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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BLACKBERRY LIMITED, a
Canadian corporation,)

Plaintiff,)

v.)

FACEBOOK, INC., a Delaware
corporation, WHATSAPP INC., a
Delaware corporation, and
INSTAGRAM, INC., a Delaware
corporation, and INSTAGRAM, LLC,
a Delaware limited liability company)

Defendants.)

CASE NO. CV 18-1844-GW(KSx)

**STIPULATED PROTECTIVE
ORDER**

BLACKBERRY LIMITED, a
Canadian corporation,)

Plaintiff,)

v.)

SNAP INC., a Delaware corporation)

Defendant.)

CASE NO. CV 18-2693-GW(KSx)

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that

1 the protection it affords from public disclosure and use extends only to the limited
2 information or items that are entitled to confidential treatment under the applicable
3 legal principles. The parties further acknowledge that this Stipulated Protective Order
4 does not entitle them to file confidential information under seal; Civil Local Rule 79-
5 5 sets forth the procedures that must be followed and the standards that will be applied
6 when a party seeks permission from the court to file material under seal.

7 B. GOOD CAUSE STATEMENT

8 This action is likely to involve trade secrets, customer and pricing lists and
9 other valuable research, development, commercial, financial, technical and/or
10 proprietary information for which special protection from public disclosure and from
11 use for any purpose other than prosecution of this action is warranted. Such
12 confidential and proprietary materials and information consist of, among other things,
13 confidential business or financial information, information regarding confidential
14 business practices, source code and technical documentation, or other confidential
15 research, development, or commercial information (including information
16 implicating privacy rights of third parties), information otherwise generally
17 unavailable to the public, or which may be privileged or otherwise protected from
18 disclosure under state or federal statutes, court rules, case decisions, or common law.
19 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
20 of disputes over confidentiality of discovery materials, to adequately protect
21 information the parties are entitled to keep confidential, to ensure that the parties are
22 permitted reasonable necessary uses of such material in preparation for and in the
23 conduct of trial, to address their handling at the end of the litigation, and serve the
24 ends of justice, a protective order for such information is justified in this matter. It is
25 the intent of the parties that information will not be designated as confidential for
26 tactical reasons and that nothing be so designated without a good faith belief that it
27 has been maintained in a confidential, non-public manner, and there is good cause
28 why it should not be part of the public record of this case.

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation
3 of information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for protection
6 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
7 Cause Statement.

8 2.3 Counsel (without qualifier): Outside Counsel of Record and House
9 Counsel (as well as their support staff).

10 2.4 Designating Party: a Party or Non-Party that designates information or
11 items that it produces in disclosures or in responses to discovery requests as
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

14 2.5 Disclosure or Discovery Material: all items or information, regardless
15 of the medium or manner in which it is generated, stored, or maintained (including,
16 among other things, testimony, transcripts, and tangible things), that are produced or
17 generated in disclosures or responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who (1) has been retained by a Party or its Counsel to serve
20 as an expert witness or as a consultant in this action, (2) is not a past or current
21 employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not
22 anticipated to become an employee of a Party or of a Party’s competitor.

23 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
24 Information or Items: extremely sensitive “Confidential Information or Items,”
25 disclosure of which to another Party or Non-Party would create a substantial risk of
26 serious harm that could not be avoided by less restrictive means.

27 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
28 extremely sensitive “Confidential Information or Items” representing computer code

1 and associated comments and revision histories, formulas, engineering specifications,
2 or schematics that define or otherwise describe in detail the algorithms or structure of
3 software or hardware designs, disclosure of which to another Party or Non-Party
4 would create a substantial risk of serious harm that could not be avoided by less
5 restrictive means.

6 2.9 House Counsel: attorneys who are employees of a party to this action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.10 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.11 Outside Counsel of Record: attorneys who are not employees of a party
12 to this action but are retained to represent or advise a party to this action and have
13 appeared in this action on behalf of that party or are employed by a law firm which
14 has appeared on behalf of that party; as well as staff of such counsel to whom it is
15 reasonably necessary to disclose or allow access to Protected Material for this
16 litigation.

17 2.12 Party: any party to this action, including all of its officers, directors, and
18 employees (and their respective support staffs).

