a deposition transcript or any portions thereof. Any motion brought pursuant to this
22 provision must be accompanied by a statement in the motion affirming that the
23 movant has complied with the meet and confer requirements imposed by the
24 preceding paragraph.

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Producing Party. Unless the Producing Party has waived the confidentiality
27 designation by failing to file a motion to retain confidentiality as described above, all
28

1 parties shall continue to afford the material in question the protection to which it is
2 entitled under the Producing Party's designation until the court rules on the challenge.

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 case
6 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
7 Material may be disclosed only to the categories of persons and under the conditions
8 described in this Stipulated Protective Order. When the litigation has been terminated,
9 a Receiving Party must comply with the provisions of section 13 below (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 Stipulated Protective Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Producing Party, a
16 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
17 only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to
20 disclose the information for this litigation;

21 (b) the officers, directors, and employees of the Receiving Party to whom
22 disclosure is reasonably necessary for this litigation and who have signed the
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving
25 Party to whom disclosure is reasonably necessary for this litigation and who have
26 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (d) the Court and its personnel;
28

1 (e) court reporters and their staff, professional jury or trial consultants, and
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation
3 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
4 A);

5 (f) during their depositions, witnesses in the action to whom disclosure is
6 reasonably necessary and who have signed the "Acknowledgment and Agreement to
7 Be Bound" (Exhibit A), unless otherwise agreed by the Producing Party or ordered by
8 the Court. Pages of transcribed deposition testimony or exhibits to depositions that
9 reveal Protected Material must be separately bound by the court reporter and may not
10 be disclosed to anyone except as permitted under this Stipulated Protective Order; and

11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information.

13 7.2.1 Disclosure of "ATTORNEYS' EYES ONLY" Information or Items.
14 Unless otherwise ordered by the court or permitted in writing by the Producing Party,
15 a Receiving Party may disclose any information or item designated "ATTORNEYS'
16 EYES ONLY" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to
19 disclose the information for this litigation;

20 (b) Experts (as defined in this Stipulated Protective Order) of the Receiving
21 Party to whom disclosure is reasonably necessary for this litigation and who have
22 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (1) the Party seeking to disclose such information shall also provide the
24 Producing Party with written notice that includes: (i) the present employer and title of
25 the Expert; (ii) an identification of all of the Expert's past and current employment
26 and consulting relationships within the last five (5) years; (iii) an up-to-date
27
28

1 curriculum vitae of the Expert; and (iv) a list of the cases in which the Expert has
2 testified at deposition or trial within the last five (5) years.

3 Within five (5) days of receipt of the disclosure of the Expert, the Producing
4 Party or Parties may object in writing to the Expert for good cause. For purposes of
5 this section, "good cause" shall include an objectively reasonable concern that the
6 Expert will, advertently or inadvertently, use or disclose the Protected Material in a
7 way or ways that are inconsistent with the provisions contained in this Order. In the
8 absence of an objection at the end of the five (5) day period, the Expert shall be
9 deemed approved under this Protective Order.

10 The Producing Party may object to and notify the Receiving Party in writing
11 that it objects to disclosure of Protected Material to the Expert. The Parties agree to
12 promptly confer and use good faith to resolve any such objection. If the Parties are
13 unable to resolve any objection, the objecting Party may file a motion with the Court
14 within fifteen (15) days of the notice, or within such other time as the Parties may
15 agree, seeking a protective order with respect to the proposed disclosure. No
16 disclosure shall occur until all such objections are resolved by agreement or Court
17 order. An initial failure to object to an Expert under this paragraph shall not preclude
18 the non-objecting Party from later objecting to continued access by that Expert for
19 good cause. If an objection is made, the Parties shall meet and confer via telephone or
20 in person within five (5) days following the objection and attempt in good faith to
21 resolve the dispute informally. If the dispute is not resolved, the Party objecting to the
22 disclosure will have five (5) days from the date of the meet and confer to seek relief
23 from the Court. The designated Expert may continue to have access to information
24 that was provided to such Expert prior to the date of the objection. If a later objection
25 is made, no further Protected Material shall be disclosed to the Expert until the Court
26 resolves the matter or the Producing Party withdraws its objection. Notwithstanding
27 the foregoing, if the Producing Party fails to move for a protective order within five
28

(5) business days after the meet and confer, further Protected Material may thereafter be provided to the Expert;

(c) the Court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Producing Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" that Party must:

(a) promptly notify in writing the Producing Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Producing Party whose Protected Material may be affected.

