

1 Denise M. De Mory (SBN 168076)
demoryd@howrey.com

2 Irene Yang (SBN 245464)
yangi@howrey.com

3 HOWREY LLP
525 Market Street, Suite 3600
4 San Francisco, California 94105
Telephone: (415) 848-4900
5 Facsimile: (415) 848-4999

6 Attorneys for Plaintiff
LARRY D. BRIGGS

7 ROBERT S. NELSON (SBN# 220984)
8 NELSON LAW GROUP
900 Cherry Avenue, Suite 300
9 San Bruno, CA 94066
(650) 794-2760 (phone)
10 (650) 794-2761 (fax)
rnelson@nelsonlawgroup.net

11 Attorneys for Defendant
12 SANMINA-SCI CORPORATION

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO

16 LARRY D. BRIGGS,
17 Plaintiff,

18 vs.

19 SANMINA-SCI,
20 Defendant.

) Case No. C-08-0870 EMC

) **STIPULATED PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords extends only to the limited information or items that are
8 entitled under the applicable legal principles to treatment as confidential. The parties further
9 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
10 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
11 that must be followed and reflects the standards that will be applied when a party seeks permission
12 from the court to file material under seal.

13 2. DEFINITIONS

14 2.1. Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and outside counsel (and their support staff).

16 2.2. Disclosure or Discovery Material: all items or information, regardless of the medium or
17 manner generated, stored, or maintained (including, among other things, testimony, transcripts, or
18 tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

19 2.3. “Confidential” Information or Items: information (regardless of how generated, stored
20 or maintained) or tangible things that qualify for protection under standards developed under
21 F.R.Civ.P. 26(c).

22 2.4. “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
23 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
24 create a substantial risk of serious injury that could not be avoided by less restrictive means.

25 2.5. Receiving Party: a Party that receives Disclosure or Discovery Material from a
26 Producing Party.

27 2.6. Producing Party: a Party or non-party that produces Disclosure or Discovery Material in
28 this action.

1 2.7. Designating Party: a Party or non-party that designates information or items that it
2 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —
3 Attorneys’ Eyes Only.”

4 2.8. Protected Material: any Disclosure or Discovery Material that is designated as
5 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

6 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to
7 represent or advise a Party in this action.

8 2.10. House Counsel: attorneys who are employees of a Party.

9 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
10 support staffs).

11 2.12. Expert: a person with specialized knowledge or experience in a matter pertinent to the
12 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
13 consultant in this action and who is not a past or a current employee of a Party or of a competitor of a
14 Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a
15 competitor of a Party’s. This definition includes a professional jury or trial consultant retained in
16 connection with this litigation.

17 2.13. Professional Vendors: persons or entities that provide litigation support services (e.g.,
18 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
19 retrieving data in any form or medium; etc.) and their employees and subcontractors.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected Material (as
22 defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
23 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
24 counsel to or in court or in other settings that might reveal Protected Material.

25 4. DURATION

26 Even after the termination of this litigation, the confidentiality obligations imposed by this
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
28 otherwise directs.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or
3 non-party that designates information or items for protection under this Order must take care to limit
4 any such designation to specific material that qualifies under the appropriate standards. A Designating
5 Party must take care to designate for protection only those parts of material, documents, items, or oral
6 or written communications that qualify – so that other portions of the material, documents, items, or
7 communications for which protection is not warranted are not swept unjustifiably within the ambit of
8 this Order.

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

13 If it comes to a Party's or a non-party's attention that information or items that it designated for
14 protection do not qualify for protection at all, or do not qualify for the level of protection initially
15 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
16 mistaken designation.

17 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see,
18 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that
19 qualifies for protection under this Order must be clearly so designated before the material is disclosed
20 or produced.

21 Designation in conformity with this Order requires

22 (a) for information in documentary form (apart from transcripts of depositions or
23 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top or bottom of each page that
25 contains protected material. If only a portion or portions of the material on a page qualifies for
26 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
27 appropriate markings in the margins) and must specify, for each portion, the level of protection being
28

1 asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY”).

