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9 Attorneys for Defendant CLEARWIRE CORPORATION,
 10 erroneously sued as CLEARWIRE, INC.

11
 12 IN THE UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA

14 SHARON NEWTON, individually and on) Case No. 2:11-cv-00783-WBS-DAD2:11-cv-
 15 behalf of all others similarly situated,) 00783-WBS-DAD
 16)
 17 Plaintiffs,)
 18) **STIPULATED PROTECTIVE ORDER**
 19 vs.)
 20 CLEARWIRE, INC.,)
 Defendant.)

21 Plaintiff Sharon Newton (“Ms. Newton”) and Defendant Clearwire Corporation
 22 (“Clearwire”), through their respective counsel, stipulate to the entry of a Protective Order
 23 (“Order”) pursuant to Federal Rule of Civil Procedure 26(c)(1), and applicable decisional law
 24 regarding the treatment of confidential information (“Order”).

25 Good causes exists for this Order because the disclosures and discovery in this case will
 26 likely involve the production of confidential or private information concerning, among other
 27 topics, confidential settlement agreements and communications between Clearwire and its
 28 customers, confidential proprietary information regarding Clearwire’s business, and personal,

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1 financial, and identifying information regarding Clearwire customers. Special protection of these
2 categories of information from public disclosure and/or from use for any purpose other than
3 prosecuting or defending this litigation is warranted.

4 Accordingly, the parties stipulate to the Court entering the following Order. This Order
5 does not confer blanket protections on all disclosures or responses to discovery and the protection
6 it affords extends only to the limited information or items that are entitled under the applicable
7 legal principles to treatment as confidential. The Order will contain the following terms and
8 conditions.

9 **1. DEFINITIONS.**

10 a. **“Confidential.”** In connection with the discovery proceedings in this action, the
11 parties may designate any document or information derived therefrom as “Confidential” under the
12 terms of this Order. Confidential information consists of: (a) information produced for or
13 disclosed to a receiving party; (b) a party reasonably and in good faith believes the information
14 constitutes confidential, personal, or consumer information, or otherwise constitutes private
15 information and/or confidential material whether embodied in physical objects, documents, or
16 other factual knowledge of persons; and (c) a party designates the information as confidential in
17 compliance with this Order, and in advance of its production.

18 Information which has been made public without violating the confidentiality or privacy
19 rights of any individual or entity may not be designated as Confidential.

20 b. **“Attorneys Eyes Only.”** Information may be designated “Attorneys Eyes Only”
21 when it contains confidential information which would put the producing person or entity at a
22 disadvantage if the information became known to the receiving party. Such information may
23 include, but is not limited to: non-public, personal financial information. Information also may be
24 designated as “Attorneys Eyes Only” if required by a prior court order or by agreement with a
25 third party that requires such treatment.

26 Information which has been made public without violating the confidentiality or privacy
27 rights of any individual or entity may not be designated as Attorneys Eyes Only.

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1 **2. DESIGNATION OF MATERIAL.**

2 a. Any party to this action, through its counsel, may designate any document it is
3 producing containing Confidential information as “CONFIDENTIAL” or “ATTORNEYS’ EYES
4 ONLY,” as applicable, by marking each page so designated at the time when the document
5 containing the information is first produced, served, or otherwise disclosed with the legend
6 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as applicable.” Stamping the cover of
7 any multi-page document shall designate all pages of the documents, unless otherwise indicated
8 by the designating party, but only if the entire document is produced in bound or otherwise intact
9 manner. The failure to mark a document or thing in accordance with this Order shall not preclude
10 any party desiring to designate the document or thing thereafter from marking the document or
11 thing and requesting, in writing, the receiving party to so mark and treat the document or thing in
12 accordance with this Order. Thereafter, the document or thing shall be fully subject to this Order,
13 but the receiving party shall have no liability for any disclosures made prior to such designation.

14 b. Any party to this action, through its counsel, may designate any document
15 containing Confidential information as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,”
16 as applicable, that is produced by another party by informing opposing counsel in writing within
17 10 calendar days of service of the document of the bates-numbers of each page containing such
18 information. To the extent that documents are produced prior to the entry of this Order,
19 documents may be so designated by informing opposing counsel in writing within 10 calendar
20 days of the entry of this Order.

