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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LOCAL.COM CORPORATION, a  
Delaware Corporation.

Plaintiff,

v.

FRY'S ELECTRONICS, INC., a  
California Corporation.

Defendant.

Case No. SA 12-CV-0976 -  
JGB(JPRx)

**PROTECTIVE ORDER**

**[DISCOVERY MATTER]**

FRY'S ELECTRONICS, INC., a  
California Corporation.

Counterclaim Plaintiff,

v.

LOCAL.COM CORPORATION, a  
Delaware Corporation.

Counterclaim Defendant.

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than  
5 prosecuting this litigation may be warranted. Accordingly, the parties have  
6 stipulated to and petitioned the court to enter the following Stipulated Protective  
7 Order. The parties acknowledge that this Order does not confer blanket protections  
8 on all disclosures or responses to discovery and that the protection it affords from  
9 public disclosure and use extends only to the limited information or items that are  
10 entitled to confidential treatment under the applicable legal principles. The parties  
11 further acknowledge, as set forth in Section 14.4, below, that this Stipulated  
12 Protective Order does not entitle them to file confidential information under seal;  
13 Civil Local Rule 79-5 and General Order 10-7 set forth the procedures that must be  
14 followed and the standards that will be applied when a party seeks permission from  
15 the court to file material under seal.

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non Party that challenges the  
18 designation of information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of  
20 how it is generated, stored or maintained) or tangible things that qualify for  
21 protection under Federal Rule of Civil Procedure 26(c).

1           2.3    Counsel (without qualifier): Outside Counsel of Record and House  
2 Counsel (as well as their support staff).

3           2.4    Designated House Counsel: House Counsel who seek access to  
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5 “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” information in this  
6 matter.

7           2.5    Designating Party: a Party or Non Party that designates information or  
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9 items that it produces in disclosures or in responses to discovery as  
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES  
11 ONLY” or “HIGHLY CONFIDENTIAL SOURCE CODE”.

12           2.6    Disclosure or Discovery Material: all items or information, regardless  
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14 of the medium or manner in which it is generated, stored, or maintained (including,  
15 among other things, testimony, transcripts, and tangible things), that are produced  
16  
17 or generated in disclosures or responses to discovery in this matter.

18           2.7    Expert: a person with specialized knowledge or experience in a matter  
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20 pertinent to the litigation who (1) has been retained by a Party or its counsel to  
21 serve as an expert witness or as a consultant in this action, (2) is not a past or  
22 current employee of a Party or of a Party’s competitor, and (3) at the time of  
23 retention, is not anticipated to become an employee of a Party or of a Party’s  
24 competitor.  
25

26           2.8    “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY”  
27 Information or Items: extremely sensitive “Confidential Information or Items,”  
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1 disclosure of which to another Party or Non Party would create a substantial risk of  
2 serious harm that could not be avoided by less restrictive means.

3           2.9   “HIGHLY CONFIDENTIAL SOURCE CODE” Information or  
4 Items: extremely sensitive “Confidential Information or Items” representing  
5 computer code and associated comments and revision histories, formulas,  
6 engineering specifications, or schematics that define or otherwise describe in detail  
7 the algorithms or structure of software or hardware designs, disclosure of which to  
8 another Party or Non Party would create a substantial risk of serious harm that  
9 could not be avoided by less restrictive means.  
10

11           2.10 House Counsel: attorneys who are employees of a party to this action.  
12 House Counsel does not include Outside Counsel of Record or any other outside  
13 counsel.  
14

15           2.11 Non Party: any natural person, partnership, corporation, association,  
16 or other legal entity not named as a Party to this action.  
17

18           2.12 Outside Counsel of Record: attorneys who are not employees of a  
19 party to this action but are retained to represent or advise a party to this action and  
20 have appeared in this action on behalf of that party or are affiliated with a law firm  
21 which has appeared on behalf of that party.  
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23           2.13 Party: any party to this action, including all of its officers, directors,  
24 employees, consultants, retained experts, and Outside Counsel of Record (and their  
25 support staffs).  
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1           2.14 Producing Party: a Party or Non Party that produces Disclosure or  
2 Discovery Material in this action.

