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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Plaintiff,

v.

ZILLOW GROUP, INC.; ZILLOW, INC.,

Defendants.

Case No. 8:19-CV-01777-JLS-JDEx

STIPULATED PROTECTIVE
ORDER

[Note Changes by the Court]

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file

1 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
2 that must be followed and the standards that will be applied when a party seeks
3 permission from the court to file material under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation
6 of information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House
11 Counsel (as well as their support staff).

12 2.4 Designated House Counsel: House Counsel who seek access to
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this
14 matter.

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”
19 or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless of
21 the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

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

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

5 2.9 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”
6 Information or Items: extremely sensitive third-party financial or technical
7 information whose disclosure is restricted by a protective order entered by another
8 court, and disclosure of which to a Party or Non-Party would create a substantial risk
9 of serious harm that could not be avoided by less restrictive means. Designation of
10 material as “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”
11 requires advance consent of the Receiving Party, and material so designated may not
12 be viewed by House Counsel, and shall be subject to the procedures for challenging
13 designations set forth in Section 6 of this Stipulated Protective Order.

14 2.10 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
15 extremely sensitive “Confidential Information or Items” representing computer code
16 and associated comments and revision histories, formulas, engineering specifications,
17 or schematics that define or otherwise describe in detail the algorithms or structure of
18 software or hardware designs, disclosure of which to another Party or Non-Party
19 would create a substantial risk of serious harm that could not be avoided by less
20 restrictive means.

21 2.11 House Counsel: attorneys who are employees of a party to this action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.12 Non-Party: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.13 Outside Counsel of Record: attorneys who are not employees of a party
27 to this action but are retained to represent or advise a party to this action and have
28 appeared in this action on behalf of that party or are affiliated with a law firm which

1 has appeared on behalf of that party.

2 2.14 Party: any party to this action, including all of its officers, directors,
3 employees to whom disclosure is reasonably necessary to the litigation, consultants,
4 retained experts, and Outside Counsel of Record (and their support staffs).

5 2.15 Producing Party: a Party or Non-Party that produces Disclosure or
6 Discovery Material in this action.

7 2.16 Professional Vendors: persons or entities that provide litigation support
8 services (e.g., photocopying, videotaping, translating, preparing exhibits or
9 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
10 their employees and subcontractors.

11 2.17 Protected Material: any Disclosure or Discovery Material that is
12 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” or as “HIGHLY CONFIDENTIAL – OUTSIDE
14 COUNSEL’S EYES ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

15 2.18 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only Protected
19 Material (as defined above), but also (1) any information copied or extracted from
20 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
21 Material; and (3) any testimony, conversations, or presentations by Parties or their
22 Counsel that might reveal Protected Material. However, the protections conferred by
23 this Stipulation and Order do not cover the following information: (a) any information
24 that is in the public domain at the time of disclosure to a Receiving Party or becomes
25 part of the public domain after its disclosure to a Receiving Party as a result of
26 publication not involving a violation of this Order, including becoming part of the
27 public record through trial or otherwise; and (b) any information known to the
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1 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
2 disclosure from a source who obtained the information lawfully and under no
3 obligation of confidentiality to the Designating Party. Any use of Protected Material
4 at trial shall be governed by a separate agreement or order. Nothing in this Protective
5 Order shall prevent or restrict a Producing Party's own disclosure or use of its own
6 Discovery Material for any purpose; and nothing in this Order shall preclude any
7 Receiving Party from showing Discovery Material to an individual who prepared the
8 Discovery Material.

