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14
 15 **IN THE UNITED STATES DISTRICT COURT**
 16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 17 **(SAN FRANCISCO DIVISION)**

18 TRACE-WILCO INC.)	Case No. 5:09 CV 00810 SI
)	
19 Plaintiff,)	
)	STIPULATED PROTECTIVE
20 v.)	ORDER
)	
21 SYMANTEC CORPORATION,)	
CISCO SYSTEMS, INC.,)	Honorable Susan Illston
22 MCAFEE, INC., and GOOGLE INC.)	
)	
23 Defendants.)	

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1 1. PURPOSES AND LIMITATIONS

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

16 2.1 Party: any party to this action, including all of its officers, directors, employees,
17 consultants, retained experts, and outside counsel (and their support staff).

18 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or
19 manner generated, stored, or maintained (including, among other things, testimony, transcripts, or
20 tangible things) that are produced or generated in disclosures or responses to discovery in this
21 matter.
22

23 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how generated,
24 stored or maintained) or tangible things that qualify for protection under standards developed under
25 F.R.Civ.P. 26(c). The following is not Confidential Information or Items: (i) information that the
26 Receiving Party can show by written record is or becomes part of the public domain by publication
27 by a party having the right to publish such information and not due to any unauthorized act or
28 omission on the part of a receiving party; (ii) information that a Receiving Party can show was

1 lawfully in the Receiving Party's possession prior to being designated as Confidential in this
2 litigation and that the receiving party is not otherwise obligated to treat as confidential; (iii)
3 information that the Receiving Party can show was obtained (without any benefit or use of
4 Confidential Material) from a third party having the right to disclose such information to the
5 Receiving Party without restriction or obligation of confidentiality; (iv) information that the
6 Receiving Party can show by written record was independently developed by it after the time of
7 disclosure by personnel who did not have access to the producing party's Confidential Material; or
8 (v) information that was submitted to a governmental entity as to which confidential treatment was
9 neither requested nor provided, either by operation of law or otherwise.
10

11 2.4 "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY" Information or Items:
12 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
13 nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive
14 means.
15

16 2.5 "HIGHLY RESTRICTED CONFIDENTIAL" Information or Items: source code or other
17 electronic files used in network operations, comments for source code or network operation files,
18 revision histories, or other material whose wrongful dissemination could result in irreparable harm to
19 the designating party.
20

21 2.6 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
22 Party.
23

24 2.7 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in
25 this action.
26

27 2.8. Designating Party: a Party or non-party that designates information or items that it
28 produces in disclosures or in responses to discovery as "Confidential," "Highly Confidential —
Outside Counsel Only," or "Highly Restricted Confidential."
29

30 2.9 Protected Material: any Disclosure or Discovery Material that is designated as

1 “Confidential,” as “Highly Confidential – Outside Counsel Only,” or as “Highly Restricted
2 Confidential.”

3 2.10. Outside Counsel: attorneys who are not employees of a Party but who are retained to
4 represent or advise a Party in this action.

5 2.11 House Counsel: attorneys who are employees of a Party.

6 2.12 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
7 their support staffs).
8

9 2.13 Expert: a person with specialized knowledge or experience in a matter pertinent to the
10 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
11 consultant in this action and who is not a past or a current employee of a Party or of a competitor of
12 a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a
13 competitor of a Party’s. This definition includes a professional jury or trial consultant retained in
14 connection with this litigation.
15

16 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
17 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
18 retrieving data in any form or medium; etc.) and their employees and subcontractors.