19 2.13 “Patents-in-Suit” means (1) for the action against Snap Inc., U.S.
20 Patent Nos. 8,209,634; 8,296,351; 8,301,713; 8,676,929; 8,825,084; and
21 8,326,327 and (2) for the action against the Facebook defendants, U.S. Patent Nos.
22 7,372,961; 8,209,634; 8,279,173; 8,296,351; 8,301,713; 8,429,236; 8,676,929;
23 8,677,250; and 9,349,120.

24 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this action.

26 2.15 Professional Vendors: persons or entities that provide litigation support
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or
28

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.16 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE
6 CODE.”

7 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9 3. SCOPE

10 3.1 The protections conferred by this Stipulation and Order cover not only
11 Protected Material (as defined above), but also (1) any information copied or extracted
12 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
13 Protected Material; and (3) any testimony, conversations, or presentations by Parties
14 or their Counsel that might reveal Protected Material. However, the protections
15 conferred by this Stipulation and Order do not cover the following information: (a)
16 any information that is in the public domain at the time of disclosure to a Receiving
17 Party or becomes part of the public domain after its disclosure to a Receiving Party
18 as a result of publication not involving a violation of this Order, including becoming
19 part of the public record through trial or otherwise; and (b) any information known to
20 the Receiving Party prior to the disclosure or obtained by the Receiving Party after
21 the disclosure from a source who obtained the information lawfully and under no
22 obligation of confidentiality to the Designating Party.

23
24 3.2 Nothing in this Protective Order shall prevent or restrict a Producing
25 Party’s own disclosure or use of its own Protected Material for any purpose, and
26 nothing in this Order shall preclude any Producing Party from showing its Protected
27 Material to an individual who prepared or was involved in the preparation of the
28 Protected Material.

1 3.3 Nothing in this Order shall be construed to prejudice any Party's right to
2 use any Protected Material in court or in any court filing with the consent of the
3 Producing Party or by order of the Court. Any use of Protected Material at trial shall
4 be governed by the orders of the trial judge. This order does not govern the use of
5 Protected Material at trial.

6 3.4 This Order is without prejudice to the right of any Party to seek further
7 or additional protection of any Discovery Material or to modify this Order in any
8 way, including, without limitation, an order that certain matter not be produced at
9 all.

10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees
13 otherwise in writing or a court order otherwise directs.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.
16 Each Party or Non-Party that designates information or items for protection under this
17 Order must take care to limit any such designation to specific material that qualifies
18 under the appropriate standards. To the extent it is practical to do so, the Designating
19 Party must designate for protection only those parts of material, documents, items, or
20 oral or written communications that qualify so that other portions of the material,
21 documents, items, or communications for which protection is not warranted are not
22 swept unjustifiably within the ambit of this Order.

23 If it comes to a Designating Party's attention that information or items that it
24 designated for protection do not qualify for protection at all or do not qualify for the
25 level of protection initially asserted, that Designating Party must promptly notify all
26 other parties that it is withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., section 5.2(b) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must
2 be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
8 CONFIDENTIAL – SOURCE CODE” to each page that contains Protected Material.

9 (b) for testimony given in deposition, that the Designating Party either
10 (1) identify on the record or (2) identify, in writing, within 21 days of receipt of the
11 final transcript, that the transcript shall be treated as “CONFIDENTIAL,” “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL
13 – SOURCE CODE.”

14 The use of a document as an exhibit at a deposition or other pretrial or trial
15 proceedings shall not in any way affect its designation as “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
17 CONFIDENTIAL – SOURCE CODE.”

18 Transcripts containing Protected Material shall have an obvious legend on the
19 title page that the transcript contains Protected Material, and the title page shall be
20 followed by a list of all pages that have been designated as Protected Material and the
21 level of protection being asserted by the Designating Party. The Designating Party
22 shall inform the court reporter of these requirements. Any transcript that was not
23 designated on the record pursuant to the first paragraph of section 5.2(b) above shall
24 be treated during the 21-day period for designation as if it had been designated
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety. After
26 the expiration of that period or as of such earlier time that such transcript is designated,
27 the transcript shall be treated only as actually designated.