3           2.15 Professional Vendors: persons or entities that provide litigation  
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
6 and their employees and subcontractors.  
7

8           2.16 Protected Material: any Disclosure or Discovery Material that is  
9 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL  
10 ATTORNEYS’ EYES ONLY.” or as “HIGHLY CONFIDENTIAL SOURCE  
11 CODE.”  
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13           2.17 Receiving Party: a Party that receives Disclosure or Discovery  
14 Material from a Producing Party.  
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17 **3. SCOPE**

18           The protections conferred by this Stipulation and Order cover not only  
19 Protected Material (as defined above), but also (1) any information copied or  
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
21 compilations of Protected Material; and (3) any testimony, conversations, or  
22 presentations by Parties or their Counsel that might reveal Protected Material.  
23

24           However, the protections conferred by this Stipulation and Order do not cover the  
25 following information: (a) any information that is in the public domain at the time  
26 of disclosure to a Receiving Party or becomes part of the public domain after its  
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1 disclosure to a Receiving Party as a result of publication not involving a violation  
2 of this Order, including becoming part of the public record through trial or  
3 otherwise; and (b) any information known to the Receiving Party prior to the  
4 disclosure or obtained by the Receiving Party after the disclosure from a source  
5 who obtained the information lawfully and under no obligation of confidentiality  
6 to the Designating Party. Any use of Protected Material at trial shall be governed  
7 by a separate agreement or order.  
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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. Final disposition shall be  
14 deemed to be the later of (1) dismissal of all claims and defenses in this action,  
15 with or without prejudice; and (2) final judgment herein after the completion and  
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
17 including the time limits for filing any motions or applications for extension of  
18 time pursuant to applicable law.  
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22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non Party that designates information or items for protection under  
25 this Order must take care to limit any such designation to specific material that  
26 qualifies under the appropriate standards. To the extent it is practical to do so, the  
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1 Designating Party must designate for protection only those parts of material,  
2 documents, items, or oral or written communications that qualify so that other  
3 portions of the material, documents, items, or communications for which  
4 protection is not warranted are not swept unjustifiably within the ambit of this  
5 Order. Mass, indiscriminate, or routinized designations are prohibited.  
6 Designations that are shown to be clearly unjustified or that have been made for an  
7 improper purpose (e.g., to unnecessarily encumber or retard the case development  
8 process or to impose unnecessary expenses and burdens on other parties) expose  
9 the Designating Party to sanctions.  
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13 If it comes to a Designating Party's attention that information or items that it  
14 designated for protection do not qualify for protection at all or do not qualify for  
15 the level of protection initially asserted, that Designating Party must promptly  
16 notify all other parties that it is withdrawing the mistaken designation.  
17

18 5.2 Manner and Timing of Designations. Except as otherwise provided in  
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
21 under this Order must be clearly so designated before the material is disclosed or  
22 produced.  
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25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic  
27 documents, but excluding transcripts of depositions or other pretrial or trial  
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1 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or  
2 “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” or “HIGHLY  
3 CONFIDENTIAL SOURCE CODE” to each page that contains protected  
4 material. If only a portion or portions of the material on a page qualifies for  
5 protection, the Producing Party also must clearly identify the protected portion(s)  
6 (e.g., by making appropriate markings in the margins) and must specify, for each  
7 portion, the level of protection being asserted.  
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10 A Party or Non Party that makes original documents or materials available  
11 for inspection need not designate them for protection until after the inspecting  
12 Party has indicated which material it would like copied and produced. During the  
13 inspection and before the designation, all of the material made available for  
14 inspection shall be deemed “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES  
15 ONLY.” After the inspecting Party has identified the documents it wants copied  
16 and produced, the Producing Party must determine which documents, or portions  
17 thereof, qualify for protection under this Order. Then, before producing the  
18 specified documents, the Producing Party must affix the appropriate legend  
19 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES  
20 ONLY” or “HIGHLY CONFIDENTIAL SOURCE CODE) to each page that  
21 contains Protected Material. If only a portion or portions of the material on a page  
22 qualifies for protection, the Producing Party also must clearly identify the  
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1 protected portion(s) (e.g., by making appropriate markings in the margins) and  
2 must specify, for each portion, the level of protection being asserted.