3 A Party or non-party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting Party has indicated which
5 material it would like copied and produced. During the inspection and before the designation, all of the
6 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants copied
8 and produced, the Producing Party must determine which documents, or portions thereof, qualify for
9 protection under this Order, then, before producing the specified documents, the Producing Party must
10 affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY”) at the top or bottom of each page that contains Protected Material. If only a portion or
12 portions of the material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
14 specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
17 Party or non-party offering or sponsoring the testimony identify on the record, before the close of the
18 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of
19 the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it
20 is impractical to identify separately each portion of testimony that is entitled to protection, and when it
21 appears that substantial portions of the testimony may qualify for protection, the Party or non-party
22 that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
23 proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony
24 as to which protection is sought and to specify the level of protection being asserted
25 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those
26 portions of the testimony that are appropriately designated for protection within the 20 days shall be
27 covered by the provisions of this Stipulated Protective Order.

28

1 Transcript pages containing Protected Material must be separately bound by the
2 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty
4 offering or sponsoring the witness or presenting the testimony.

5 (c) for information produced in some form other than documentary, and for any
6 other tangible items, that the Producing Party affix in a prominent place on the exterior of the container
7 or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item
9 warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions,
10 specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

11 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
12 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes
13 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
14 Order for such material. If material is appropriately designated as “Confidential” or “Highly
15 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on
16 timely notification of the designation, must make reasonable efforts to assure that the material is
17 treated in accordance with the provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party’s
20 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
21 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its
22 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

24 6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
25 confidentiality designation must do so in good faith and must begin the process by conferring directly
26 (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the
27 Designating Party. In conferring, the challenging Party must explain the basis for its belief that the
28 confidentiality designation was not proper and must give the Designating Party an opportunity to

1 review the designated material, to reconsider the circumstances, and, if no change in designation is
2 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next
3 stage of the challenge process only if it has engaged in this meet and confer process first.

4 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality
5 designation after considering the justification offered by the Designating Party may file and serve a
6 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
7 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion
8 must be accompanied by a competent declaration that affirms that the movant has complied with the
9 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity
10 the justification for the confidentiality designation that was given by the Designating Party in the meet
11 and confer dialogue. The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
13 material in question the level of protection to which it is entitled under the Producing Party's
14 designation.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
17 produced by another Party or by a non-party in connection with this case only for prosecuting,
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
19 categories of persons and under the conditions described in this Order. When the litigation has been
20 terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
21 DISPOSITION).

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

24 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
25 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
26 information or item designated CONFIDENTIAL only to:

27 (a) the Receiving Party's Outside Counsel of record in this action, as well as
28 employees of said Counsel to whom it is reasonably necessary to disclose the information for this

1 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
2 hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the
5 “Agreement to Be Bound by Protective Order” (Exhibit A);

6 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
7 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
8 Protective Order” (Exhibit A);

9 (d) the Court and its personnel;

10 (e) court reporters, their staffs, and professional vendors to whom disclosure is
11 reasonably necessary for this litigation;

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

17 (g) the author of the document or the original source of the information.

18 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

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

22 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
23 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
24 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
25 hereto as Exhibit A;

26 (b) experts (as defined in this Order) (1) to whom disclosure is reasonably necessary
27 for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A),
28 and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

1 (c) the Court and its personnel; and

2 (d) court reporters, their staffs, and professional vendors to whom disclosure is
3 reasonably necessary for this litigation

4 7.4. Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

6 (a) Unless otherwise ordered by the court or agreed in writing by the Designating Party,
7 a Party that seeks to disclose to an “Expert” (as defined in this Order) any information or item that has
8 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first must make a
9 written disclosure to the Designating Party that (1) sets forth the full name of the Expert and the city
10 and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3)
11 identifies the Expert’s current employer(s), (4) identifies each person or entity from whom the Expert
12 has received compensation for work in his or her areas of expertise or to whom the expert has provided
13 professional services at any time during the preceding five years, and (5) identifies (by name and
14 number of the case, filing date, and location of court) any litigation in connection with which the Expert
15 has provided any professional services during the preceding five years.