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1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on
3 the exterior of the container or containers in which the information or item is stored
4 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a
6 portion or portions of the information or item warrant protection, the Producing Party,
7 to the extent practicable, shall identify the protected portion(s) and specify the level
8 of protection being asserted.

9 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
10 qualified information or items does not waive the Designating Party’s right to secure
11 protection under this Order for such material. Upon correction of a designation, the
12 Receiving Party must make all reasonable efforts to assure that the material is treated
13 in accordance with the provisions of this Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court’s
17 Scheduling Order.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
19 resolution process under Local Rule 37.1 et seq.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
21 court intervention, the Designating Party will have seven (7) days from the date of the
22 meet and confer to seek relief from the Court, unless superseded by the applicable
23 discovery dispute resolution procedures of any Judge or Magistrate Judge presiding
24 over such dispute. If relief is not sought from the Court within that time, the objection
25 shall be deemed withdrawn.

26 The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Frivolous challenges and those made for an improper purpose
28 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may

1 expose the Challenging Party to sanctions. Unless the Designating Party has waived
2 the confidentiality designation by failing to seek a telephone conference with the
3 Court to retain confidentiality as described above, all parties shall continue to afford
4 the material in question the level of protection to which it is entitled under the
5 Producing Party’s designation until the Court rules on the challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this case
9 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
10 Material may be disclosed only to the categories of persons and under the conditions
11 described in this Order. When the Action has been terminated, a Receiving Party
12 must comply with the provisions of section 15 below (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
17 otherwise ordered by the Court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as
21 well as employees of said Outside Counsel of Record to whom it is reasonably
22 necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this Action and
25 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom
27 disclosure is reasonably necessary for this Action and who have signed the
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 (d) the Court and its personnel;
2 (e) court reporters and their staff,
3 (f) professional jury or trial consultants including mock jurors who have
4 signed a confidentiality agreement, and Professional Vendors to whom disclosure is
5 reasonably necessary for this Action and who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A);

7 (g) during their depositions, witnesses in the action to whom disclosure
8 is reasonably necessary, with the consent of the Designating Party or as ordered by
9 the Court. Pages of transcribed deposition testimony or exhibits to depositions that
10 reveal Protected Material must be separately bound by the court reporter and may not
11 be disclosed to anyone except as permitted under this Stipulated Protective Order;

12 (h) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information;

14 (i) any mediator or settlement officer, and their supporting personnel,
15 mutually agreed upon by any of the parties engaged in settlement discussions.

16 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in
18 writing by the Designating Party, a Receiving Party may disclose any information or
19 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
20 to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to
23 disclose the information for this litigation;

24 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
25 necessary for this litigation, (2) who have signed the “Acknowledgment and
26 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
27 Paragraph 7.5(a), below, have been followed;

28 (c) the Court and its personnel;

- 1 (d) court reporters and their staff,
- 2 (e) professional jury or trial consultants including mock jurors who have signed
- 3 a confidentiality agreement, and Professional Vendors to whom disclosure is
- 4 reasonably necessary for this litigation and who have signed the “Acknowledgment
- 5 and Agreement to Be Bound” (Exhibit A);
- 6 (f) the author or recipient of a document containing the information or a
- 7 custodian or other person who otherwise possessed or knew the information;
- 8 (g) any mediator or settlement officer, and their supporting personnel, mutually
- 9 agreed upon by any of the parties engaged in settlement discussions.

10 7.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE”

11 Information or Items. Unless otherwise ordered by the Court or permitted in writing

12 by the Designating Party, a Receiving Party may disclose any information or item

13 designated “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as

15 employees of said Outside Counsel of Record to whom it is reasonably necessary to

16 disclose the information for this litigation;

17 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably

18 necessary for this litigation, (2) who have signed the “Acknowledgment and

19 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in

20 Paragraph 7.5(a), below, have been followed;

21 (c) the Court and its personnel;

22 (d) court reporters and their staff,

23 (e) professional jury or trial consultants (but not mock jurors), and Professional

24 Vendors to whom disclosure is reasonably necessary for this litigation and who have

25 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

26 (f) the author or recipient of a document containing the information or a

27 custodian or other person who otherwise possessed or knew the information; and

28

1 (g) any mediator or settlement officer, and their supporting personnel, mutually
2 agreed upon by any of the parties engaged in settlement discussions..