1 If the Producing Party timely seeks a protective order in any such other
 2 litigation, the Party served with the subpoena or court order in such other litigation
 3 shall not produce any information designated in this action as “CONFIDENTIAL” or
 4 “ATTORNEYS’ EYES ONLY” before a determination by the court from which the
 5 subpoena or order issued, unless the Party has obtained the Producing Party’s
 6 permission. The Producing Party shall bear the burden and expense of seeking
 7 protection in that court of its confidential material. Nothing in this Stipulated
 8 Protective Order should be construed as authorizing or encouraging a Receiving Party
 9 in this action to disobey a lawful directive from another court.

10 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 11 **PRODUCED IN THIS LITIGATION**

12 (a) The terms of this Stipulated Protective Order are applicable to
 13 information produced by a Non-Party in this action and designated as
 14 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”. Such information produced
 15 by Non-Parties in connection with this litigation is protected by the remedies and
 16 relief provided by this Stipulated Protective Order. Nothing in these provisions should
 17 be construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to
 19 produce a Non-Party’s confidential information in its possession, and the Party is
 20 subject to an agreement with the Non-Party not to produce the Non-Party’s
 21 confidential information, then the Party shall:

22 (i) promptly notify in writing the Requesting Party and the Non-Party that
 23 some or all of the information requested is subject to a confidentiality agreement with
 24 a Non-Party;

25 (ii) promptly provide the Non-Party with a copy of this Stipulated
 26 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
 27 specific description of the information requested; and
 28

(iii) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Producing Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Stipulated Protective Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the

1 parties reach an agreement on the effect of disclosure of a communication or
2 information covered by the attorney-client privilege or work product protection, the
3 parties may incorporate their agreement in the stipulated protective order submitted to
4 the Court.

5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Stipulated Protective Order
7 abridges the right of any person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Stipulated Protective Order, no Party waives any right it otherwise would have to
10 object to disclosing or producing any information or item on any ground not addressed
11 in this Stipulated Protective Order. Similarly, no Party waives any right to object on
12 any ground to use in evidence of any of the material covered by this Stipulated
13 Protective Order.

14 12.3 Filing Protected Material. Without written permission from the Producing
15 Party or a Court order secured after appropriate notice to all interested persons, a Party
16 may not file in the public record in this action any Protected Material. A Party that
17 seeks to file under seal any Protected Material must comply with Civil Local Rule 79-
18 5. Protected Material may only be filed under seal pursuant to a Court order
19 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil
20 Local Rule 79-5, a sealing order will issue only upon a request establishing that the
21 Protected Material at issue is privileged, protectable as a trade secret, or otherwise
22 entitled to protection under the law. If a Receiving Party's request to file Protected
23 Material under seal pursuant to Civil Local Rule 79-5 is denied by the Court, then the
24 Receiving Party may file the Protected Material in the public record unless otherwise
25 instructed by the Court.

26 **13. FINAL DISPOSITION**

1 Within 60 days after the “Final Disposition” of this action, as such term is
 2 defined in Section 4, each Receiving Party must return all Protected Material to the
 3 Producing Party or destroy such material. As used in this subdivision, “all Protected
 4 Material” includes all copies, abstracts, compilations, summaries, and any other
 5 format reproducing or capturing any of the Protected Material. Whether the Protected
 6 Material is returned or destroyed, the Receiving Party must submit a written
 7 certification to the Producing Party (and, if not the same person or entity, to the
 8 Producing Party) by the 60-day deadline that (1) identifies (by category, where
 9 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
 10 that the Receiving Party has not retained any copies, abstracts, compilations,
 11 summaries or any other format reproducing or capturing any of the Protected Material.
 12 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
 13 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
 14 correspondence, deposition and trial exhibits, expert reports, attorney work product,
 15 and consultant and expert work product, even if such materials contain Protected
 16 Material. Any such archival copies that contain or constitute Protected Material
 17 remain subject to this Stipulated Protective Order as set forth in Section 4.

18 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

19 DATED: July 11, 2017

20 **SINGH, SINGH & TRAUBEN, LLP**

21 By: /s/ Michael A. Trauben

22 Michael A. Trauben

23 *Attorneys for Plaintiff*
 24 ADSUPPLY, INC.

1 DATED: July 11, 2017

NIXON PEADBODY LLP

2
3 By: /s/ Shawn G. Hansen

4 Shawn G. Hansen

5 *Attorneys for Defendant*
6 ADVERTISE.COM, INC.

7 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED**

8
9
10
11 7/11/17
12 DATED

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HONORABLE CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], have read
in its entirety and consulted with counsel about the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California in
the case of *ADSUPPLY, INC. v. ADVERTISE.COM, INC.*, Case No. 2:16-cv-08921-
PSG (Ex). I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me or my company to sanctions and punishment in the nature of contempt
and/or monetary or other sanctions. 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 Stipulated Protective Order, even if such enforcement
proceedings occur after termination of this action.

Date: _____

Printed name: _____
[printed name]

Signature: _____
[signature]