9 Except as may be otherwise ordered by the Court, any person may be examined
10 as a witness at depositions and/or trial and may testify concerning all Protected
11 Material of which such person has prior knowledge as set forth below:

12 (i) A present director, officer, and/or employee of a Producing Party may be
13 examined and may testify concerning all Protected Material which has been produced
14 by that Party;

15 (ii) A former director, officer, and/or employee of a Producing Party may be
16 examined and may testify concerning all Protected Material of the Producing Party
17 that establishes on its face or is established from other documents or testimony to have
18 been previously received from or communicated to that person and of which he or she
19 has prior knowledge, including any Protected Material that refers to matters of which
20 the witness has personal knowledge, has been produced by that Party, and pertains to
21 the period or periods of his or her employment; and

22 (iii) Non-parties may be examined or testify concerning any document
23 containing Protected Material of a Producing Party that appears, on its face or from
24 other documents or testimony, to have been previously received from or
25 communicated to the non-party as a result of any contact or relationship with the
26 Producing Party or a representative of such Producing Party. Any person other than
27 the witness, his or her attorney(s), and any person qualified to receive Protected
28 Material under this Order shall be excluded from the portion of the examination

1 concerning such information, unless the Producing Party consents to persons other
2 than qualified recipients being present at the examination.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
6 in writing or a court order otherwise directs. Final disposition shall be deemed to be
7 the later of (1) dismissal of all claims and defenses in this action, with or without
8 prejudice; and (2) final judgment herein after the completion and exhaustion of all
9 appeals, rehearings, remands, trials, or reviews of this action, including the time limits
10 for filing any motions or applications for extension of time pursuant to applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Available Designations.

13 Any Producing Party may designate Discovery Material with any of the
14 following designations, provided that it meets the requirements for such designations
15 as provided for herein:

16 (i) “CONFIDENTIAL”

17 (ii) “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

18 (iii) “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES
19 ONLY”

20 (iv) “HIGHLY CONFIDENTIAL – SOURCE CODE.”

21 5.2 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

10 5.3 Manner and Timing of Designations. Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.3(a) below), or as otherwise stipulated
12 or ordered, Disclosure or Discovery Material that qualifies for protection under this
13 Order must be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
19 CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY" or "HIGHLY
20 CONFIDENTIAL – SOURCE CODE" to each page that contains protected material.
21 If only a portion or portions of the material on a page qualifies for protection, and to
22 the extent it is practical to do so, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must
24 specify, for each portion, the level of protection being asserted.

25 A Party or Non-Party that makes original documents or materials available for
26 inspection need not designate them for protection until after the inspecting Party has
27 indicated which material it would like copied and produced. During the inspection and
28 before the designation, all of the material made available for inspection shall be

1 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
2 inspecting Party has identified the documents it wants copied and produced, the
3 Producing Party must determine which documents, or portions thereof, qualify for
4 protection under this Order. Then, before producing the specified documents, the
5 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
7 – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL –
8 SOURCE CODE”) to each page that contains Protected Material. If only a portion or
9 portions of the material on a page qualifies for protection, the Producing Party also
10 must clearly identify the protected portion(s) (e.g., by making appropriate markings in
11 the margins) and must specify, for each portion, the level of protection being asserted.

12 Moreover, media containing documents may be designated by marking the
13 media with the appropriate confidentiality designation. If documents are printed from
14 the media, they shall be immediately marked with the designation on the media.

15 (b) for testimony given in deposition or in other pretrial or trial
16 proceedings, that the Designating Party identify on the record, before the close of the
17 deposition, hearing, or other proceeding, all protected testimony and specify the level
18 of protection being asserted. When it is impractical to identify separately each portion
19 of testimony that is entitled to protection and it appears that substantial portions of the
20 testimony may qualify for protection, the Designating Party may invoke on the record
21 (before the deposition, hearing, or other proceeding is concluded) a right to have up to
22 21 days to identify the specific portions of the testimony as to which protection is
23 sought and to specify the level of protection being asserted. Only those portions of the
24 testimony that are appropriately designated for protection within the 21 days shall be
25 covered by the provisions of this Stipulated Protective Order. Alternatively, a
26 Designating Party may specify, at the deposition or up to 21 days afterwards if that
27 period is properly invoked, that the entire transcript shall be treated as
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY.”