3 7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY
4 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
5 – SOURCE CODE” Information or Items to Experts.

6 (a) Unless otherwise ordered by the Court or agreed to in writing by the
7 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order)
8 any information or item that has been designated “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
10 pursuant to Paragraphs 7.3 and 7.4 first must make a written request to the
11 Designating Party that (1) identifies the general categories of “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
13 – SOURCE CODE” information that the Receiving Party seeks permission to disclose
14 to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
15 her primary residence, (3) attaches a copy of the Expert’s current resume, (4)
16 identifies the Expert’s current employer(s), (5) identifies each person or entity from
17 whom the Expert has received compensation or funding for work in his or her areas
18 of expertise or to whom the Expert has provided professional services, including in
19 connection with a litigation, at any time during the preceding five years and the party
20 to the litigation for whom such work was done, (6) identifies (by name and number
21 of the case, filing date, and location of court) any litigation in connection with which
22 the Expert has offered expert testimony, including through a declaration, report, or
23 testimony at a deposition or trial, during the preceding five years, and (7) identifies
24 any patents or patent applications in which the Expert is identified as an inventor or
25 applicant, is involved in prosecuting or maintaining, or has any pecuniary interest.
26 With regard to the information sought through part (5) of this disclosure, if the Expert
27 believes any of this information is subject to a confidentiality obligation to a third
28 party, then the Expert should provide whatever information the Expert believes can

1 be disclosed without violating any confidentiality agreements, and the Party seeking
2 to disclose to the Expert shall be available to meet and confer with the Designating
3 Party regarding any such engagement.

4 (b) A Party that makes a request and provides the information specified in the
5 preceding respective paragraphs may disclose the subject Protected Material to the
6 identified Expert unless, within seven days of delivering the request (the "Objection
7 Period"), the Party receives a written objection from the Designating Party. Any such
8 objection must set forth in detail the grounds on which it is based. The Parties shall
9 work in good faith to agree to longer or shorter Objection Periods if deadlines in the
10 case so require. For the avoidance of doubt, absent written consent of the Designating
11 Party, the Party may not share Protected Material with the identified Expert until
12 either the expiration of the Objection Period without written objection or until the
13 Court resolves the objection.

14 (c) A Party that receives a timely written objection must meet and confer with
15 the Designating Party (through direct voice to voice dialogue) to try to resolve the
16 matter by agreement within seven days of the written objection. If the dispute is not
17 resolved, the Party objecting to the disclosure will have seven (7) days from the date
18 of the meet and confer to seek relief from the Court, unless superseded by the
19 applicable discovery dispute resolution procedures of any Judge or Magistrate Judge
20 presiding over such dispute. If relief is not sought from the Court within that time, the
21 objection shall be deemed withdrawn.

22 In any such proceeding, the Party opposing disclosure to the Expert shall bear
23 the burden of proving that the risk of harm that the disclosure would entail (under the
24 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
25 Material to its Expert.

26 8. PROSECUTION BAR

27 Absent the written consent of the Designating Party, any person who receives
28 materials designated by another Party as "HIGHLY CONFIDENTIAL –

1 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
2 (“Barred Person”) shall not be involved, directly or indirectly, in any of the following
3 activities: (i) preparing, prosecuting, supervising, or otherwise assisting in the
4 preparation or prosecution of any patent application related by claim of priority to any
5 of the Patents-in-Suit; (ii) amending any claim of any of the Patents-in-Suit; and (iii)
6 advising on, consulting on, preparing, prosecuting, drafting, editing, and/or amending
7 of patent applications, specifications, claims, and/or responses to office actions, or
8 otherwise affecting the scope of claims in patent applications relating to the field of
9 the invention of the Patents-in-Suit.