19 3. SCOPE

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

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. In determining the
3 scope of information that a party may designate as its Protected Material, each party acknowledges
4 the importance of client access to information necessary to client decision-making in the prosecution
5 or defense of litigation, and therefore agrees that designations of information as Protected Material
6 and responses to requests to permit further disclosure of Confidential Information or Items shall be
7 made in good faith and not (1) to impose burden or delay on an opposing party or (2) for tactical or
8 other advantage in litigation. Designations that are shown to be clearly unjustified, or that have been
9 made for an improper purpose (e.g., to unnecessarily encumber or retard the case development
10 process, or to impose unnecessary expenses and burdens on other parties), expose the Designating
11 Party to sanctions.
12

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
14 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that
15 qualifies for protection under this Order must be clearly so designated before the material is
16 disclosed or produced.
17

18 (a) The labeling or marking of a document or tangible thing with the designation
19 "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" or "HIGHLY
20 RESTRICTED CONFIDENTIAL" shall be made when a copy of the document or thing is provided
21 to the Receiving Party by placing the legend "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE
22 COUNSEL ONLY" or "HIGHLY RESTRICTED CONFIDENTIAL," on the face of each such
23 document or thing. Any such designation that is inadvertently omitted or misdesignated may be
24 corrected by written notification to counsel for the Receiving Party, and the Receiving Party shall
25 thereafter mark and treat the materials as "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE
26 COUNSEL ONLY," or "HIGHLY RESTRICTED CONFIDENTIAL," as appropriate, and such
27 material shall be subject to this Protective Order as if it had been initially so designated. If, prior to
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1 receiving such notice, the Receiving Party has disseminated the Confidential Information or Items to
2 individuals not authorized to receive it hereunder, it shall make a reasonable effort to retrieve the
3 Confidential materials or to otherwise assure that the recipient(s) properly mark the Confidential
4 Information or Items and maintain the confidentiality of the Confidential materials, but shall have no
5 other responsibility or obligation with respect to the information disseminated.
6

7 A Party or non-party that makes original documents or materials available for inspection
8 need not designate them for protection until after the inspecting Party has indicated which material it
9 would like copied and produced. During the inspection and before the designation, all of the material
10 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – OUTSIDE
11 COUNSEL ONLY." After the inspecting Party has identified the documents it wants copied and
12 produced, the Producing Party must determine which documents, or portions thereof, qualify for
13 protection under this Order, then, before producing the specified documents, the Producing Party
14 must affix the appropriate legend ("CONFIDENTIAL," "HIGHLY CONFIDENTIAL – OUTSIDE
15 COUNSEL ONLY," or "HIGHLY RESTRICTED CONFIDENTIAL") on the face of each
16 document that contains Protected Material. If only a portion or portions of the material qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins) and must specify, for each portion, the level of protection
19 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL
20 ONLY").
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23 (b) In the case of deposition upon oral examination or written questions, such testimony shall
24 be deemed "CONFIDENTIAL -- OUTSIDE COUNSEL ONLY" until the expiration of thirty (30)
25 days after the receipt of the deposition transcript unless otherwise designated at the time of the
26 deposition or during the thirty (30) day period. Pages or entire transcripts of testimony given at a
27 deposition or hearing may be designated as containing "CONFIDENTIAL," "CONFIDENTIAL –
28 OUTSIDE COUNSEL ONLY," or "HIGHLY RESTRICTED CONFIDENTIAL" information by an

1 appropriate statement either at the time of the giving of such testimony or by written notification
2 within thirty (30) days after the deposition. Only those portions of the testimony that are
3 appropriately designated for protection within the 30 days shall be covered by the provisions of this
4 Stipulated Protective Order.