21 c. Any deposition testimony in this litigation, or any portion thereof, may be
22 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as applicable, by any party
23 before or at the time of the deposition by the party’s counsel or by the deponent in accordance
24 with the following procedure:

- 25 i. At the deposition;
- 26 ii. After the deposition, provided such designation is made in writing to
27 opposing counsel within 10 calendar days of receipt of the official deposition transcript; all
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1 deposition testimony shall be treated as “CONFIDENTIAL” until the 10 calendar day period has
2 expired.

3 d. To the extent that deposition testimony concerns any Confidential documents or
4 subjects designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” by any party,
5 arrangements shall be made with the court reporter taking and transcribing such proceeding to
6 separately bind such portions of the transcript containing information designated as Confidential,
7 and to label such portions appropriately.

8 e. Counsel’s treatment of designated documents or information in conformity with the
9 indicated designation shall not be an admission or agreement by any party that the designated
10 information, in fact or in law, constitutes or contains any proprietary and/or confidential
11 information of any other party. The designation of information as being “CONFIDENTIAL”
12 pursuant to this Order shall not, in substantive proceedings in this action, excuse or relieve the
13 designating party from the burden of proof imposed by the relevant substantive law.

14 f. This Order shall not be construed as a waiver by the parties of any objection which
15 might be raised as to the admissibility of any evidentiary material. This Order shall also be
16 without prejudice to the rights of any person to oppose production of any information on any
17 proper ground.

18 **3. USE OF CONFIDENTIAL MATERIAL.**

19 a. Material designated as Confidential under this Order, the information contained
20 therein, and any summaries, copies, abstracts or other documents derived in whole or in part from
21 material designated as Confidential (“Confidential Material”) shall be used only for the purpose of
22 the prosecution, defense or settlement of this action and for no other purpose. Confidential
23 Material produced pursuant to this Order may be disclosed or made available only to the Court
24 and to counsel for a party, including the paralegal, clerical and secretarial staff employed by such
25 counsel. Counsel who obtain Confidential Information shall not disclose it to anyone other than
26 the following persons:
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- 1 i. The parties and representatives of a party who are responsible for assisting
2 counsel in the mediation, preparation for trial or settlement of this case;
- 3 ii. Employees of such counsel;
- 4 iii. Independent experts, consultants and other independent contractors actually
5 retained or employed to consult with, advise or assist counsel in mediation, or the preparation for
6 trial of this case or any persons actually consulted or contacted by counsel for any party in
7 connection with the mediation or preparation for trial of this case;
- 8 iv. Persons who are being prepared by counsel to give testimony at a
9 deposition, or who are being examined by counsel at a deposition; and
- 10 v. Court personnel, including stenographic reporters engaged in proceedings
11 necessarily incident to any pre-trial proceedings.
- 12 b. Before counsel for any party discloses any Confidential Material to any person
13 pursuant to the provisions of this Paragraph (except subparagraph (v)), counsel shall provide the
14 person to whom the disclosure is to be made with a copy of this Order, advise the person of the
15 substance of the Order and the possible penalties for violating the Order, and advise that person
16 that they are bound by the Order. All persons who obtain Confidential Information pursuant to
17 this Paragraph shall be prohibited from disclosing any Confidential Information to anyone except
18 as permitted by further order of this Court or written agreement of both counsel. Except as
19 provided above, the persons described in subparagraphs (i)–(iv) shall have access to Confidential
20 Information only after having been made aware of the provisions of this Order and having
21 acknowledged their assent to be bound by executing and delivering a copy of the “Certification”
22 (attached as Exhibit A to this Order), or so stating under oath and on the record.

23 **4. USE OF ATTORNEYS’ EYES ONLY MATERIAL.**

- 24 a. Material designated as Attorneys’ Eyes Only under this Order, the information
25 contained therein, and any summaries, copies, abstracts or other documents derived in whole or in
26 part from material designated as Attorneys’ Eyes Only (“Attorneys’ Eyes Only Material”) shall be
27 used only for the purpose of the prosecution, defense or settlement of this action and for no other
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1 purpose. Attorneys' Eyes Only Material produced pursuant to this Order may be disclosed or
2 made available only to the Court and to counsel for a party, including the paralegal, clerical and
3 secretarial staff employed by such counsel, and in-house counsel and paralegals with
4 responsibility for the matter. Counsel or in-house counsel/paralegals who obtain Attorneys Eyes
5 Only Material shall not disclose it to anyone other than the following persons:

- 6 i. Employees of such counsel;
- 7 ii. Independent experts, consultants and other independent contractors actually
8 retained or employed to consult with, advise or assist counsel in mediation, or the preparation for
9 trial of this case or any persons actually consulted or contacted by counsel for any party in
10 connection with the mediation or preparation for trial of this case;
- 11 iii. Persons who are being examined by counsel at a deposition, with respect to
12 information produced by that person or, in the case of an individual, that person's current
13 employer; and
- 14 iv. Court personnel, including stenographic reporters engaged in proceedings
15 necessarily incident to any pre-trial proceedings.