3 (b) for testimony given in deposition that the Designating Party  
4 identify on the record, before the close of the deposition all protected testimony  
5 and specify the level of protection being asserted. When it is impractical to identify  
6 separately each portion of testimony that is entitled to protection and it appears that  
7 substantial portions of the testimony may qualify for protection, the Designating  
8 Party may invoke on the record (before the deposition, hearing, or other  
9 proceeding is concluded) a right to have up to 21 days to identify the specific  
10 portions of the testimony as to which protection is sought and to specify the level  
11 of protection being asserted. Only those portions of the testimony that are  
12 appropriately designated for protection within the 21 days shall be covered by the  
13 provisions of this Stipulated Protective Order. Alternatively, a Designating Party  
14 may specify, at the deposition or up to 21 days afterwards if that period is properly  
15 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or  
16 “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY.” Parties shall give  
17 the other parties notice if they reasonably expect a deposition, hearing or other  
18 proceeding to include Protected Material so that the other parties can ensure that  
19 only authorized individuals who have signed the “Acknowledgment and  
20 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of  
21 a document as an exhibit at a deposition shall not in any way affect its designation  
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1 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES  
2 ONLY.”

3 Transcripts containing Protected Material shall have an obvious legend on  
4 the title page that the transcript contains Protected Material, and the title page shall  
5 be followed by a list of all pages (including line numbers as appropriate) that have  
6 been designated as Protected Material and the level of protection being asserted by  
7 the Designating Party. The Designating Party shall inform the court reporter of  
8 these requirements. Any transcript that is prepared before the expiration of a 21  
9 day period for designation shall be treated during that period as if it had been  
10 designated “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” in its  
11 entirety unless otherwise agreed. After the expiration of that period, the transcript  
12 shall be treated only as actually designated.

13 (c) for information produced in some form other than documentary  
14 and for any other tangible items, that the Producing Party affix in a prominent  
15 place on the exterior of the container or containers in which the information or  
16 item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
17 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL SOURCE  
18 CODE”. If only a portion or portions of the information or item warrant protection,  
19 the Producing Party, to the extent practicable, shall identify the protected  
20 portion(s) and specify the level of protection being asserted.

1           5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent  
2 failure to designate qualified information or items does not, standing alone, waive  
3 the Designating Party’s right to secure protection under this Order for such  
4 material. Upon timely correction of a designation, the Receiving Party must make  
5 reasonable efforts to assure that the material is treated in accordance with the  
6 provisions of this Order.  
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9       6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

10           6.1    Timing of Challenges. Any Party or Non Party may challenge a  
11 designation of confidentiality at any time. Unless a prompt challenge to a  
12 Designating Party’s confidentiality designation is necessary to avoid foreseeable,  
13 substantial unfairness, unnecessary economic burdens, or a significant disruption  
14 or delay of the litigation, a Party does not waive its right to challenge a  
15 confidentiality designation by electing not to mount a challenge promptly after the  
16 original designation is disclosed.  
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18           6.2    Meet and Confer. The Challenging Party shall initiate the dispute  
19 resolution process by providing written notice of each designation it is challenging  
20 and describing the basis for each challenge. To avoid ambiguity as to whether a  
21 challenge has been made, the written notice must recite that the challenge to  
22 confidentiality is being made in accordance with this specific paragraph of the  
23 Protective Order. The parties shall attempt to resolve each challenge in good faith  
24 and must begin the process by conferring directly (in voice to voice dialogue; other  
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1 forms of communication are not sufficient) within 10 days of the date of service of  
2 notice. In conferring, the Challenging Party must explain the basis for its belief  
3 that the confidentiality designation was not proper and must give the Designating  
4 Party an opportunity to review the designated material, to reconsider the  
5 circumstances, and, if no change in designation is offered, to explain the basis for  
6 the chosen designation. A Challenging Party may proceed to the next stage of the  
7 challenge process only if it has engaged in this meet and confer process first or  
8 establishes that the Designating Party is unwilling to participate in the meet and  
9 confer process in a timely manner. In complying with this requirement, the parties  
10 must comply with Local Rules 37-1 and -1 in filing any discovery motion,  
11 including the joint stipulation requirement.

