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and Defendant AMHC, Inc.

14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 MICROSOFT CORPORATION,
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 18 Plaintiff,

19 v.

20 MEDIAPointe, INC., AMHC, INC.,
 21
 22 Defendants.

23 MEDIAPointe, INC.

24 Counterclaimant,

25 v.

26 MICROSOFT CORPORATION

27 Counterclaim-Defendant.
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Case No. 2:22-cv-01009-MCS-MRW

**STIPULATED PROTECTIVE
 ORDER**

1 WHEREAS, Plaintiff Microsoft Corporation (“Microsoft”) and Defendants
2 MediaPointe, Inc. and AMHC, Inc. (collectively “MediaPointe”) (Plaintiff and
3 Defendants each a “Party,” and collectively, the “Parties”) believe that certain
4 information that is or will be encompassed by discovery demands by the Parties
5 involves the production or disclosure of trade secrets, confidential business
6 information, or other proprietary information;

7 WHEREAS, the Parties seek a protective order limiting disclosure thereof in
8 accordance with Federal Rule of Civil Procedure 26(c):

9 THEREFORE, it is hereby stipulated among the Parties and **ORDERED**
10 that:

11 1. A. PURPOSES AND LIMITATIONS

12 Discovery in this action is likely to involve production of confidential,
13 proprietary or private information for which special protection from public
14 disclosure and from use for any purpose other than prosecuting this litigation may
15 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
16 enter the following Stipulated Protective Order. The parties acknowledge that this
17 Order does not confer blanket protections on all disclosures or responses to
18 discovery and that the protection it affords from public disclosure and use extends
19 only to the limited information or items that are entitled to confidential treatment
20 under the applicable legal principles.

21 B. GOOD CAUSE STATEMENT

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

18 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
19 SEAL

20 The parties further acknowledge, as set forth in Section 12.3, below, that this
21 Stipulated Protective Order does not entitle them to file confidential information
22 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
23 and the standards that will be applied when a party seeks permission from the court
24 to file material under seal. Any information designated “CONFIDENTIAL,”
25 “RESTRICTED - ATTORNEYS’ EYES ONLY,” “RESTRICTED
26 CONFIDENTIAL SOURCE CODE,” or “PRIVACY DATA” by any party, as
27 discussed below, will be deemed “information previously designated as
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1 confidential” within the meaning of Local Rule 79-5 unless the Court rules
2 otherwise.

3 There is a strong presumption that the public has a right of access to judicial
4 proceedings and records in civil cases. In connection with non-dispositive motions,
5 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
6 *County of Honolulu*, [447 F.3d 1172, 1176 \(9th Cir. 2006\)](#), *Phillips v. Gen. Motors*
7 *Corp.*, [307 F.3d 1206, 1210-11 \(9th Cir. 2002\)](#), *Makar-Welbon v. Sony Electronics,*
8 *Inc.*, [187 F.R.D. 576, 577 \(E.D. Wis. 1999\)](#) (even stipulated protective orders require
9 good cause showing), and a specific showing of good cause or compelling reasons
10 with proper evidentiary support and legal justification, must be made with respect to
11 Protected Material that a party seeks to file under seal. The parties’ mere designation
12 of Disclosure or Discovery Material as CONFIDENTIAL does not — without the
13 submission of competent evidence by declaration, establishing that the material
14 sought to be filed under seal qualifies as confidential, privileged, or otherwise
15 protectable — constitute good cause.

16 Further, if a party requests sealing related to a dispositive motion or trial, then
17 compelling reasons, not only good cause, for the sealing must be shown, and the
18 relief sought shall be narrowly tailored to serve the specific interest to be protected.
19 *See Pintos v. Pacific Creditors Ass’n*, [605 F.3d 665, 677–79 \(9th Cir. 2010\)](#). For
20 each item or type of information, document, or thing sought to be filed or introduced
21 under seal in connection with a dispositive motion or trial, the party seeking
22 protection must articulate compelling reasons, supported by specific facts and legal
23 justification, for the requested sealing order. Again, competent evidence supporting
24 the application to file documents under seal must be provided by declaration.

25 Any document that is not confidential, privileged, or otherwise protectable in
26 its entirety will not be filed under seal if the confidential portions can be redacted.
27 If documents can be redacted, then a redacted version for public viewing, omitting
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1 only the confidential, privileged, or otherwise protectable portions of the document,
2 shall be filed. Any application that seeks to file documents under seal in their
3 entirety should include an explanation of why redaction is not feasible.

4 Producing Confidential Information (defined in Section 2.3 below) imposes a
5 substantial burden and a risk of disclosure of trade secrets. *See, e.g., Fed. R. Civ. P.*
6 26(c)(1)(G). Therefore, the Parties shall limit their discovery requests for
7 Confidential Information to no more than is reasonably necessary to prosecute or
8 defend against the specific claims alleged in this Action. The Parties agree that,
9 consistent with Federal Rule of Civil Procedure 34, all requests for Confidential
10 Information will describe the requested discovery material with reasonable
11 particularity. The parties agree to meet and confer in good faith to narrow the scope
12 of requested discovery of Confidential Information to what is reasonably necessary
13 to prosecute or defend against the specific claims alleged in this Action.

14 The parties shall only include Protected Material (defined in Section 2.14
15 below) in filings with the Court to the extent that it is reasonably necessary for the
16 Court to decide a disputed issue, including by filing only the relevant excerpts of
17 documents designated as Protected Material. *See L.R. 79-5.2.2*. If a Party files
18 excessive Protected Material of another Designating Party that is not reasonably
19 necessary for the Court to decide a disputed issue, the Designating Party reserves all
20 rights to seek relief, including to petition the clerk of court to remove or return any
21 unnecessarily filed Protected Material or to move the Court to strike such
22 unnecessarily filed Protected Material.