10 These prohibitions are not intended to and shall not preclude counsel from
11 participating in proceedings on behalf of a Party challenging or defending the validity
12 of any patent, including, but not limited to, as part of any reexamination, inter partes
13 review, or reissue proceedings, but Barred Persons (including counsel for the
14 Receiving Party) may not participate, directly or indirectly, in drafting, amending, or
15 altering the language of any patent claim(s) in any such proceeding. These
16 prohibitions shall begin when access to “HIGHLY CONFIDENTIAL – SOURCE
17 CODE” materials are first received by the Barred Person, and shall end two (2) years
18 after the final resolution of this action, including all appeals. Nothing in this
19 Protective Order shall prevent any attorney from sending Prior Art to persons
20 involved in prosecuting patent applications for purposes of ensuring that such Prior
21 Art is submitted to the U.S. Patent and Trademark Office (or any similar agency of a
22 foreign government) in compliance with any duty of candor. Nothing in this
23 paragraph shall prohibit any attorney of record in this litigation from discussing any
24 aspect of this case that is reasonably necessary for the prosecution or defense of any
25 claim or counterclaim in this litigation. This Prosecution Bar applies to each
26 individual reviewing the HIGHLY CONFIDENTIAL – SOURCE CODE” material
27 and does not impute to the law firm, institution, or company who employs the
28 individual.

1 9. SOURCE CODE

2 (a) To the extent production of source code becomes necessary in this
3 case, a Producing Party may designate source code as “HIGHLY CONFIDENTIAL
4 - SOURCE CODE” if it comprises or includes extremely sensitive “Confidential
5 Information or Items” representing computer code and associated comments and
6 revision histories, formulas, engineering specifications, or schematics that define or
7 otherwise describe in detail the algorithms or structure of software or hardware
8 designs, disclosure of which to another Party or Non-Party would create a substantial
9 risk of serious harm that could not be avoided by less restrictive means.

10 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –
11 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information including the
13 Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the individuals
14 to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE
15 CODE” information may be disclosed, as set forth in Paragraph 7.4.

16 (c) Any source code produced in discovery shall be made available
17 for inspection, in a format allowing it to be reasonably reviewed and searched, during
18 normal business hours (9:00 am to 6:00 pm local time) or at other mutually agreeable
19 times, at an office of the Producing Party’s Counsel selected by the Producing Party
20 or another mutually agreed upon location. The computer containing source code will
21 be made available upon reasonable notice to the Producing Party, which shall not be
22 less than seven (7) days’ notice prior to the first requested inspection and, three (3)
23 business days’ notice in advance of any additional inspections. The source code shall
24 be made available for inspection on a secured computer in a room without Internet
25 access or network access to other computers, and the Receiving Party shall not copy,
26 remove, or otherwise transfer any portion of the source code onto any recordable
27 media or recordable device. Representatives of the Producing Party may monitor the
28 review through a window such that the Producing Party is not able to hear any normal

1 volume discussions among the Receiving Party’s representatives, or view what
2 specific portions of the Source Code Material that the Receiving Party’s
3 representative is inspecting. The Parties agree to cooperate in good faith such that
4 maintaining the producing Party’s Source Code Material at the offices of its outside
5 counsel shall not unreasonably hinder the receiving Party’s ability to efficiently and
6 effectively conduct the prosecution or defense of this Action. All persons viewing
7 Source Code shall sign on each day they view Source Code a log that will include the
8 names of persons who enter the secured room to view the Source Code and when they
9 enter and depart.

10 (d) The Producing Party will, upon request by the Receiving Party,
11 provide up to four (4) paper copies of limited portions of source code that are
12 reasonably necessary to attach to filings, pleadings, expert reports, or other papers, or
13 for use as an exhibit at deposition or trial, but shall not request paper copies for the
14 purposes of reviewing the source code other than electronically as set forth in
15 Paragraph 9(c) in the first instance. Using the software available on the Source Code
16 Computer, the Receiving Party shall create PDFs of the printed copies the Receiving
17 Party is requesting and save them in a folder on the desktop of the Source Code
18 Computer named “Print Requests” with a subfolder identifying the date of the request.
19 The PDF printouts must include identifying information including the full file path
20 and file name, page number, line numbers, and date of printing. The request for
21 printed Source Code shall be served via an email request identifying the subfolders of
22 the “Print Requests” folder that the Receiving Party is requesting. Within five (5)
23 business days of such request, the Producing Party shall provide one copy of all such
24 source code on watermarked or colored paper including bates numbers and the label
25 “HIGHLY CONFIDENTIAL - SOURCE CODE.” If the request is served after
26 5:00pm Pacific Time, it shall be deemed served the following business day. The
27 Producing Party may challenge the amount of source code requested in hard copy
28 form pursuant to the dispute resolution procedure set forth in Paragraph 6 whereby