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15         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without  
16 court intervention, the Designating Party shall file and serve a motion to retain  
17 confidentiality under Civil Local Rule 37 (and in compliance with Civil Local  
18 Rule 79-5 and General Order 10-7, if applicable) in accordance with the guidelines  
19 set forth by Local Rule 37, including the requirement of a joint stipulation. Each  
20 such motion must be accompanied by a competent declaration affirming that the  
21 movant has complied with the meet and confer requirements imposed in the  
22 preceding paragraph. Failure by the Designating Party to make such a motion  
23 including the required declaration within 21 days of receiving notice from the  
24 challenging party shall automatically waive the confidentiality designation for each  
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1 challenged designation. In addition, the Challenging Party may file a motion, in  
2 accordance with Local Rule 37, challenging a confidentiality designation at any  
3 time if there is good cause for doing so, including a challenge to the designation of  
4 a deposition transcript or any portions thereof. Any motion brought pursuant to  
5 this provision must be accompanied by a competent declaration affirming that the  
6 movant has complied with the meet and confer requirements imposed by the  
7 preceding paragraph.  
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10         The burden of persuasion in any such challenge proceeding shall be on the  
11 Designating Party. Frivolous challenges and those made for an improper purpose  
12 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
13 expose the Challenging Party to sanctions. Unless the Designating Party has  
14 waived the confidentiality designation by failing to file a motion to retain  
15 confidentiality as described above, all parties shall continue to afford the material  
16 in question the level of protection to which it is entitled under the Producing  
17 Party's designation until the court rules on the challenge.  
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## 21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22         7.1 Basic Principles. A Receiving Party may use Protected Material that  
23 is disclosed or produced by another Party or by a Non Party in connection with this  
24 case only for prosecuting, defending, or attempting to settle this litigation. Such  
25 Protected Material may be disclosed only to the categories of persons and under  
26 the conditions described in this Order. When the litigation has been terminated, a  
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1 Receiving Party must comply with the provisions of section 15 below (FINAL  
2 DISPOSITION).

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

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
8 otherwise ordered by the court or permitted in writing by the Designating Party, a  
9 Receiving Party may disclose any information or item designated  
10 “CONFIDENTIAL” only to:  
11

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 litigation and who have signed the  
15 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
16 A;  
17

18 (b) the officers, directors, and employees (including House  
19 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for  
20 this litigation and who have signed the “Acknowledgment and Agreement to Be  
21 Bound” (Exhibit A);  
22

23 (c) Experts (as defined in this Order) of the Receiving Party to  
24 whom disclosure is reasonably necessary for this litigation and who have signed  
25 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
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(d) the court and its personnel;

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

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

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

7.3 Disclosure of “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL SOURCE CODE” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL SOURCE CODE” only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action,  
2 as well as employees of said Outside Counsel of Record to whom it is reasonably  
3 necessary to disclose the information for this litigation and who have signed the  
4 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit  
5 A;

7 (b) Designated House Counsel of the Receiving Party (1) who has  
8 no involvement in competitive decision making, (2) to whom disclosure is  
9 reasonably necessary for this litigation, (3) who has signed the "Acknowledgment  
10 and Agreement to Be Bound" (Exhibit A), and (4) as to whom the procedures set  
11 forth in paragraph 7.4(a)(1), below, have been followed;

14 (c) Experts of the Receiving Party (1) to whom disclosure is  
15 reasonably necessary for this litigation, (2) who have signed the "Acknowledgment  
16 and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set  
17 forth in paragraph 7.4(a)(2), below, have been followed;

19 (d) the court and its personnel;

21 (e) court reporters and their staff, professional jury or trial  
22 consultants, and Professional Vendors to whom disclosure is reasonably necessary  
23 for this litigation and who have signed the "Acknowledgment and Agreement to  
24 Be Bound" (Exhibit A); and  
25



1 (f) the author or recipient of a document containing the  
2 information or a custodian or other person who otherwise possessed or knew the  
3 information.  
4

5 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
6 CONFIDENTIAL ATTORNEYS’ EYES ONLY” or “HIGHLY  
7 CONFIDENTIAL SOURCE CODE” Information or Items to Designated House  
8 Counsel or Experts.  
9