23 2. DEFINITIONS

24 2.1. Action: this pending federal lawsuit.

25 2.2. Challenging Party: a Party or Non-Party that challenges the designation
26 of information or items under this Order.
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1 2.3. “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
4 the Good Cause Statement. “CONFIDENTIAL” information includes information
5 designated with a more restrictive category, including “RESTRICTED -
6 ATTORNEYS’ EYES ONLY,” “RESTRICTED CONFIDENTIAL SOURCE
7 CODE,” or “PRIVACY DATA.”

8 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as
9 their support staff).

10 2.5. Designating Party: a Party or Non-Party that designates information or
11 items that it produces in disclosures or in responses to discovery as
12 “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,”
13 “RESTRICTED CONFIDENTIAL SOURCE CODE,” or “PRIVACY DATA.”

14 2.6. 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 2.7. Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as
20 an expert witness or as a consultant in this Action, including support staff. Both
21 experts, and any of their support staff who actively review any materials marked
22 RESTRICTED - ATTORNEYS’ EYES ONLY” or “RESTRICTED
23 CONFIDENTIAL SOURCE CODE” for the purpose of helping that expert form an
24 opinion in this case, are subject to the requirements of Section 7.2(c) below.

25 2.8. House Counsel: attorneys who are employees of a party to this Action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.

1 2.9. Non-Party: any natural person, partnership, corporation, association or
2 other legal entity not named as a Party to this action.

3 2.10. Outside Counsel of Record: attorneys who are not employees of a party
4 to this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm that
6 has appeared on behalf of that party, and includes support staff.

7 2.11. Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13. Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14. Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES
18 ONLY,” “RESTRICTED CONFIDENTIAL SOURCE CODE,” or “PRIVACY
19 DATA.”

20 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
21 from a Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only
24 Protected Material (as defined above), but also (1) any information copied or
25 extracted from Protected Material; (2) all copies, excerpts, summaries, or
26 compilations of Protected Material; and (3) any testimony, conversations, or
27 presentations by Parties or their Counsel that might reveal Protected Material.
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1 Any use of Protected Material at trial shall be governed by the orders of the
2 trial judge, rather than this Order. Subject to any challenges under Section 6, below,
3 the Parties will not oppose any reasonable request by the Producing Party that the
4 courtroom be sealed, if allowed by the Court, during the presentation of any
5 testimony, evidence, or argument relating to or involving the use of any Protected
6 Material.

7 4. DURATION

8 Once a case proceeds to trial, information that was designated as
9 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
10 as an exhibit at trial becomes public and will be presumptively available to all
11 members of the public, including the press, unless compelling reasons supported by
12 specific factual findings to proceed otherwise are made to the trial judge in advance
13 of the trial. *See Kamakana*, [447 F.3d at 1180-81](#) (distinguishing “good cause”
14 showing for sealing documents produced in discovery from “compelling reasons”
15 standard when merits-related documents are part of court record). Accordingly, the
16 terms of this protective order do not extend beyond the commencement of the trial.

17 5. DESIGNATING PROTECTED MATERIAL

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

26 Mass, indiscriminate or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
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1 purpose (e.g., to unnecessarily encumber the case development process or to impose
2 unnecessary expenses and burdens on other parties) may expose the Designating
3 Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it
5 designated for protection do not qualify for protection, that Designating Party must
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

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

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial proceedings),
15 that the Producing Party affix, at a minimum, the legend "CONFIDENTIAL,"
16 "RESTRICTED - ATTORNEYS' EYES ONLY," "RESTRICTED -
17 CONFIDENTIAL SOURCE CODE," or "PRIVACY DATA" (hereinafter
18 "Designating Legend"), to each page that contains protected material. If only a
19 portion of the material on a page qualifies for protection, the Producing Party also
20 must clearly identify the protected portion(s) (e.g., by making appropriate markings
21 in the margins).

22 A Party or Non-Party that makes original documents available for inspection
23 need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be
26 deemed "RESTRICTED - ATTORNEYS' EYES ONLY." After the inspecting
27 Party has identified the documents it wants copied and produced, the Producing
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1 Party must determine which documents, or portions thereof, qualify for protection
2 under this Order. Then, before producing the specified documents, the Producing
3 Party must affix Designating Legends to each page that contains Protected Material.
4 If only a portion of the material on a page qualifies for protection, the Producing
5 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins).

7 (b) for testimony given in depositions or hearings, that the
8 Designating Party, at the deposition or hearing or within ten (10) days after receipt
9 of a deposition or hearing transcript, designate the deposition or hearing transcript
10 or any portion thereof as “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’
11 EYES ONLY,” “RESTRICTED - CONFIDENTIAL SOURCE CODE,” or
12 “PRIVACY DATA” pursuant to this Order, by affixing a Designating Legend to
13 each page that contains Protected Material. If only a portion of the material on a
14 page qualifies for protection, the Producing Party also must clearly identify the
15 protected portion(s) (e.g., by making appropriate markings in the margins). Access
16 to the deposition or hearing transcript so designated shall be limited in accordance
17 with the terms of this Order. Until expiration of the 10-day period, the entire
18 deposition or hearing transcript shall be treated as RESTRICTED - ATTORNEYS’
19 EYES ONLY.

20 (c) for electronic files and documents produced in native electronic
21 format, that the Producing Party append, at a minimum, the legend
22 “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,”
23 “RESTRICTED - CONFIDENTIAL SOURCE CODE,” or “PRIVACY DATA”
24 (hereinafter “Designating Legend”) to the file names or designators information
25 indicating whether the file contains “CONFIDENTIAL,” “RESTRICTED -
26 ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE
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1 CODE” material, or shall use any other reasonable method for so designating
2 Protected Materials produced in electronic format.