1 the Producing Party is the “Challenging Party” and the Receiving Party is the
2 “Designating Party” for purposes of dispute resolution. The Parties agree to discuss
3 whether any numerical limits on the total pages of Source Code or total consecutive
4 pages of Source Code printed may be appropriate, and further agree to conduct such
5 discussions twenty-one (21) days after the production of source code by Defendants.
6 For clarity, the parties reserve all rights with respect to the ability to seek (or oppose
7 another party’s attempt to seek) such numerical limits on Source Code printing, and
8 neither Party shall use the lack of such numerical limits in this paragraph to claim that
9 either Party has waived any argument that the number of consecutive or total pages
10 of Source Code printed is excessive.

11 (e) The Receiving Party shall maintain a log of all paper copies of the
12 Source Code. The log shall include the names of the reviewers and/or recipients of
13 paper copies and locations where the paper copies are stored. Upon five (5) business
14 days’ advance notice to the Receiving Party by the Producing Party, the Receiving
15 Party shall provide a copy of this log to the Producing Party. The Receiving Party
16 shall maintain all paper copies of any printed portions of the source code in a secured,
17 locked area. To the extent a deposition is likely to involve source code, the Party
18 taking the deposition, shall provide at least two days written notice of that fact, and
19 the Producing Party may make a source code computer and projector available at the
20 deposition, minimizing the need for additional paper copies of source code. The
21 Producing Party is not required to create a new Source Code Computer for the purpose
22 of depositions. Any paper copies used during a deposition shall be retrieved by the
23 Producing Party at the end of each day and must not be given to or left with a court
24 reporter or any other individual. Notwithstanding anything to the contrary in this
25 paragraph, the Receiving Party may request additional paper copies of the printed
26 source code which shall not be unreasonably withheld. Any disputes relating to such
27 additional copies shall be handled in accordance with Section 9(d).

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1 (f) Except as provided in this sub-paragraph, absent express written
2 permission from the Producing Party, the Receiving Party may not create electronic
3 images, or any other images, or make electronic copies, of the Source Code from any
4 paper copy of Source Code for use in any manner (including by way of example only,
5 the Receiving Party may not scan the Source Code to a PDF or photograph the code).
6 Images or copies of Source Code shall not be included in correspondence between the
7 Parties (references to production numbers shall be used instead), and shall be omitted
8 from pleadings and other papers except to the extent permitted herein. The Receiving
9 Party may create an electronic copy or image of limited excerpts of Source Code in a
10 pleading, court filing, expert report, trial exhibit, demonstrative, deposition
11 exhibit/transcript, and drafts of these documents. Such excerpts shall in no instance
12 comprise more than 150 consecutive lines of Source Code. The Receiving Party may
13 create an electronic image of a selected portion of the Source Code only when the
14 electronic file containing such image (“Source Code File”) has been encrypted using
15 commercially reasonable software (specifically Microsoft Word Document Protect,
16 7Zip, or other software agreed upon by the Parties in writing) provided, however, that
17 (i) transitory images, such as images temporarily saved to the clipboard during
18 copy/paste operations, do not need to be so encrypted, and (ii) filings with the Court
19 shall not be encrypted. The Receiving Party shall not transmit any Source Code Files
20 using email, nor shall the Receiving Party store any Source Code Files on any
21 handheld devices, such as smartphones. Any transmission of Source Code Files, apart
22 from filing with the Court, shall be via secure FTP or password-protected media.
23 Copies of Source Code Files shall be deleted immediately from any media used for
24 purposes of transfer after transfer is complete. The Receiving Party shall maintain a
25 log of all such electronic copies of any portion of Source Code in its possession or in
26 the possession of its retained consultants, including the names of the reviewers and/or
27 recipients of any such electronic copies, and the locations and manner in which the
28 electronic copies are stored, to the extent any electronic copies are stored outside of

1 the law offices of Outside Counsel of Record for the Receiving Party. Such log need
2 not include the names of any attorneys or staff of Outside Counsel of Record for the
3 Receiving Party.