2 Parties shall give the other parties notice if they reasonably expect a deposition,
3 hearing or other proceeding to include Protected Material so that the other parties can
4 ensure that only authorized individuals who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
6 document as an exhibit at a deposition shall not in any way affect its designation as
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”
9 or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

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

20 (c) for information produced in some form other than documentary and
21 for any other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information or item is stored the
23 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”
25 or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of
26 the information or item warrant protection, the Producing Party, to the extent
27 practicable, shall identify the protected portion(s) and specify the level of protection
28 being asserted.

1 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive the
3 Designating Party’s right to secure protection under this Order for such material. Upon
4 timely correction of a designation, the Receiving Party must make reasonable efforts
5 to assure that the material is treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time, subject to any applicable Scheduling Order.
9 Unless a prompt challenge to a Designating Party’s confidentiality designation is
10 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
11 or a significant disruption or delay of the litigation, a Party does not waive its right to
12 challenge a confidentiality designation by electing not to mount a challenge promptly
13 after the original designation is disclosed.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process by providing written notice of each designation it is challenging and
16 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
17 has been made, the written notice must recite that the challenge to confidentiality is
18 being made in accordance with this specific paragraph of the Protective Order. The
19 parties shall attempt to resolve each challenge in good faith and must begin the process
20 by conferring directly (in voice to voice dialogue; other forms of communication are
21 not sufficient) within 14 days of the date of service of notice. In conferring, the
22 Challenging Party must explain the basis for its belief that the confidentiality
23 designation was not proper and must give the Designating Party an opportunity to
24 review the designated material, to reconsider the circumstances, and, if no change in
25 designation is offered, to explain the basis for the chosen designation. A Challenging
26 Party may proceed to the next stage of the challenge process only if it has engaged in
27 this meet and confer process first or establishes that the Designating Party is unwilling
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1 to participate in the meet and confer process in a timely manner.

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

18 The burden of persuasion in any such challenge proceeding shall be on the
19 Designating Party. Frivolous challenges and those made for an improper purpose (e.g.,
20 to harass or impose unnecessary expenses and burdens on other parties) may expose
21 the Challenging Party to sanctions. Unless the Designating Party has waived the
22 confidentiality designation by failing to file a motion to retain confidentiality as
23 described above, all parties shall continue to afford the material in question the level
24 of protection to which it is entitled under the Producing Party's designation until the
25 court rules on the challenge.

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a Non-Party in connection with this case

1 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
2 Material may be disclosed only to the categories of persons and under the conditions
3 described in this Order. When the litigation has been terminated, a Receiving Party
4 must comply with the provisions of section 15 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a password-protected form that ensures that access is limited to the
7 persons 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 “CONFIDENTIAL”
11 only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action, as
13 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 A;

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

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

22 (d) the court and its personnel;

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

27 (f) during their depositions, witnesses in the action to whom disclosure is
28 reasonably necessary and who have signed the “Acknowledgment and Agreement to

1 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
2 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
3 reveal Protected Material must be separately bound by the court reporter and may not
4 be disclosed to anyone except as permitted under this Stipulated Protective Order;

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

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”
9 or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
13 – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL –
14 SOURCE CODE” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action, as
16 well as employees of said Outside Counsel of Record to whom it is reasonably
17 necessary to disclose the information for this litigation and who have signed the
18 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

19 (b) In the case of information or items designated as “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” Designated House Counsel of the
21 Receiving Party (1) who has no involvement in competitive decision-making, (2) to
22 whom disclosure is reasonably necessary for this litigation, (3) who has signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the
24 procedures set forth in paragraph 7.4(a)(1), below, have been followed;

25 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
26 necessary for this litigation, (2) who have signed the “Acknowledgment and
27 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
28 paragraph 7.4(a)(2), below, have been followed;

1 (d) the court and its personnel;

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

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

8 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
10 – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL –
11 SOURCE CODE” Information or Items to Designated House Counsel or Experts.