3 (d) for information produced in some form other than documentary
4 and for any other tangible items, that the Producing Party affix in a prominent place
5 on the exterior of the container or containers in which the information is stored the
6 legend “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,”
7 “RESTRICTED CONFIDENTIAL SOURCE CODE,” or “PRIVACY DATA.” If
8 only a portion or portions of the information warrants protection, the Producing
9 Party, to the extent practicable, shall identify the protected portion(s).

10 5.3. To the extent a producing Party believes in good faith that certain
11 Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that
12 its dissemination deserves even further limitation, the producing Party may
13 designate such Protected Material “RESTRICTED - ATTORNEYS’ EYES ONLY,”
14 or to the extent such Protected Material includes or substantially reveals computer
15 source code¹ and/or live data (that is, data as it exists residing in a database or
16 databases), the producing Party may designate such Protected Material as
17 “RESTRICTED CONFIDENTIAL SOURCE CODE” (“Source Code Material”), or
18 to the extent such Protected Material includes any information that a producing Party
19 reasonably believes to be subject to federal, state or foreign Data Protection Laws or

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21 ¹ “Source code” means computer code, formulas, engineering specifications, or
22 schematics that define or otherwise describe in detail the algorithms or structure of
23 software or hardware designs. Source code includes software, source code,
24 executable code, object code (i.e., computer instructions and data definitions
25 expressed in a form suitable for input to an assembler, compiler, or other translator),
26 microcode, register transfer language (“RTL”), firmware, and hardware description
27 language (“HDL”), as well as any and all programmer notes, annotations, and other
28 comments of any type related thereto and accompanying the code. For avoidance of
doubt, this includes source files, make files, intermediate output files, executable
files, header files, resource files, library files, module definition files, map files,
object files, linker files, browse info files, and debug files.

1 other privacy obligations, the producing Party may designate such Protected
2 Material as “PRIVACY DATA”.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time that is consistent with the Court’s
6 Scheduling Order.

7 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
8 resolution process under Local Rule 37-1 et seq.

9 6.3. Joint Stipulation. Any challenge submitted to the Court shall be via a
10 joint stipulation pursuant to Local Rule 37-2.

11 6.4. The burden of persuasion in any such challenge proceeding shall be on
12 the Designating Party. Frivolous challenges, and those made for an improper
13 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
14 parties) may expose the Challenging Party to sanctions. Unless the Designating
15 Party has waived or withdrawn the confidentiality designation, all parties shall
16 continue to afford the material in question the level of protection to which it is
17 entitled under the Producing Party’s designation until the Court rules on the
18 challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1. Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending, or attempting to settle this Action, and may
23 not use Protected Material for any other purpose whatsoever, including, without
24 limitation, any other litigation, patent prosecution or acquisition, patent
25 reexamination, inter parties review, or reissue proceedings, or any business or
26 competitive purpose or function. Such Protected Material may be disclosed only to
27 the categories of persons and under the conditions described in this Order, and
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1 Protected Material shall not be distributed, disclosed, or made available to anyone
2 except as expressly provided in this Order. When the Action has been terminated, a
3 Receiving Party must comply with the provisions of section 14 below (FINAL
4 DISPOSITION).

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

8 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 “CONFIDENTIAL” only to:

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

15 (b) the officers, directors, and employees (including House Counsel)
16 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

17 (c) Outside Counsel or Experts (as defined in this Order) of the
18 Receiving Party to whom disclosure is reasonably necessary for this Action and who
19 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
20 provided that (1) before access to an Expert is given, the Expert has completed the
21 Undertaking attached as Exhibit A hereto and the same is served upon the producing
22 Party with a current curriculum vitae² of the Expert at least seven (7) days before
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24 ² For any such person, the curriculum vitae shall identify his/her (i) current
25 employer(s), (ii) each person or entity from whom s/he has received compensation
26 or funding for work in his or her areas of expertise or to whom the s/he has provided
27 professional services, including in connection with a litigation, at any time during
28 the preceding five years; (iii) (by name and number of the case, filing date, and

1 access to the Protected Material is to be given to that Expert. The Designating Party
2 may, within the seven (7) days, notify the receiving Party in writing that it objects
3 to disclosure of Protected Material to the Expert, and state its reasons for objection.
4 The Parties agree to promptly confer and use good faith to resolve any such
5 objection. If the Parties are unable to resolve any objection, the objecting Party may
6 file a motion with the Court within three (3) days of a meet and confer at which the
7 parties agree that they are at an impasse, or within such other time as the Parties may
8 agree, seeking a protective order with respect to the proposed disclosure. The
9 objecting Party shall have the burden of proving the need for a protective order. No
10 disclosure shall occur until all such objections are resolved by agreement or Court
11 order;

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and
15 Professional Vendors to whom disclosure is reasonably necessary for this Action
16 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
17 A);

18 (g) the author or recipient of a document containing the information
19 or a custodian or other person who otherwise possessed or knew the information;
20 and

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23 location of court) any litigation in connection with which the s/he has offered expert
24 testimony, including through a declaration, report, or testimony at a deposition or
25 trial, during the preceding five years. If such consultant or expert believes any of this
26 information is subject to a confidentiality obligation to a third-party, then the s/he
27 should provide whatever information can be disclosed without violating any
28 confidentiality agreements, and the Party seeking to disclose Protected Material to
the consultant or expert shall be available to meet and confer with the designating
Party regarding any such engagement.

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

4 7.3. For Protected Material designated RESTRICTED - ATTORNEYS'
5 EYES ONLY, access to, and disclosure of, such Protected Material shall be limited
6 to individuals listed in Sections 7.2(a) and (c-h), above, and up to one House Counsel
7 for the Parties who is a member in good standing of at least one state bar and has
8 responsibility for making decisions dealing directly with the litigation of this Action,
9 but who exercises no competitive decision-making authority on behalf of either
10 Party.