10 (a) (1) Unless otherwise ordered by the court or agreed to in  
11 writing by the Designating Party, a Party that seeks to disclose to Designated  
12 House Counsel any information or item that has been designated “HIGHLY  
13 CONFIDENTIAL ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b)  
14 first must make a written request to the Designating Party that (1) sets forth the full  
15 name of the Designated House Counsel and the city and state of his or her  
16 residence, and (2) describes the Designated House Counsel’s current and  
17 reasonably foreseeable future primary job duties and responsibilities in sufficient  
18 detail to determine if House Counsel is involved, or may become involved, in any  
19 competitive decision making.  
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23 (a) (2) Unless otherwise ordered by the court or agreed to in  
24 writing by the Designating Party, a Party that seeks to disclose to an Expert (as  
25 defined in this Order) any information or item that has been designated “HIGHLY  
26 CONFIDENTIAL ATTORNEYS’ EYES ONLY” or “HIGHLY  
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1 CONFIDENTIAL SOURCE CODE” pursuant to paragraph 7.3(c) first must  
2 make a written request to the Designating Party that (1) identifies the general  
3 categories of “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” or  
4 “HIGHLY CONFIDENTIAL SOURCE CODE” information that the Receiving  
5 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the  
6 Expert and the city and state of his or her primary residence, (3) attaches a copy of  
7 the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)  
8 identifies each person or entity from whom the Expert has received compensation  
9 or funding for work in his or her areas of expertise or to whom the expert has  
10 provided professional services, including in connection with a litigation, at any  
11 time during the preceding five years, and (6) identifies (by name and number of  
12 the case, filing date, and location of court) any litigation in connection with which  
13 the Expert has offered expert testimony, including through a declaration, report, or  
14 testimony at a deposition or trial, during the preceding five years.

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19 (b) A Party that makes a request and provides the information  
20 specified in the preceding respective paragraphs may disclose the subject Protected  
21 Material to the identified Designated House Counsel or Expert unless, within 10  
22 days of delivering the request, the Party receives a written objection from the  
23 Designating Party. Any such objection must set forth in detail the grounds on  
24 which it is based.  
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1 (c) A Party that receives a timely written objection must meet and  
2 confer with the Designating Party (through direct voice to voice dialogue) to try to  
3 resolve the matter by agreement within seven days of the written objection. If no  
4 agreement is reached, the Party seeking to make the disclosure to Designated  
5 House Counsel or the Expert may file a motion as provided in Civil Local Rule 37  
6 (and in compliance with Civil Local Rule 79 5 and General Order 10-7, if  
7 applicable) seeking permission from the court to do so. Any such motion must  
8 describe the circumstances with specificity, set forth in detail the reasons why the  
9 disclosure to Designated House Counsel or the Expert is reasonably necessary,  
10 assess the risk of harm that the disclosure would entail, and suggest any additional  
11 means that could be used to reduce that risk. In addition, any such motion must be  
12 accompanied by a competent declaration describing the parties' efforts to resolve  
13 the matter by agreement (i.e., the extent and the content of the meet and confer  
14 discussions) and setting forth the reasons advanced by the Designating Party for its  
15 refusal to approve the disclosure. All such disputes are subject to Rules 37-1 and  
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22 In any such proceeding, the Party opposing disclosure to Designated House  
23 Counsel or the Expert shall bear the burden of proving that the risk of harm that  
24 the disclosure would entail (under the safeguards proposed) outweighs the  
25 Receiving Party's need to disclose the Protected Material to its Designated House  
26 Counsel or Expert.  
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1 8. PROSECUTION BAR

2 Absent written consent from the Producing Party, any individual who  
3 receives access to “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY”  
4 or “HIGHLY CONFIDENTIAL SOURCE CODE” information shall not be  
5 involved in the prosecution of patents or patent applications relating to [insert  
6 subject matter of the invention and of highly confidential technical information to  
7 be produced], including without limitation the patents asserted in this action and  
8 any patent or application claiming priority to or otherwise related to the patents  
9 asserted in this action, before any foreign or domestic agency, including the United  
10 States Patent and Trademark Office (“the Patent Office”). For purposes of this  
11 paragraph, “prosecution” includes directly or indirectly drafting, amending,  
12 advising, or otherwise affecting the scope or maintenance of patent claims. To  
13 avoid any doubt, “prosecution” as used in this paragraph does not include  
14 representing a party challenging a patent before a domestic or foreign agency  
15 (including, but not limited to, a reissue protest, ex parte reexamination or inter  
16 partes reexamination). This Prosecution Bar shall begin when access to “HIGHLY  
17 CONFIDENTIAL ATTORNEYS’ EYES ONLY” or “HIGHLY  
18 CONFIDENTIAL SOURCE CODE” information is first received by the affected  
19 individual and shall end two (2) years after final termination of this action.  
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26 9. SOURCE CODE  
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1           (a) To the extent production of source code becomes necessary in  
2 this case, a Producing Party may designate source code as “HIGHLY  
3 CONFIDENTIAL SOURCE CODE” if it comprises or includes confidential,  
4 proprietary or trade secret source code.  
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6           (b) Protected Material designated as “HIGHLY CONFIDENTIAL  
7 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY  
8 CONFIDENTIAL ATTORNEYS’ EYES ONLY” information including the  
9 Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the  
10 individuals to whom “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES  
11 ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with  
12 the exception of Designated House Counsel.  
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15           (c) Any source code produced in discovery shall be made available  
16 for inspection, in a format allowing it to be reasonably reviewed and searched,  
17 during normal business hours or at other mutually agreeable times, at an office of  
18 the Producing Party’s counsel or another mutually agreed upon location. The  
19 source code shall be made available for inspection on a secured computer in a  
20 secured room without Internet access or network access to other computers, and  
21 the Receiving Party shall not copy, remove, or otherwise transfer any portion of  
22 the source code onto any recordable media or recordable device. The Producing  
23 Party may visually monitor the activities of the Receiving Party’s representatives  
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1 during any source code review, but only to ensure that there is no unauthorized  
2 recording, copying, or transmission of the source code.