12 (a)(1) Unless otherwise ordered by the court or agreed to in writing by
13 the Designating Party, a Party that seeks to disclose to Designated House Counsel any
14 information or item that has been designated “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written
16 request to the Designating Party that (1) sets forth the full name of the Designated
17 House Counsel and the city and state of his or her residence, and (2) describes the
18 Designated House Counsel’s current and reasonably foreseeable future primary job
19 duties and responsibilities in sufficient detail to determine if House Counsel is
20 involved, or may become involved, in any competitive decision-making. Designated
21 House Counsel who receives “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” information pursuant to this Order shall promptly disclose any changes in job
23 duties or responsibilities that may affect Designated House Counsel’s involvement in
24 any competitive decision-making process prior to final disposition of the litigation.

25 (a)(2) Unless otherwise ordered by the court or agreed to in writing by
26 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this
27 Order) any information or item that has been designated “HIGHLY CONFIDENTIAL
28 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE

1 COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
2 pursuant to paragraph 7.3(c) first must make a written request to the Designating Party
3 that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
5 COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
6 information that the Receiving Party seeks permission to disclose to the Expert, (2)
7 sets forth the full name of the Expert and the city and state of his or her primary
8 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s
9 current employer(s), (5) identifies each person or entity from whom the Expert has
10 received compensation or funding for work in his or her areas of expertise or to whom
11 the expert has provided professional services, including in connection with a litigation,
12 at any time during the preceding five years,¹ and (6) identifies (by name and number
13 of the case, filing date, and location of court) any litigation in connection with which
14 the Expert has offered expert testimony, including through a declaration, report, or
15 testimony at a deposition or trial, during the preceding five years.

16 (b) A Party that makes a request and provides the information specified
17 in the preceding respective paragraphs may disclose the subject Protected Material to
18 the identified Designated House Counsel or Expert unless, within 7 days of delivering
19 the request, the Party receives a written objection from the Designating Party. Any
20 such objection must set forth in detail the grounds on which it is based.

21 (c) A Party that receives a timely written objection must meet and confer
22 with the Designating Party (through direct voice to voice dialogue) to try to resolve
23 the matter by agreement within seven days of the written objection. If no agreement is
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26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation
27 to a third-party, then the Expert should provide whatever information the Expert
28 believes can be disclosed without violating any confidentiality agreements, and the
Party seeking to disclose to the Expert shall be available to meet and confer with the
Designating Party regarding any such engagement.

1 reached, the Party seeking to make the disclosure to Designated House Counsel or the
2 Expert may file a motion as provided in Civil Local Rule 37 (and in compliance with
3 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any
4 such motion must describe the circumstances with specificity, set forth in detail the
5 reasons why the disclosure to Designated House Counsel or the Expert is reasonably
6 necessary, assess the risk of harm that the disclosure would entail, and suggest any
7 additional means that could be used to reduce that risk. In addition, any such motion
8 must be accompanied by a competent declaration describing the parties' efforts to
9 resolve the matter by agreement (i.e., the extent and the content of the meet and confer
10 discussions) and setting forth the reasons advanced by the Designating Party for its
11 refusal to approve the disclosure.

12 In any such proceeding, the Party opposing disclosure to Designated House
13 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
14 disclosure would entail (under the safeguards proposed) outweighs the Receiving
15 Party's need to disclose the Protected Material to its Designated House Counsel or
16 Expert.