11 7.4. For Protected Material designated RESTRICTED CONFIDENTIAL
12 SOURCE CODE, the following additional restrictions apply:

13 (a) Access to a Party's Source Code Material shall be provided only
14 on "stand-alone" computer(s) (that is, the computer may not be linked to any
15 network, including a local area network ("LAN"), an intranet or the Internet) in a
16 secured locked room. The stand-alone computer(s) may be connected to a printer.
17 The stand-alone computer(s) must be part of a setup including an external monitor,
18 keyboard, mouse, table or desk, and chair. And each stand-alone computer shall
19 have at least the following software or equivalent loaded and available at the time of
20 source code review: (1) Linux/Ubuntu (including functionality for regex, libreoffice,
21 vim, python, a pdf reader, and the ability to print to PDF), (2) Visual Studio Code or
22 Eclipse with C, C++, and Java, and (3) build-essential. The stand-alone computer(s)
23 may only be located within the United States at the offices of the producing Party's
24 outside counsel. The stand-alone computer(s) shall have disk encryption and be
25 password protected. Except as otherwise provided, use or possession of any
26 input/output device (e.g., USB memory stick, mobile phone or tablet, camera or any
27 camera-enabled device, CD, floppy disk, portable hard drive, laptop, or any device
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1 that can access the Internet or any other network or external system, etc.) is
2 prohibited while accessing the computer containing the source code. All persons
3 entering the locked room containing the stand-alone computer(s) must attest that
4 they are not carrying any prohibited items before they will be given access to the
5 stand-alone computer(s). The producing Party may periodically physically “check
6 in” on the receiving Party’s representatives during any stand-alone computer review
7 and may intermittently (i.e., not continuously) visually monitor the activities of the
8 receiving Party’s representatives by knocking on the door to or from outside the
9 room in which the stand alone computer(s) is located to ensure that no unauthorized
10 copying of the Source Code Material is being made or transmitted. The producing
11 Party may not monitor by way of video or recording devices or record (visually,
12 audibly or by other means) the activities of the receiving Party’s representatives;

13 (b) The receiving Party shall make reasonable efforts to restrict its
14 requests for such access to the stand-alone computer(s) to normal business hours,
15 which for purposes of this paragraph shall be 9:00 a.m. through 5:00 p.m. However,
16 upon reasonable notice from the receiving party, the producing Party shall make
17 reasonable efforts to accommodate the receiving Party’s request for access to the
18 stand-alone computer(s) outside of normal business hours. The Parties agree to
19 cooperate in good faith such that maintaining the producing Party’s Source Code
20 Material at the offices of its outside counsel shall not unreasonably hinder the
21 receiving Party’s ability to efficiently and effectively conduct the prosecution or
22 defense of this Action;

23 (c) The producing Party shall provide the receiving Party with
24 information explaining how to start, log on to, and operate the stand-alone
25 computer(s) in order to access the produced Source Code Material on the stand-alone
26 computer(s);

1 (d) The producing Party will produce Source Code Material in
2 computer searchable format on the stand-alone computer(s) as described above;

3 (e) Access to Source Code Material shall be limited to Outside
4 Counsel of Record and up to three (3) Experts per party³ (not existing employees or
5 affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation
6 and approved to access such Protected Materials pursuant to 7.2(c) above.

7 (f) To the extent portions of Source Code Material are quoted in an
8 electronic document or image of a document which must be filed or served (“Source
9 Code Document”), either (1) the entire Source Code Document will be stamped and
10 treated as RESTRICTED CONFIDENTIAL SOURCE CODE or (2) those pages
11 containing quoted Source Code Material will be separately stamped and treated as
12 RESTRICTED CONFIDENTIAL SOURCE CODE;

13 (g) Except as set forth in this and the preceding paragraph, no
14 electronic copies of Source Code Material shall be made without prior written
15 consent of the producing Party. The receiving Party may create documents with an
16 electronic copy or image of limited excerpts of Source Code Material (“Source Code
17 Documents”) only to the extent necessary to create Source Code Documents, or any
18 drafts of these documents⁴. The receiving Party shall only include such excerpts as
19 are reasonably necessary for the purposes for which such part of the Source Code
20 Material is used. Images or copies of Source Code Material shall not be included in
21 correspondence between the parties (references to production numbers shall be used
22 instead) and shall be omitted from pleadings and other papers except to the extent
23 permitted herein. Any electronic transmission of a file containing a selected portion
24 of the Source Code Material must be encrypted using one of the following software:

25 _____
26 ³ Herein, MediaPointe, Inc. and AMHC, Inc. are a single party.

27 ⁴ Drafts of a Source Code Document shall only include those excerpts the Receiving
28 Party believes will be included in the final version of the Source Code Document.