16 b. Before counsel for any party discloses any Attorneys Eyes Only Material to any
17 person pursuant to subparagraphs (i)–(iii) of this Paragraph, counsel shall provide the person to
18 whom the disclosure is to be made with a copy of this Protective Order, advise the person of the
19 substance of the Order and the possible penalties for violating the Order, and advise that person
20 that they are bound by the Order. All persons who obtain Attorneys' Eyes Only Information
21 pursuant to this Paragraph shall be prohibited from disclosing any Attorneys' Eyes Only
22 Information to anyone except as permitted by further order of this Court or written agreement of
23 both counsel. Except as provided above, the persons described in subparagraphs (i)–(iii) shall
24 have access to Attorneys Eyes Only Information only after having been made aware of the
25 provisions of this Order and having acknowledged their assent to be bound by executing and
26 delivering a copy of the "Certification" (attached as Exhibit A to this Order), or so stating under
27 oath and on the record.

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1 **5. PRESENTATION OF MATERIAL TO COURT.**

2 a. For any documents, pleadings, applications and/or motions submitted to the Court
3 by any party that attach, quote from, or refer to the substance of documents or materials containing
4 or consisting of Confidential Information or Attorneys Eyes Only Information, the submitting
5 party shall present to the Court a written application and a proposed order demonstrating good
6 cause along with the document[s] submitted for filing under seal in conformance with Local
7 Rule 39-141. The documents containing the purported Confidential Information or Attorneys
8 Eyes Only Information shall be submitted to the Court in sealed envelopes or other appropriate
9 sealed containers. The word “CONFIDENTIAL” shall be stamped on the envelope.

10 b. A party may present to the Court any opposition to or support for the request to seal
11 in accordance with Local Rule 39-141(c).

12 c. Where filings under seal are explicitly authorized by statute or rule, the request
13 shall set forth the supporting authority as set forth in Local Rule 39-141(b). Under this latter
14 procedure, the documents containing the Confidential Information shall be submitted to the Court
15 in sealed envelopes or other appropriate sealed containers. The word “CONFIDENTIAL” shall be
16 stamped on the envelope, and a statement substantially in the following form shall also be printed
17 on the envelope:

18 This envelope is sealed pursuant to [statute or rule], contains
19 Confidential Information and is not to be opened or the contents
20 revealed, except by Order of the Court or agreement by the parties.

21 **6. CHALLENGING A DESIGNATION OF CONFIDENTIALITY or ATTORNEYS’
22 EYES ONLY**

23 a. A party shall not be obligated to challenge the propriety of a Confidential or
24 Attorneys’ Eyes Only designation at the time made, and a failure to do so shall not preclude a
25 subsequent challenge thereto. The designation or failure to designate material as
26 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” shall not be determinative of that
27 material’s status as information suitable for protection from disclosure.
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1 b. All challenges to the propriety of a confidentiality designation of a document, page,
2 or transcript, or a portion of a document, page or transcript shall be first made in writing by a letter
3 or other document identifying the specific material challenged. The party challenging such
4 designation shall serve on all other parties a captioned Notice of Objection, which shall identify
5 with particularity the designated materials as to which the designation is challenged and state the
6 basis for each challenge (“Notice of Objection”). In the Notice of Objection, each challenged
7 document shall be identified individually. Within fourteen (14) days of such a challenge, the
8 designating party shall substantiate the basis for such designation in writing to the other party, or
9 forever waive the protection of this Order with respect to the challenged information.

10 c. If the confidentiality of any material is challenged, the parties shall try first to
11 resolve such dispute in good faith on an informal basis. If informal resolution is not possible, the
12 party asserting confidentiality of the document or the designation of such documents shall bring a
13 motion before the court no later than 45 days from the service date of the Notice of Objection, to
14 have the document designated as Confidential or Attorneys’ Eyes Only Material, with notice to all
15 parties and upon a showing of good cause. “Good cause” shall refer to, among other things,
16 appropriate grounds for claiming and establishing an applicable privilege under California law or
17 other reason(s) why the confidential information should be so designated. If a party serves a
18 Notice of Objection under this Paragraph, all parties shall continue to treat the information or
19 materials in question as confidential in accordance with the designation until such time as the
20 parties agree to a resolution of the challenged designation, or the Court has ruled on the motion.