3 (d) The Receiving Party may request paper copies of limited  
4 portions of source code that are reasonably necessary for the preparation of court  
5 filings, pleadings, expert reports, or other papers, or for deposition or trial, but  
6 shall not request paper copies for the purposes of reviewing the source code other  
7 than electronically as set forth in paragraph (c) in the first instance. The Producing  
8 Party shall provide all such source code in paper form including bates numbers and  
9 the label “HIGHLY CONFIDENTIAL SOURCE CODE.” The Producing Party  
10 may challenge the amount of source code requested in hard copy form pursuant to  
11 the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby  
12 the Producing Party is the “Challenging Party” and the Receiving Party is the  
13 “Designating Party” for purposes of dispute resolution.

14 (e) The Receiving Party shall maintain a record of any individual  
15 who has inspected any portion of the source code in electronic or paper form. The  
16 Receiving Party shall maintain all paper copies of any printed portions of the  
17 source code in a secured, locked area. The Receiving Party shall not create any  
18 electronic or other images of the paper copies and shall not convert any of the  
19 information contained in the paper copies into any electronic format. The  
20 Receiving Party shall only make additional paper copies if such additional copies  
21 are (1) necessary to prepare court filings, pleadings, or other papers (including a  
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1 testifying expert's expert report), (2) necessary for deposition, or (3) otherwise  
2 necessary for the preparation of its case. Any paper copies used during a deposition  
3 shall be retrieved by the Producing Party at the end of each day and must not be  
4 given to or left with a court reporter or any other individual.  
5

6 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation  
9 that compels disclosure of any information or items designated in this action as  
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES  
11 ONLY" or "HIGHLY CONFIDENTIAL SOURCE CODE" that Party must:  
12

13 (a) promptly notify in writing the Designating Party. Such  
14 notification shall include a copy of the subpoena or court order;  
15

16 (b) promptly notify in writing the party who caused the subpoena  
17 or order to issue in the other litigation that some or all of the material covered by  
18 the subpoena or order is subject to this Protective Order. Such notification shall  
19 include a copy of this Stipulated Protective Order; and  
20

21 (c) cooperate with respect to all reasonable procedures sought to be  
22 pursued by the Designating Party whose Protected Material may be affected.  
23

24 If the Designating Party timely seeks a protective order, the Party served  
25 with the subpoena or court order shall not produce any information designated in  
26 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL  
27 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL SOURCE  
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1 CODE” before a determination by the court from which the subpoena or order  
2 issued, unless the Party has obtained the Designating Party’s permission or any  
3 court so orders. The Designating Party shall bear the burden and expense of  
4 seeking protection in that court of its confidential material and nothing in these  
5 provisions should be construed as authorizing or encouraging a Receiving Party in  
6 this action to disobey a lawful directive from another court.  
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9 11. A NON PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
10 PRODUCED IN THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced  
12 by a Non Party in this action and designated as “CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL ATTORNEYS’ EYES ONLY” or “HIGHLY  
14 CONFIDENTIAL SOURCE CODE”]. Such information produced by Non  
15 Parties in connection with this litigation is protected by the remedies and relief  
16 provided by this Order. Nothing in these provisions should be construed as  
17 prohibiting a Non Party from seeking additional protections.  
18

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

24  
25 (1) promptly notify in writing the Requesting Party and the  
26 Non Party that some or all of the information requested is subject to a  
27 confidentiality agreement with a Non Party;  
28



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

5 (3) make the information requested available for inspection  
6 by the Non Party.