1 BitLocker, FileVault, LUKS, or VeraCrypt. The communication and/or disclosure
2 of electronic files containing any portion of Source Code Material shall at all times
3 be limited to individuals who are authorized to see Source Code Material under the
4 provisions of this Protective Order. Additionally, all electronic copies of Source
5 Code Documents must be labeled “RESTRICTED CONFIDENTIAL SOURCE
6 CODE.” If Source Code Documents are filed with the Court, they must be filed
7 under seal in accordance with the Court’s rules, procedures and orders;

8 (h) No person shall copy, e-mail, transmit, upload, download, print,
9 photograph or otherwise duplicate any portion of the designated “RESTRICTED
10 CONFIDENTIAL SOURCE CODE” material, except that the Receiving Party may
11 request paper copies (“Source Code Printouts”) of limited portions of the Source
12 Code Material, but only if and to the extent reasonably necessary for the preparation
13 of court filings, pleadings, expert reports, or other papers, or for deposition or trial.
14 The producing Party shall print for the Receiving Party no more than three (3) sets
15 of Source Code Material and no more than 50 consecutive pages, for an aggregate
16 total of no more than 1000 pages, during the duration of the case. The Receiving
17 Party may file a motion for leave to print a limited number of additional pages above
18 an aggregate total of 1000 pages upon a showing of good cause. The receiving Party
19 shall not request paper copies for the purposes of reviewing the source code other
20 than electronically as set forth in Section 7.4(a) in the first instance. Within three
21 (3) business days or such additional time as reasonably necessary due to the volume
22 of pages requested, the Producing Party will provide the requested material on
23 watermarked or colored paper bearing Bates numbers and the legend
24 “RESTRICTED CONFIDENTIAL SOURCE CODE” unless objected to as
25 discussed below. Even if within the limits described, the producing Party may, upon
26 a showing of good cause, challenge the amount of source code requested in hard
27 copy form or whether the source code requested in hard copy form is reasonably
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1 necessary to any case preparation activity pursuant to the dispute resolution
2 procedure and timeframes set forth in Section 6, above, whereby the producing Party
3 is the “Challenging Party” for purposes of dispute resolution. Contested Source
4 Code Printouts do not need to be produced to the receiving Party until the matter is
5 resolved by the Court;

6 (i) If the receiving Party’s outside counsel, consultants, or experts
7 obtain printouts of Source Code Material, the receiving Party shall ensure that such
8 outside counsel, consultants, or experts keep the printouts in a secured locked area
9 in the offices of such outside counsel, consultants, or expert. The receiving Party
10 may also temporarily keep the printouts or photocopies at: (i) the Court for any
11 proceedings(s) relating to the Source Code Material, for the dates associated with
12 the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code
13 Material are taken, for the dates associated with the deposition(s); and (iii) any
14 intermediate location reasonably necessary to transport the printouts to a Court
15 proceeding or deposition);

16 (j) A producing Party’s Source Code Material may only be
17 transported by the receiving Party at the direction of Outside Counsel of Record
18 authorized under Section 7.4(e) above to another person authorized under Section
19 7.4(e) above, on paper or removable electronic media (e.g., a DVD, CD-ROM, or
20 flash memory “stick”) via hand carry, Federal Express or other similarly reliable
21 courier. Any Source Code Material that is stored electronically must be kept in a
22 secured container (e.g., Bitlocker or equivalent) and must be further password
23 protected. Source Code Material may not be transported or transmitted
24 electronically over a network of any kind, including a LAN, an intranet, or the
25 Internet. Source Code Material may only be transported electronically as is
26 reasonably necessary for filing any Source Code material with the Court.
27 Notwithstanding anything else in this Protective Order, the Parties may make
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1 electronic copies, and send by electronic mail, copies of Source Code Documents,
2 and any notes taken during Source Code review pursuant to Section 7.4(k), below,
3 as part of their preparation of draft pleadings and/or expert reports in this case,
4 provided that any such documents sent by electronic mail are sent in a password-
5 protected file using 256-bit or higher encryption, with the password sent via separate
6 electronic mail;

7 (k) The Receiving Party shall be entitled to take notes (electronic or
8 non-electronic) relating to the Source Code but may not copy the Source Code into
9 such notes. To the extent the Receiving Party desires to take notes electronically,
10 the Producing Party shall provide a note-taking computer (e.g., a computer, which
11 is distinct from the standalone computer, that is not linked to any network, including
12 a local area network (“LAN”), an intranet or the Internet, and has image making
13 functionality of any type disabled, including but not limited to camera or video
14 functionality) (“note-taking computer”) with a current, widely used word processing
15 program in the Source Code review room for the Receiving Party’s use in taking
16 such notes. The “note-taking computer” shall be used for the sole purpose of note-
17 taking and shall be retained by the Producing Party. Such notes shall be downloaded
18 to a removable disk or drive for the Receiving Party (but not the Producing Party) to
19 retain, and the computer cleared of such notes. The laptop computer shall have no
20 features which would hinder the complete clearing of the Receiving Party’s notes
21 after such notes have been downloaded. Any such notes shall not include copies or
22 reproductions of portions of the source code; however, the notes may contain
23 filenames, directory names, module names, class names, parameter names, variable
24 names, function names, method names, or procedure names. No copies of any
25 portion of the source code may leave the room in which the source code is inspected
26 except as otherwise provided herein. Further, no other written or electronic record
27 of the source code is permitted except as otherwise provided herein. No notes shall
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1 be made or stored on the inspection computer or left behind at the site where the
2 inspection computer is made available, and any such notes shall be deleted or
3 destroyed by the producing Party, without reviewing the substance of the notes, upon
4 discovery. Notwithstanding the foregoing, any such notes shall be stamped and
5 treated as “RESTRICTED CONFIDENTIAL SOURCE CODE.” The log of such
6 notes need not be produced to any other party absent Court Order (*e.g.*, potentially
7 in connection with a Protective Order violation motion);

8 (l) A list of names of persons who will review Source Code Material
9 on the standalone computer(s) will be provided to the producing Party in conjunction
10 with any written (including email) notice requesting inspection. Prior to the first
11 inspection of any Source Code Material on the stand-alone computer(s), the
12 receiving Party shall provide three (3) business days’ notice to schedule the initial
13 inspection with the producing Party. The receiving Party shall provide reasonable
14 advance notice of any additional inspections. Such notice shall include the names
15 for every individual from the receiving Party who will attend the inspection. The
16 producing Party may maintain a daily log of the names of persons who enter the
17 locked room to view the source code and when they enter and depart;