16 (b) A Party that makes a request and provides the information specified in the preceding
17 paragraph may disclose any information or item that has been designated “HIGHLY CONFIDENTIAL
18 – ATTORNEYS’ EYES ONLY” to the identified Expert unless, within seven court days of delivering
19 the request, the Party receives a written objection from the Designating Party. Any such objection must
20 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 with the
22 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement. If
23 no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as
24 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking
25 permission from the court to do so. Any such motion must describe the circumstances with specificity,
26 set forth in detail the reasons for which the disclosure to the Expert is reasonably necessary, assess the
27 risk of harm that the disclosure would entail and suggest any additional means that might be used to
28 reduce that risk. In addition, any such motion must be accompanied by a competent declaration in

1 which the movant describes the parties' efforts to resolve the matter by agreement (i.e., the extent and
2 the content of the meet and confer discussions) and sets forth the reasons advanced by the Designating
3 Party for its refusal to approve the disclosure.

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

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
8 LITIGATION.

9 If a Receiving Party is served with a subpoena or an order issued in other litigation that
10 would compel disclosure of any information or items designated in this action as "CONFIDENTIAL"
11 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify
12 the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court
13 days after receiving the subpoena or order. Such notification must include a copy of the subpoena or
14 court order.

15 The Receiving Party also must immediately inform in writing the Party who caused the
16 subpoena or order to issue in the other litigation that some or all the material covered by the subpoena
17 or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of
18 this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or
19 order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the existence of
21 this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
22 confidentiality interests in the court from which the subpoena or order issued. The Designating Party
23 shall bear the burdens and the expenses of seeking protection in that court of its confidential material –
24 and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in
25 this action to disobey a lawful directive from another court.

26 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
28 Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the

1 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
2 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person
3 or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request
4 such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached
5 hereto as Exhibit A.

6 10. FILING PROTECTED MATERIAL.

7 Without written permission from the Designating Party or a court order secured after
8 appropriate notice to all interested persons, a Party may not file in the public record in this action any
9 Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil
10 Local Rule 79-5.

11 11. FINAL DISPOSITION.

12 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
13 the final termination of this action, each Receiving Party must return all Protected Material to the
14 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
15 compilations, summaries or any other form of reproducing or capturing any of the Protected Material.
16 With permission in writing from the Designating Party, the Receiving Party may destroy some or all of
17 the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed,
18 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
19 person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where
20 appropriate) all the Protected Material that was returned compilations, summaries or other forms of
21 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
22 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
23 correspondence or attorney work product, even if such materials contain Protected Material. Any such
24 archival copies that contain or constitute Protected Material remain subject to this Protective Order as
25 set forth in Section 4 (DURATION), above. 12.

26 12. MISCELLANEOUS

27 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek
28 its modification by the Court in the future.

1 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
2 Party waives any right it otherwise would have to object to disclosing or producing any information or
3 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
4 right to object on any ground to use in evidence of any of the material covered by this Protective
5 Order.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 Dated: October 28, 2008

HOWREY LLP

10 By: /s/ Irene Yang
Irene Yang
Attorneys for Plaintiff
LARRY D. BRIGGS

13 Dated: October 28, 2008

NELSON LAW GROUP

15 By: /s/ Robert S. Nelson
Robert S. Nelson
Attorneys for Defendant
SANMINA-SCI, INC.

18 PURSUANT TO STIPULATION, IT IS SO ORDERED

20 Dated: October 31, 2008

Hon. Edward M. Chen
United States Me

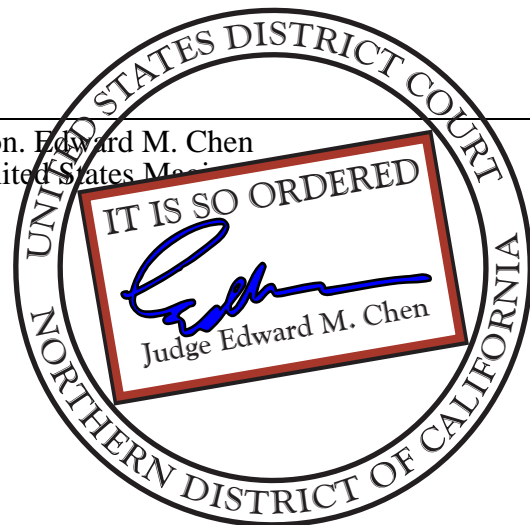


EXHIBIT A

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 Northern District of California on _____ [date] in the case of Larry
D. Briggs v. Sanmina-SCI, No. C08-0870 EMC. 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 Northern
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: _____
[printed name]

Signature: _____
[signature]