4 The communication and/or disclosure of electronic files containing any portion
5 of Source Code shall at all times be limited to individuals who are expressly
6 authorized to view Source Code under the provisions of this Protective Order. Any
7 electronic copies of any portions of source code (or documents containing said
8 portions of source code) must be labeled “CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY – SOURCE CODE” as provided for in this Order. A party seeking to file with
10 the court documents containing excerpts of Source Code as permitted by this
11 subparagraph must file an Application for Leave to File Under Seal under the
12 provisions of Local Rule 79-5 or 79-6, as applicable.

13 (g) The Producing Party shall install tools that are sufficient for
14 reviewing the code produced. The Receiving Party’s Outside Counsel and/or
15 experts/consultants may request that commercially available software tools for
16 viewing and searching Source Code be installed on the Source Code Computer,
17 provided, however, that (a) the Receiving Party possesses an appropriate license to
18 such software tools and (b) the Producing Party approves such software tools, which
19 approval shall not be unreasonably withheld; the Producing Party will approve the use
20 of software tools that are reasonably necessary for the Receiving Party to perform its
21 review of the Source Code consistent with all of the protections herein, including but
22 not limited to one or more of each of the following tools: a text editor capable of
23 printing out source code with filename, page and line number, a source-code
24 comparison tool such as a “diff” tool, and a multi-text file search tool. The Producing
25 Party shall approve reasonable requests for additional commercially available
26 software tools. The Receiving Party must provide the Producing Party with the CD,
27 DVD, file path, or Advanced Package Tool package containing such licensed software
28 tool(s) at least four (4) business days in advance of the date upon which the Receiving

1 Party wishes to have the additional software tools available for use on the Source
2 Code Computer. The Producing Party shall make reasonable attempts to install the
3 requested software but will not be held responsible for the proper setup, functioning,
4 or support of any software requested by the Receiving Party. By way of example, the
5 Producing Party will not compile or debug software for installation.

6 (h) No electronic recordable media or recordable devices, including,
7 without limitation, sound recorders, computers, cellular telephones, peripheral
8 equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the
9 Source Code Review Room.

10 (i) The Receiving Party's Outside Counsel and/or experts/consultants
11 shall be entitled to take notes relating to the Source Code but may not copy the Source
12 Code into the notes.

13 (j) The Receiving Party's Outside Counsel and any person receiving
14 a copy of any Source Code shall maintain and store any paper copies of the Source
15 Code at their offices in a manner that prevents duplication of or unauthorized access
16 to the Source Code, including, without limitation, storing the Source Code in a locked
17 room or cabinet at all times when it is not in use.

18 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
19 OTHER LITIGATION

20 10.1 If a Party is served with a subpoena or a court order issued in other
21 litigation that compels disclosure of any information or items designated in this
22 Action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
23 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" that Party must:

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

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

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

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this action
7 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination
9 by the Court from which the subpoena or order issued, unless the Party has obtained
10 the Designating Party’s permission. The Designating Party shall bear the burden and
11 expense of seeking protection in that court of its confidential material and nothing in
12 these provisions should be construed as authorizing or encouraging a Receiving Party
13 in this Action to disobey a lawful directive from another court.

14 10.2 The provisions set forth herein are not intended to, and do not, restrict
15 in any way the procedures set forth in Federal Rule of Civil Procedure 45(d)(3) or
16 (f).

17 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a Non-
20 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
22 – SOURCE CODE.” Such information produced by Non-Parties in connection with
23 this litigation is protected by the remedies and relief provided by this Order. Nothing
24 in these provisions should be construed as prohibiting a Non-Party from seeking
25 additional protections.

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

3 1. promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Non-Party; and

6 2. promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a reasonably
8 specific description of the information requested.

9 (c) If the Non-Party fails to object or seek a protective order from this court
10 within ten days after receiving the notice and accompanying information (unless a
11 different period of time is specified by a contract or agreement involving the
12 Producing Party and the Non-Party covering the confidentiality and/or disclosure of
13 the information requested), the Producing Party may produce the Non-Party's
14 confidential information responsive to the discovery request. If the Non-Party timely
15 seeks a protective order, the Producing Party shall not produce any information in its
16 possession or control that is subject to the confidentiality agreement with the Non-
17 Party before a determination by the Court.