18 (m) The receiving Party’s outside counsel shall maintain a log of all
19 copies of the Source Code Printouts (received from a producing Party) that are
20 delivered by the receiving Party to any person and a log of any electronic images of
21 Source Code Material. The log shall include the names of the recipients and
22 reviewers of copies and locations where the copies are stored. Upon request by the
23 producing Party, the receiving Party shall provide reasonable assurances and/or
24 descriptions of the security measures employed by the receiving Party and/or person
25 that receives a copy of any portion of the source code; and

26 (n) At the Producing Party’s request, all copies of any portion of the
27 Source Code Printouts in whatever form shall be securely destroyed if they are no
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1 longer in use. Copies of Source Code Printouts that are marked as deposition
2 exhibits shall not be provided to the Court Reporter or attached to deposition
3 transcripts; rather, the deposition record will identify the exhibit by its production
4 number(s).

5 7.5. For Protected Material designated PRIVACY DATA, the following
6 additional restrictions apply:

7 (a) “PRIVACY DATA”: refers to any information that a producing
8 Party reasonably believes to be subject to federal, state or foreign Data Protection
9 Laws or other privacy obligations. This provision may not be arbitrarily applied,
10 and is meant as means to designate and secure support data, where available, that is
11 believed to be subject to Data Protection Laws if the receiving party requests to
12 inspect or challenge anonymized summary data. The parties must promptly meet
13 and confer to resolve any disputes regarding a PRIVACY DATA designation.
14 Privacy Data constitutes highly sensitive materials requiring special protection.
15 Examples of such Data Protection Laws include, without limitation, The Gramm-
16 Leach-Bliley Act, [15 U.S.C. § 6801](#) et seq. (financial information); The Health
17 Insurance Portability and Accountability Act (“HIPAA”) and the regulations
18 thereunder, 45 CFR Part 160 and Subparts A and E of Part 164 (medical
19 information); Regulation (EU) 2016/679 Of the European Parliament and of the
20 Council of 27 April 2016 on the Protection of Natural Persons with Regard to the
21 Processing of Personal Data and on the Free Movement of Such Data, also known
22 as the General Data Protection Regulation (“GDPR”); and the German Federal Data
23 Protection Act (“BDSG”).

24 (b) PRIVACY DATA must be treated with the same provisions as
25 Protected Material designated RESTRICTED CONFIDENTIAL SOURCE CODE.

26 (c) To the extent practical, PRIVACY DATA included in
27 documents, information, or material must be redacted so that the documents,
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1 information, or material can be produced in the ordinary course. For these redacted
2 documents, information, or materials, the receiving party may request that
3 unredacted versions be produced on the source code computer in accordance with
4 Section 7.4 above.

5 (d) If such redactions are not practical to make (e.g., the PRIVACY
6 DATA is clustered in log files or batch files), then the documents, information, or
7 material containing the PRIVACY DATA may be produced on the source code
8 computer in accordance with Section 7.4 above.

9 7.6. Absent written consent from the designating Party, any person
10 associated or affiliated with the Parties and permitted to receive each Party's
11 Protected Material, who reviews, or otherwise learns, in whole or in part, each
12 Party's Protected Material marked RESTRICTED - ATTORNEYS' EYES ONLY
13 or RESTRICTED - CONFIDENTIAL SOURCE CODE under this Order shall not
14 prepare, prosecute, supervise, participate in, or assist in the preparation or
15 prosecution of any U.S., foreign, or international patent application pertaining to (a)
16 content delivery networks (CDNs), (b) any Microsoft products, services, or systems
17 accused by MediaPointe in this Action, (c) the patents asserted in this Action and
18 any patent or application claiming priority to or otherwise related to the patents
19 asserted in this Action (collectively the "Field of Invention") or (d) any patent
20 application related to the subject matter of any Protected Material marked
21 RESTRICTED - ATTORNEYS' EYES ONLY or RESTRICTED -
22 CONFIDENTIAL SOURCE CODE, during the pendency of this Action and for (2)
23 years after its conclusion, including any appeals. For purposes of this paragraph,
24 "prosecution" includes any activity related to the competitive business decisions
25 involving (i) the preparation or prosecution (for any person or entity) of patent
26 applications, including among others reexamination and reissue applications or (ii)
27 directly or indirectly participating, drafting, amending, advising, or otherwise
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1 affecting the scope or maintenance of patent claims.⁵ However, these prohibitions
2 shall not preclude each Party's outside counsel or Expert from participating in any
3 *inter partes* review, CBM, or post-grant review proceedings, provided that each
4 Party's outside counsel or Expert do not participate in any claim drafting or
5 amendment of claims in such proceedings.

6 7.7. Absent written consent from the designating Party, during the pendency
7 of this Action and for (2) years after its conclusion, including any appeals, any
8 person associated or affiliated with the Parties and permitted to receive each Party's
9 Protected Material, who reviews, or otherwise learns, in whole or in part, another
10 Party's Protected Material marked RESTRICTED - ATTORNEYS' EYES ONLY
11 or RESTRICTED - CONFIDENTIAL SOURCE CODE under this Order shall not
12 advise or decide on the purchase or acquisition of any third-party patent or patent
13 application to assert against any Microsoft products, services, or systems (1) accused
14 by MediaPointe in any counterclaims or infringement contentions in this Action,
15 including Microsoft Azure CDN or any Microsoft content delivery networks, or (2)
16 whose particular technical details, including design, structure, or functionality, are
17 described in any Protected Material marked RESTRICTED – ATTORNEYS' EYES
18 ONLY or RESTRICTED – CONFIDENTIAL SOURCE CODE. Agreement to the
19 acquisition bar shall not preclude any Party or person associated or affiliated with
20 the Parties from seeking a subsequent modification upon a showing of good cause
21 to modify the provision should new facts or information be discovered and the
22 parties are unable to reach an agreement on a compromise following a meet and
23 confer.