5
6 (c) In the case of written discovery responses and the information contained therein, the
7 responses may be designated as containing "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE
8 COUNSEL ONLY," or "HIGHLY RESTRICTED CONFIDENTIAL" information by means of a
9 statement at the conclusion of each response that contains such information specifying the level of
10 designation of the Confidential Information and by placing a legend on the front page of such
11 discovery responses stating: "CONTAINS CONFIDENTIAL INFORMATION/[the highest level of
12 designation contained in the answers]." Any such designation that is inadvertently omitted or mis-
13 designated may be corrected within thirty (30) days of service of such discovery responses by
14 written notification to counsel for the Receiving Party, and the Receiving Party shall thereafter mark
15 and treat the materials as "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE COUNSEL ONLY,"
16 or "HIGHLY RESTRICTED CONFIDENTIAL," as appropriate, and such material shall be subject
17 to this Protective Order as if it had been initially so designated. If, prior to receiving such notice, the
18 Receiving Party has disseminated the Confidential Information or Items to individuals not authorized
19 to receive it hereunder, it shall make a reasonable effort to retrieve the Confidential Information or
20 Items or to otherwise assure that the recipient(s) properly mark and maintain the confidentiality of
21 the Confidential Information or Items, but shall have no other responsibility or obligation with
22 respect to the information disseminated.

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25 (d) In the case of Confidential Information not reduced to documentary or tangible form or
26 which cannot be conveniently designated as set forth above, such information may be designated
27 "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," or "HIGHLY
28 RESTRICTED CONFIDENTIAL" information by informing the Receiving Party of the designation

1 in writing either at the time of transfer of such information or within thirty (30) days after the
2 transfer of such information.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
4 qualified information or items as “Confidential,” “Highly Confidential – Outside Counsel Only,” or
5 “Highly Restricted Confidential” does not, standing alone, waive the Designating Party’s right to
6 secure protection under this Order for such material. If material is appropriately designated as
7 “Confidential,” “Highly Confidential – Outside Counsel,” or “Highly Restricted Confidential” after
8 the material was initially produced, the Receiving Party, on timely notification of the designation,
9 must make reasonable efforts to assure that the material is treated in accordance with the provisions
10 of this Order.
11

12 5.4 Disclosure of Privileged or Protected Information. Production or disclosure of
13 documents or information subject to the attorney-client privilege, work product immunity, or any
14 other applicable privilege shall not constitute a waiver of, nor a prejudice to, any claim that such or
15 related material is privileged or protected by the work product immunity or any other applicable
16 privilege, provided that the Producing Party has exercised reasonable diligence and notifies the
17 Receiving Party in writing promptly after discovery of such production. Such privileged or
18 protected documents, including all copies thereof, shall be returned to the Producing Party
19 immediately upon request. No use shall be made of such documents or information during
20 deposition or at trial, nor shall such documents or information be shown to anyone who has not
21 already been given access to them subsequent to the request that they be returned. The Producing
22 Party shall then provide a privilege log identifying the privileged or protected document. The
23 Receiving Party may move the Court for an Order compelling production of any such document or
24 information, but the motion shall not assert as a ground for production the fact of the initial
25 production, nor shall the motion disclose or otherwise use the content of the privileged or protected
26 document or information (beyond any information appearing on the privilege log) in any way in
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1 connection with any such motion.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality
4 designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens,
5 or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge
6 a confidentiality designation by electing not to mount a challenge promptly after the original
7 designation is disclosed.

8
9 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
10 confidentiality designation must do so in good faith and must begin the process by conferring
11 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
12 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
13 that the confidentiality designation was not proper and must give the Designating Party an
14 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
15 designation is offered, to explain the basis for the chosen designation. A challenging Party may
16 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
17 process first.

18
19 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
20 designation after considering the justification offered by the Designating Party may file and serve a
21 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
22 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
23 motion must be accompanied by a competent declaration that affirms that the movant has complied
24 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
25 specificity the justification for the confidentiality designation that was given by the Designating
26 Party in the meet and confer dialogue.