17 8. PROSECUTION AND ACQUISITION BAR

18 (a) Absent written consent from the Producing Party, any individual who
19 receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
20 "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY" or
21 "HIGHLY CONFIDENTIAL – SOURCE CODE" information (collectively
22 "HIGHLY SENSITIVE INFORMATION") shall not advise on, consult on, prepare,
23 prosecute, supervise, or assist in the preparation or prosecution of any patent
24 application, specifications, claims, and/or responses to office actions, or otherwise
25 affect the scope of claims in patents or patent applications relating to (1) user single-
26 sign-on operations within a federated computer environment, (2) storing, delivering,
27 and presenting applications along with targeted advertising in interactive services
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1 provided on a computer network, (3) storing and delivering data objects for presenting
2 applications along with command functions in an interactive service provided on a
3 computer network, (4) displaying objects in multiple layers organized in a layer order,
4 (5) producing and/or storing a promotion list of promotion instances in an electronic
5 medium for a promotion management campaign, (6) geo-spatial and list-based
6 mapping systems with coordinated map and list elements, and/or (7) retrieving and
7 comparing image data to generate a map based on that data, including without
8 limitation the patents asserted in this action and any patent or application claiming
9 priority to or otherwise related to the patents asserted in this action, before any foreign
10 or domestic agency, including the United States Patent and Trademark Office (“the
11 Patent Office”). This provision does not prohibit Plaintiff’s counsel of record or
12 experts in this litigation from participating in or representing it in reexamination
13 proceedings, Post-Grant Review proceedings, Inter Partes Review proceedings, or
14 Covered Business Method Review proceedings involving any patent, including the
15 patents-in-suit, provided they (1) do not rely upon or use, directly or indirectly,
16 Defendant’s HIGHLY SENSITIVE MATERIAL in those proceedings and (2) do not
17 advise on, consult on, prepare, draft, or edit any amendment to specifications or claims
18 in those proceedings. Further, Plaintiff’s counsel of record or experts in this litigation
19 may not reveal Defendant’s HIGHLY SENSITIVE MATERIAL to any
20 reexamination, inter parties review, or covered business method review counsel or
21 agent. These prohibitions are not intended to and shall not preclude counsel from
22 participating in proceedings on behalf of a Party challenging the validity of any patent.
23 Nothing in this paragraph shall apply to any individual permitted to receive any other
24 Party’s Protected Material and who in compliance with the terms of this Protective
25 Order obtains, receives, has access to, or otherwise learns, in whole or in part, any
26 other Party’s HIGHLY SENSITIVE MATERIAL, if said HIGHLY SENSITIVE
27 MATERIAL is only of financial nature and not of a technical nature.

28 (b) In addition, any individual for or representing the parties who reviews

1 and/or learns, in whole or in part, any technical “HIGHLY SENSITIVE
2 INFORMATION” information under this Order shall not supervise/assist in the
3 acquisition of patents or patent applications related to the subjects listed in Section
4 8(a) on behalf of any entity that said individual knows or has reason to know is
5 asserting or plans to assert claims of patent infringement against the Producing Party.

6 (c) This Prosecution and Acquisition Bar shall begin when access to
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
8 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY
9 CONFIDENTIAL – SOURCE CODE” information is first received by the affected
10 individual and shall end two (2) years after final termination of this action, including
11 all appeals.

12 9. SOURCE CODE

13 (a) To the extent production of source code becomes necessary in this
14 case, a Producing Party may designate source code as “HIGHLY CONFIDENTIAL -
15 SOURCE CODE” if it comprises or includes confidential, proprietary or trade secret
16 source code.

17 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –
18 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, including the
20 Prosecution and Acquisition Bar set forth in Section 8, and may be disclosed only to
21 the individuals to whom “HIGHLY CONFIDENTIAL – SOURCE CODE”
22 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception
23 of Designated House Counsel.

24 (c) Any source code produced in discovery shall be made available for
25 inspection, in a format allowing it to be reasonably reviewed and searched, during
26 normal business hours or at other mutually agreeable times, at an office of the
27 Producing Party’s counsel or another mutually agreed upon location. The source code
28 shall be made available for inspection on a secured computer in a secured room

1 without Internet access or network access to other computers, and the Receiving Party
2 shall not copy, remove, or otherwise transfer any portion of the source code onto any
3 recordable media or recordable device. The Producing Party may visually monitor the
4 activities of the Receiving Party's representatives during any source code review, but
5 only to ensure that there is no unauthorized recording, copying, or transmission of the
6 source code. The Receiving Party shall keep a paper log indicating the names of any
7 individuals inspecting the source code and dates and times of inspection, and the
8 names of any individuals to whom paper copies of portions of source code are
9 provided.