24 7.8. Protected Material produced in this litigation may contain Export
25 Controlled Information.

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27 ⁵ Prosecution includes, for example, original prosecution, reissue, and reexamination
28 proceedings.

1 (a) “Export Controlled Information” refers to any information
2 subject to applicable export control and economic sanctions laws and regulations,
3 including the Export Administration Regulations (“EAR”, 15 CFR 730 et seq.,
4 <http://www.bis.doc.gov/>) administered by the Department of Commerce, Bureau of
5 Industry and Security, and the Foreign Asset Control Regulations (31 CFR 500 et
6 seq., <http://www.treas.gov/offices/enforcement/ofac/>) administered by the
7 Department of Treasury, Office of Foreign Assets Control (“OFAC”), and similar
8 laws and regulations in other jurisdictions (“Export Control Laws”).

9 (b) The Producing Party will produce Protected Material to
10 Receiving Parties within the United States, to the extent authorized by Export
11 Control Laws. Receiving Parties may not export, re-export, transfer, disclose, or
12 release (collectively, “Export”) any Export Controlled Information to any
13 destination, person, entity, or end use without first obtaining approval from the U.S.
14 government or as otherwise authorized by Export Control Laws. Outside Counsel,
15 Experts, or other individuals authorized to receive Export Controlled Information
16 will not Export any Export Controlled Information to any foreign person except as
17 permitted by Export Control Laws, and will not transport any Export Controlled
18 Information outside of U.S. territory, without first obtaining approval from the U.S.
19 government or as otherwise authorized by Export Control Laws. Compliance with
20 all Export Control Laws is the sole responsibility of the Receiving Party.

21 7.9. No material designated RESTRICTED CONFIDENTIAL SOURCE
22 CODE may leave the territorial boundaries of the United States. Protected Material
23 that is not designated RESTRICTED CONFIDENTIAL SOURCE CODE may be
24 taken outside the United States if it is both reasonably necessary for a deposition
25 taken in a foreign country and to the extent authorized by Export Control Laws.
26 Nothing in this provision shall prevent Outside Counsel or Experts from travelling
27 outside the United States with their personal electronic devices, including laptops
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1 and/or cellphones, or reviewing their electronic mail while traveling abroad,
2 provided such activities comply with Export Control Laws. The restrictions
3 contained within this subsection may be amended through the consent of the
4 producing Party to the extent that such agreed to procedures comply with Export
5 Control Laws.

6 7.10. Nothing contained herein shall be construed to prejudice any Party's
7 right to use any Protected Material in taking testimony at any deposition or hearing
8 provided that the Protected Material is only disclosed to person(s) who are: (i)
9 eligible to have access to the Protected Material by virtue of his or her employment
10 with the designating party, (ii) identified in the Protected Material as an author,
11 addressee, or copy recipient of such information, (iii) although not identified as an
12 author, addressee, or copy recipient of such Protected Material, has, in the ordinary
13 course of business, seen or could be expected to see or receive such Protected
14 Material, (iv) court reporters and videographers; (v) the Court; or (vi) other persons
15 entitled hereunder to access to Protected Material. Subject to any challenge to a
16 particular designation under Section 6, above, the Parties will not oppose any
17 reasonable request by the designating Party that the courtroom be sealed, if allowed
18 by the Court, during the presentation of any testimony, evidence, or argument
19 relating to or involving the use of any Protected Material.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
21 IN OTHER LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation
23 that compels disclosure of any information or items designated in this Action as
24 "CONFIDENTIAL," that Party must:

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

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

5 (c) cooperate in good faith with respect to all reasonable procedures
6 sought to be pursued by the Designating Party whose Protected Material may be
7 affected.

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

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

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

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

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

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

7 (3) make the information requested available for inspection by
8 the Non-Party, if requested.

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

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection,
5 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
7 may be established in an e-discovery order that provides for production without prior
8 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as
9 the parties reach an agreement on the effect of disclosure of a communication or
10 information covered by the attorney-client privilege or work product protection, the
11 parties may incorporate their agreement in the stipulated protective order submitted
12 to the court. The parties hereby incorporate their agreements provided in their Joint
13 Report pursuant to Federal Rule of Civil Procedure 26. See Dkt. 52.

14 The failure to designate documents, information or material in accordance
15 with this Order and the failure to object to a designation at a given time shall not
16 preclude the filing of a motion at a later date seeking to impose such designation or
17 challenging the propriety thereof. The entry of this Order and/or the production of
18 documents, information and material hereunder shall in no way constitute a waiver
19 of any objection to the furnishing thereof, all such objections being hereby
20 preserved.

21 A designation of Protected Material (*i.e.*, as “CONFIDENTIAL,”
22 “RESTRICTED - ATTORNEYS’ EYES ONLY,” “RESTRICTED
23 CONFIDENTIAL SOURCE CODE,” or “PRIVACY DATA”) may be made at any
24 time. Inadvertent or unintentional production of documents, information or material
25 that has not been designated as Protected Material shall not be deemed a waiver in
26 whole or in part of a claim for confidential treatment. Any party that inadvertently
27 or unintentionally produces Confidential Information without designating it as
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1 Protected Material may request destruction of that Protected Material by notifying
2 the recipient(s), as soon as reasonably practicable after the producing Party becomes
3 aware of the inadvertent or unintentional disclosure and providing replacement
4 Protected Material that is properly designated. The recipient(s) shall then destroy
5 all copies of the inadvertently or unintentionally produced Protected Materials and
6 any documents, information or material derived from or based thereon.