27
28 The burden of persuasion in any such challenge proceeding shall be on the Designating

1 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
2 question the level of protection to which it is entitled under the Producing Party's designation.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a non-party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
7 the categories of persons and under the conditions described in this Order. When the litigation has
8 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
9 DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving Party at a location and in a
11 secure manner that ensures that access is limited to the persons authorized under this Order.
12

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
14 court or permitted in writing by the Designating Party, a Receiving Party may disclose any
15 information or item designated CONFIDENTIAL only to:

16 (a) the Receiving Party's Outside Counsel of record in this action, including both local and
17 trial counsel, as well as employees and agents of such Counsel, including paralegals, litigation
18 support services, secretarial and clerical staff as well as the following categories of persons provided
19 that such persons have no involvement in addressing any matter regarding the substantive issues in
20 the case: independent legal translators retained to translate in connection with this action;
21 independent stenographic reporters and videographers retained to record and transcribe testimony in
22 connection with this action; graphics, translation, or design services retained by counsel of record for
23 purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings
24 in this action; and non-technical jury or trial consulting services (expressly excluding mock jurors)
25 provided such individuals agree to be bound by this Protective Order;

26 (b) no more than three corporate representatives (including House Counsel) of the Receiving
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1 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
2 “Agreement to Be Bound by Protective Order” (Exhibit A);

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

6 (d) the Court and its personnel;

7 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
8 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order”
9 (Exhibit A);

10 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
11 necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

12 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
13 must be separately bound by the court reporter and may not be disclosed to anyone except as
14 permitted under this Stipulated Protective Order.

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

16 7.3 Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”
17 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
19 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” only to:

20 (a) the Receiving Party’s Outside Counsel of record in this action, including both local and
21 trial counsel, as well as employees and agents of such Counsel, including paralegals, litigation
22 support services, secretarial and clerical staff as well as the following categories of persons provided
23 that such persons have no involvement in addressing any matter regarding the substantive issues in
24 the case: independent legal translators retained to translate in connection with this action;
25 independent stenographic reporters and videographers retained to record and transcribe testimony in
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1 connection with this action; graphics, translation, or design services retained by counsel of record for
2 purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings
3 in this action; and non-technical jury or trial consulting services (expressly excluding mock jurors)
4 provided such individuals agree to be bound by this Protective Order;

5 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this
6 litigation, and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

7 (c) the Court and its personnel;

8 (d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
9 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order”
10 (Exhibit A); and

11 (e) the author of the document or the original source of the information.

12 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE
13 COUNSEL” Information or Items to “Experts”

14 (a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a
15 Party that seeks to disclose to an “Expert” (as defined in this Order) any information or item that has
16 been designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” first must make a
17 written request to the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL
18 information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full
19 name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the
20 Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or
21 entity from whom the Expert has received compensation for work in his or her areas of expertise or
22 to whom the expert has provided professional services at any time during the preceding five years,
23 and (6) identifies (by name and number of the case, filing date, and location of court) any litigation
24 in connection with which the Expert has provided any professional services during the preceding
25 five years.
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1 (b) A Party that makes a request and provides the information specified in the preceding
2 paragraph may disclose the subject Protected Material to the identified Expert unless, within seven
3 court days of delivering the request, the Party receives a written objection from the Designating
4 Party. Any such objection must set forth in detail the grounds on which it is based.

5 (c) A Party that receives a timely written objection must meet and confer with the
6 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement.
7 If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion
8 as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
9 seeking permission from the court to do so. Any such motion must describe the circumstances with
10 specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably
11 necessary, assess the risk of harm that the disclosure would entail and suggest any additional means
12 that might be used to reduce that risk. In addition, any such motion must be accompanied by a
13 competent declaration in which the movant describes the parties' efforts to resolve the matter by
14 agreement (i.e., the extent and the content of the meet and confer discussions) and sets forth the
15 reasons advanced by the Designating Party for its refusal to approve the disclosure.
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18 In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of
19 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
20 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.
21

22 7.5 Disclosure of "HIGHLY RESTRICTED CONFIDENTIAL" Information or Items.
23 HIGHLY RESTRICTED CONFIDENTIAL material and any information contained therein may be
24 disclosed only to the following persons and in strict accordance with the following procedures:

25 (a) HIGHLY RESTRICTED CONFIDENTIAL material, to the extent in electronic
26 format, will be provided on a stand-alone computer at a mutually agreeable location in the San
27 Francisco Bay area with all ports, software and other avenues that could be used to copy or transfer
28 such data blocked ("Stand-alone Computer"). The Stand-alone Computer shall be maintained in the

1 sole control and custody of counsel of record for the producing party and shall be maintained in the
2 United States at an office of counsel of record for the producing party or at such other location as
3 shall be mutually agreed to by the parties.