18 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

27 13. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
28 MATERIAL

1 When a Producing Party gives notice to Receiving Parties that certain produced
2 material is subject to a claim of privilege or other protection, the obligations of the
3 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
4 A Producing Party may assert privilege or protection over produced documents at any
5 time by notifying the Receiving Party in writing of the assertion of privilege or
6 protection. In addition, information that contains privileged matter or attorney work
7 product shall be returned or destroyed immediately by the Receiving Party if such
8 information appears on its face to have been inadvertently produced or if requested.
9 After being notified, a Receiving Party must promptly return or destroy the specified
10 information until the claim is resolved.

11 Pursuant to Federal Rule of Evidence 502(d) and (e), the production of a
12 privileged or work-product-protected document is not a waiver of privilege or
13 protection from discovery in this case or in any other federal or state proceeding. For
14 example, the mere production of privilege or work-product-protected documents in
15 this case as part of a mass production is not itself a waiver in this case or any other
16 federal or state proceeding.

17 14. MISCELLANEOUS

18 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the Court in the future.

20 14.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to
22 disclosing or producing any information or item on any ground not addressed in this
23 Stipulated Protective Order. Similarly, no Party waives any right to object on any
24 ground to use in evidence of any of the material covered by this Protective Order.

25 14.3 Export Control. The Protected Material disclosed by the Producing
26 Party may contain technical data subject to export control laws and therefore
27 the release of such technical data to foreign persons or nationals in the United States
28 or elsewhere may be restricted. The Receiving Party shall take measures necessary to

1 ensure compliance with applicable export control laws, including confirming that no
2 unauthorized foreign person has access to such technical data.

3 No Protected Material may leave the territorial boundaries of the United States
4 of America or Canada. Without limitation, this prohibition extends to Protected
5 Information (including copies) in physical and electronic form. The viewing of
6 Protected Information through electronic means outside the territorial limits of the
7 United States of America or Canada is similarly prohibited. Further, with respect to
8 Defendants' materials designated as "HIGHLY CONFIDENTIAL – SOURCE
9 CODE," such materials may not leave the territorial boundaries of the United States
10 of America. The restrictions contained within this paragraph may be amended
11 through the express written consent of the Producing Party to the extent that such
12 agreed to procedures conform with applicable export control laws and
13 regulations. Nothing in this paragraph is intended to remove any obligation that may
14 otherwise exist to produce documents currently located in a foreign country.

15 14.4 Filing Protected Material. Without written permission from the
16 Designating Party or a court order secured after appropriate notice to all interested
17 persons, a Party may not file in the public record in this action any Protected Material.

18 14.5 Privilege Logs. No Party is required to identify on its respective
19 privilege log any document or communication dated after the filing of the Complaint.
20 The parties shall exchange their respective privilege logs at a time to be agreed upon
21 by the parties following the production of documents, or as otherwise ordered by the
22 Court.

23 14.6 Computation of time. The computation of any period of time prescribed
24 or allowed by this Order shall be governed by the provisions for computing time set
25 forth in Federal Rule of Civil Procedure 6.


26 15. FINAL DISPOSITION

27 Final disposition shall be deemed to be the later of (1) dismissal of all claims
28 and defenses in this Action, with or without prejudice; and (2) final judgment herein

1 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
2 reviews of this action, including the time limits for filing any motions or applications
3 for extension of time pursuant to applicable law and the time limits for filing a petition
4 for writ of certiorari to the Supreme Court of the United States if applicable.

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

23
24 **SO ORDERED** this 25th day of September, 2018.

25
26 

27 GEORGE H. WU, U.S. District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California on
7 [date] in the case of *BlackBerry Limited v. Snap Inc.*, Case No. 2:18-cv-02693
8 GW(KSx) [OR *BlackBerry Limited v. Facebook, Inc. et al.*, Case No. 2:18-cv-01844
9 GW(KSx)]. I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
12 that I will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with
14 the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24
25 Date: _____

26
27 City and State where sworn and signed: _____

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Printed name: _____

[printed name]

Signature: _____

[signature]