7 12. MISCELLANEOUS

8 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

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

15 12.3. Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information
20 in the public record unless otherwise instructed by the court.

21 12.4. Any Party knowing or believing that any other Party is in violation of
22 or intends to violate this Order and has raised the question of violation or potential
23 violation with the opposing Party and has been unable to resolve the matter by
24 agreement may move the Court for such relief as may be appropriate in the
25 circumstances. Pending disposition of the motion by the Court, the Party alleged to
26 be in violation of or intending to violate this Order shall discontinue the performance
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1 of and/or shall not undertake the further performance of any action alleged to
2 constitute a violation of this Order.

3 12.5. The inadvertent production of Protected Material by any Party shall not
4 be deemed a publication of the documents, information, or material (or the contents
5 thereof) produced so as to void or make voidable whatever claim the Parties may
6 have as to the proprietary and confidential nature of the documents, information, or
7 other material or its contents.

8 12.6. Pursuant to Federal Rule of Evidence 502(d) and (e), the production of
9 a privileged or work product protected document is not a waiver of privilege or
10 protection from discovery in this case or in any other federal or state proceeding.
11 For example, the mere inadvertent production of a privileged or work product
12 protected document in this case as part of a production is not itself a waiver. The
13 inadvertent production by a Party of Discovery Material subject to the attorney-
14 client privilege, work-product protection, or any other applicable privilege or
15 protection will not waive the applicable privilege and/or protection if a request for
16 return of such inadvertently produced Discovery Material is made promptly after the
17 Producing Party learns of its inadvertent production. Upon a request from any
18 Producing Party who has inadvertently produced Discovery Material that it believes
19 is privileged and/or protected, each Receiving Party shall immediately destroy or
20 return such Protected Material or Discovery Material and all copies to the Producing
21 Party. The parties do not waive any objections as to the production, discoverability,
22 admissibility, or confidentiality of documents.

23 12.7. Each of the Parties shall also retain the right to file a motion with the
24 Court (a) to modify this Order to allow disclosure of Protected Material to additional
25 persons or entities if reasonably necessary to prepare and present this Action; and
26 (b) to apply for additional protection of Protected Material.

1 12.8. This Order shall be binding upon the Parties hereto, their attorneys, and
2 their successors, executors, personal representatives, administrators, heirs, legal
3 representatives, assigns, subsidiaries, divisions, employees, agents, retained
4 consultants and experts, and any persons or organizations over which they have
5 direct control.

6 13. The United States District Court for the Central District of California is
7 responsible for the interpretation and enforcement of this Agreed Protective Order.
8 After termination of this litigation, the provisions of this Agreed Protective Order
9 shall continue to be binding except with respect to those documents and information
10 that become a matter of public record. This Court retains and shall have continuing
11 jurisdiction over the Parties and recipients of the Protected Material for enforcement
12 of the provisions of this Agreed Protective Order following termination of this
13 litigation. All disputes concerning Protected Material produced under the protection
14 of this Agreed Protective Order shall be resolved by the United States District Court
15 for the Central District of California. In the event anyone shall violate or threaten to
16 violate the terms of this Protective Order, the aggrieved designating Party may
17 immediately apply to obtain injunctive relief against any such person violating or
18 threatening to violate any of the terms of this Protective Order.

19 14. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in Section 4, within 60
21 days of a written request by the Designating Party, each Receiving Party must return
22 all Protected Material to the Producing Party or destroy such material. As used in
23 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
24 summaries, and any other format reproducing or capturing the Protected Material.
25 Whether the Protected Material is returned or destroyed, the Receiving Party must
26 submit a written certification to the Producing Party (and, if not the same person or
27 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
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1 category, where appropriate) all the Protected Material that was returned or
2 destroyed and (2) affirms that the Receiving Party has not retained any copies,
3 abstracts, compilations, summaries or any other format reproducing or capturing any
4 of the Protected Material. Notwithstanding this provision, Outside Counsel of
5 Record are entitled to retain an archival copy of all pleadings, motion papers, trial,
6 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
7 and trial exhibits, expert reports, attorney work product, and consultant and expert
8 work product, even if such materials contain Protected Material. Any such archival
9 copies that contain or constitute Protected Material remain subject to this Protective
10 Order as set forth in Section 4 (DURATION).

11 15. VIOLATION

12 Any violation of this Order may be punished by appropriate measures
13 including, without limitation, contempt proceedings and/or monetary sanctions.
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15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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1 Dated: February 9, 2023

/s/ Betty Chen

Betty Chen (SBN 290588)

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14 *Counsel for Plaintiff Microsoft*
15 *Corporation*

1 Dated: February 9, 2023

/s/ Justin Kenney

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*Counsel for Defendant and
Counterclaimant, MediaPointe, Inc.
and Defendant AMHC, Inc*

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21 DATED: February 9, 2023

22
23 /s/ Michael R. Wilner
24 HON. MICHAEL R. WILNER
25 United States Magistrate Judge
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1 **FILER'S ATTESTATION**

2 Pursuant to Local Rule 5-4.3.4(a)(2), the filer hereby attests that all other
3 signatories to this document concur in the content of, and have authorized, this filing.

4 Dated: February 9, 2023

/s/ Justin Kenney
Justin C. Kenney
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Counsel for Defendants
MediaPointe, Inc. and AMHC, Inc.

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address],

6 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
7 Protective Order that was issued by the United States District Court for the Central District of
8 California on _____ in the case of *Microsoft Corporation v. MediaPointe, Inc. et al.*,
9 No. 2:22-cv-01009-MCS-MRW (C.D. Cal.). I agree to comply with and to be bound by all the
10 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise 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 the provisions
14 of this Order.

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

18 I hereby appoint _____ [print or type full name] of
19 _____

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

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26
27 Signature: _____