7 (c) If the Non Party fails to object or seek a protective order from  
8 this court within 14 days of receiving the notice and accompanying information,  
9 the Receiving Party may produce the Non Party's confidential information  
10 responsive to the discovery request. If the Non Party timely seeks a protective  
11 order, the Receiving Party shall not produce any information in its possession or  
12 control that is subject to the confidentiality agreement with the Non Party before a  
13 determination by the court or any court so orders. Absent a court order to the  
14 contrary, the Non Party shall bear the burden and expense of seeking protection in  
15 this court of its Protected Material.  
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19 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL  
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21 If a Receiving Party learns that, by inadvertence or otherwise, it has  
22 disclosed Protected Material to any person or in any circumstance not authorized  
23 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
24 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
25 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
26 the person or persons to whom unauthorized disclosures were made of all the terms  
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1 of this Order, and (d) request such person or persons to execute the  
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit

3 A.

4  
5 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
6 PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain  
8 inadvertently produced material is subject to a claim of privilege or other  
9 protection, the obligations of the Receiving Parties are those set forth in Federal  
10 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
11 whatever procedure may be established in an e discovery order that provides for  
12 production without prior privilege review. Pursuant to Federal Rule of Evidence  
13 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
14 of a communication or information covered by the attorney client privilege or work  
15 product protection, the parties may incorporate their agreement in the stipulated  
16 protective order submitted to the court. No such modification will have the effect  
17 or force of a court order unless the Court accepts the modification.

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21 **14. MISCELLANEOUS**

22 14.1 Right to Further Relief. Nothing in this Order abridges the right of  
23 any person to seek its modification by the court in the future.

24 14.2 Right to Assert Other Objections. By stipulating to the entry of this  
25 Protective Order no Party waives any right it otherwise would have to object to  
26 disclosing or producing any information or item on any ground not addressed in  
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1 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
2 any ground to use in evidence of any of the material covered by this Protective  
3 Order.  
4

5 14.3 Export Control. Disclosure of Protected Material shall be subject to  
6 all applicable laws and regulations relating to the export of technical data  
7 contained in such Protected Material, including the release of such technical data  
8 to foreign persons or nationals in the United States or elsewhere. The Producing  
9 Party shall be responsible for identifying any such controlled technical data, and  
10 the Receiving Party shall take measures necessary to ensure compliance.  
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12

13 14.4 Filing Protected Material. Without written permission from the  
14 Designating Party or a court order secured after appropriate notice to all interested  
15 persons, a Party may not file in the public record in this action any Protected  
16 Material. A Party that seeks to file under seal any Protected Material must comply  
17 with Civil Local Rule 79 5 and General Order 10-7. Protected Material may only  
18 be filed under seal pursuant to a court order authorizing the sealing of the specific  
19 Protected Material at issue. Pursuant to Civil Local Rule 79 5 and General Order  
20 10-7, a sealing order will issue only upon a request establishing that the Protected  
21 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
22 protection under the law. If a Receiving Party's request to file Protected Material  
23 under seal pursuant to Civil Local Rule 79 5(d) and General Order 10-7 is denied  
24 by the court, then the Receiving Party may file the Protected Material in the public  
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1 record pursuant to Civil Local Rule 79 5(e) unless otherwise instructed by the  
2 court.

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

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 04, 2013



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Hon. Jean P. Rosenbluth  
Magistrate Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Central District of California  
on [date] in the case of \_\_\_\_\_ [insert formal name of the case and the  
number and initials assigned to it by the court]. I agree to comply with and to be  
bound by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in  
any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this  
Order.

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

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with

1 this action or any proceedings related to enforcement of this Stipulated Protective  
2 Order.

3  
4 Date: \_\_\_\_\_

5 City and State where sworn and signed: \_\_\_\_\_

6 Printed name: \_\_\_\_\_

7 [printed name]

8 Signature: \_\_\_\_\_

9 [signature]

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