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

21 (e) The Receiving Party shall maintain a record of any individual who
22 has inspected any portion of the source code in electronic or paper form. The Receiving
23 Party shall maintain all paper copies of any printed portions of the source code in a
24 secured, locked area. The Receiving Party shall not create any electronic or other
25 images of the paper copies and shall not convert any of the information contained in
26 the paper copies into any electronic format. The Receiving Party shall only make
27 additional paper copies if such additional copies are (1) necessary to prepare court
28 filings, pleadings, or other papers (including a testifying expert's expert report), (2)

1 necessary for deposition, or (3) otherwise necessary for the preparation of its case.
2 Any paper copies used during a deposition shall be retrieved by the Producing Party
3 at the end of each day and must not be given to or left with a court reporter or any
4 other unauthorized individual.

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

7 If a Party is served with a subpoena or a court order issued in other
8 litigation that compels disclosure of any information or items designated in this action
9 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”
11 or “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

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

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

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

20 If the Designating Party timely seeks a protective order, the Party served
21 with the subpoena or court order shall not produce any information designated in this
22 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES
24 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination
25 by the court from which the subpoena or order issued, unless the Party has obtained
26 the Designating Party’s permission. The Designating Party shall bear the burden and
27 expense of seeking protection in that court of its confidential material – and nothing
28 in these provisions should be construed as authorizing or encouraging a Receiving

1 Party in this action to disobey a lawful directive from another court.

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

4 (a) The terms of this Order are applicable to information produced by
5 a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
7 – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL –
8 SOURCE CODE.” Such information produced by Non-Parties in connection with this
9 litigation is protected by the remedies and relief provided by this Order. Nothing in
10 these provisions should be construed as prohibiting a Non-Party from seeking
11 additional protections.

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

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

19 2. promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
21 specific description of the information requested; and

22 3. make the information requested available for inspection by the
23 Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order from this
25 court within 14 days of receiving the notice and accompanying information, the
26 Receiving Party may produce the Non-Party’s confidential information responsive to
27 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
28 Party shall not produce any information in its possession or control that is subject to

1 the confidentiality agreement with the Non-Party before a determination by the court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
3 of seeking protection in this court of its Protected Material.

4 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 If information is produced in discovery that is subject to a claim of privilege or
16 of protection as trial-preparation material, the party making the claim may notify any
17 party that received the information of the claim and the basis for it. After being
18 notified, a party must promptly return or destroy the specified information and any
19 copies it has and may not sequester, use or disclose the information until the claim is
20 resolved. This provision is not intended to modify whatever procedure may be
21 established in an e-discovery order that provides for production without prior privilege
22 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties
23 reach an agreement on the effect of disclosure of a communication or information
24 covered by the attorney-client privilege or work product protection, the parties may
25 incorporate their agreement in the stipulated protective order submitted to the court.

26 14. MISCELLANEOUS

27 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the court in the future.

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

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

12 14.4 Filing Protected Material. ~~Without written permission from the~~
13 ~~Designating Party or a court order secured after appropriate notice to all interested~~
14 ~~persons, a Party may not file in the public record in this action any Protected Material.~~
15 A Party that seeks to file under seal any Protected Material must comply with Civil
16 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
17 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
18 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
19 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
20 entitled to protection under the law. If a Receiving Party's request to file Protected
21 Material under seal pursuant to Civil Local Rule 79-5 is denied by the court, then the
22 Receiving Party may file the Protected Material in the public record unless otherwise
23 instructed by the court.


24 15. FINAL DISPOSITION

25 Within 60 days after the final disposition of this action, as defined in
26 paragraph 4, each Receiving Party must return all Protected Material to the Producing
27 Party or destroy such material. As used in this subdivision, "all Protected Material"
28 includes all copies, abstracts, compilations, summaries, and any other format

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

14
15 Pursuant to the parties' Stipulation (Dkt. 7) and for good cause shown, IT IS
16 SO ORDERED.

17 DATED: March 26, 2020

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21 JOHN D. EARLY
22 United States Magistrate Judge
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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 *International Business Machines Corp.*
v. Zillow Group, Inc., Case No. 8:19-CV-01777-JLS-JDE. 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
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____