21 **7. APPLICABILITY OF THIS PROTECTIVE ORDER.**

22 This Order shall apply to all pre-trial activity in this matter, including, but not necessarily
23 limited to, discovery, mediation, consultation with consultants or experts, preparation for trial
24 and/or settlement of this case. The parties anticipate that they will (but do not obligate themselves
25 to) negotiate and prepare a new Stipulated Protective Order to define the parameters for use of
26 Confidential and Attorneys’ Eyes Only documents and information to be used in the trial and post-
27 trial proceedings in this matter.

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1 **8. GOOD CAUSE STATEMENT.**

2 Federal Rule of Civil Procedure 26(c) states that a court may enter a protective order,
3 “upon good cause shown,” “to protect a party from annoyance, embarrassment, or undue burden
4 or expense....” Rule 26(c) includes a nonexhaustive list of the kinds of information that may be
5 subject to such a protective order – “trade secret or other confidential research, development, or
6 commercial information.” The parties to this Order have good cause to believe that disclosure of
7 their trade secret and other confidential commercial and/or private information would materially
8 harm their financial and commercial interests, as well as unduly infringe on the privacy interests of
9 third parties. *See Phillips v. Byrd*, 307 F.3d 1206, 1211-12 (9th Cir. 2002) (“[t]he law, however,
10 gives district courts broad latitude to grant protective orders to prevent disclosure of materials for
11 many types of information, including, but not limited to, trade secrets or other confidential
12 research, development, or commercial information”). Accordingly, the parties have stipulated to
13 this Protective Order pursuant to Rule 26(c).

14 **9. MISCELLANEOUS PROVISIONS.**

15 a. This Order shall survive the final termination of this action to the extent that the
16 Confidential or Attorneys’ Eyes Only Material is not, and does not, become known to the public
17 and the Court shall retain jurisdiction to resolve any dispute concerning the use of information
18 disclosed hereunder. Upon termination of this case, and upon request of the designating party,
19 counsel for the parties shall assemble all documents, materials and deposition transcripts
20 designated as Confidential or Attorneys’ Eyes Only and all copies of same, and shall either deliver
21 such Materials to opposing counsel or destroy such Materials. The designating party shall be
22 entitled to receive, upon request, a declaration signed by the delivering/destroying party setting
23 forth that any and all such Confidential Materials have been delivered and/or destroyed.
24 Notwithstanding the foregoing, counsel may retain one complete file of the litigation, including
25 documents and deposition transcripts designated as confidential and including work product,
26 notes, memoranda and correspondence containing such information, *provided, however*, that the
27 Material is maintained in accordance with paragraphs 3 and 4, above.

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1 b. In the event the Court does not approve this stipulation, all Confidential or
2 Attorneys' Eyes Only Material previously produced shall be immediately returned to the
3 producing party, unless the Court orders otherwise or the parties otherwise agree.

4 c. Any party receiving a subpoena duces tecum or other lawful process or order of any
5 court, administrative body, tribunal or other public authority requiring the production and
6 disclosure of documents, or the disclosure of information designated by another party as
7 confidential and subject to this Order, shall notify the designating party in writing of receipt of the
8 process or order within three business days of the receipt thereof, and shall not produce the
9 information until the designating party has had reasonable time to object or take other appropriate
10 steps to protect the information.

11 d. This Order is subject to further order of the Court and may be modified if deemed
12 appropriate and necessary by the Court. The parties and their respective counsel hereby consent to
13 the making of any entry of the foregoing Order.

14 e. This stipulation may be executed in counterparts.

15 Stipulated and respectfully submitted this 31st day of October, 2011.

16 For Clearwire Corporation:

For Plaintiff:

17 DAVIS WRIGHT TREMAINE LLP

AUDET & PARTNERS, LLP

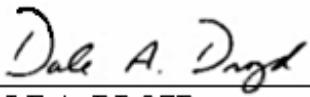
18 By: /s/ Kenneth E. Payson
19 Kenneth E. Payson

By: /s/ Bryce Miller (authorized on October 31, 2011)
Bryce Miller

20 Attorneys for Defendant
21 CLEARWIRE CORPORATION

Attorneys for Plaintiff
SHARON NEWTON

22
23 **IT IS SO ORDERED.**

24 
25 _____
26 DALE A. DROZD
27 UNITED STATES MAGISTRATE JUDGE

28 **DDAD1/orders.civil.newton0783.spo**