4 (b) HIGHLY RESTRICTED CONFIDENTIAL material, to the extent not in electronic
5 format, shall be designated using the same processes applied to CONFIDENTIAL and
6 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY materials described in paragraph 5.2 above.

7
8 (c) Only persons designated under paragraph 7.3(a) and 7.3(b) above shall have access to
9 the Stand-alone Computer provided however that the following additional restrictions shall apply to
10 such access:

11 (i) at least ten (10) business days prior to the date on which access is sought to
12 such Stand-alone Computer (ten day notice period), counsel of record for the receiving party
13 shall provide a list of individuals including attorneys seeking to access such Stand-alone
14 Computer and the designating party shall have the right to object to such access in
15 accordance with paragraph 7.5 herein;

16
17 (ii) during the pendency of the ten day notice period, no listed individual shall
18 have access to the Stand-alone Computer;

19 (iii) If an objection to any specific listed individual is made, that individual shall
20 not have access to the Stand-alone Computer until resolution of such objection; and

21 (iv) Each time a person accesses the Stand-alone Computer, the person shall sign a
22 sign-in sheet prior to, and a sign-out sheet subsequent to, accessing the Stand-alone
23 Computer including the name of the person accessing, the date and time in and out,
24 and whether any hard copies were made.
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1 (d) The receiving party shall not have the right to, and agrees not to, copy, transmit or
2 duplicate HIGHLY RESTRICTED CONFIDENTIAL materials in any manner, including scanning
3 or otherwise creating an electronic image of the HIGHLY RESTRICTED CONFIDENTIAL
4 materials, except as set forth herein.

5 (i) A printer shall be attached to the Stand-alone Computer and the receiving
6 party shall make no more than 1000 total pages, and no more than 25 consecutive pages, of hard
7 copies of HIGHLY RESTRICTED CONFIDENTIAL material they in good faith consider to be
8 necessary to proving elements of their case.

9 (ii) Whenever hard copies are made, copies of the hard copies shall be provided to
10 counsel for the producing party along with an identification of when the copies were made and who
11 made them.

12 (iii) Any hard copies shall be conspicuously marked HIGHLY RESTRICTED
13 CONFIDENTIAL.

14 (iv) Receiving party shall keep a log including: (a) the custodian of each copy of
15 any HIGHLY RESTRICTED CONFIDENTIAL materials; (b) the name of all persons accessing the
16 HIGHLY RESTRICTED CONFIDENTIAL materials; and (c) the date and time of access of the
17 HIGHLY RESTRICTED CONFIDENTIAL materials.

18 (e) All HIGHLY RESTRICTED CONFIDENTIAL materials, including all copies, in the
19 possession of the receiving party shall be maintained in a secured, locked area.

20 (f) All HIGHLY RESTRICTED CONFIDENTIAL materials utilized during a deposition
21 or marked as an exhibit at a deposition will be retrieved by the party conducting the deposition at the
22 end of each day. At no time, will any HIGHLY RESTRICTED CONFIDENTIAL material be given
23 to or left with the Court Reporter or any other individual.

24 (g) The Receiving Party may include excerpts of HIGHLY RESTRICTED
25 CONFIDENTIAL materials in a pleading, exhibit, expert report, discovery document, deposition
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1 transcript, other Court document, or any drafts of these documents. The receiving party shall
2 conspicuously mark such documents as HIGHLY RESTRICTED CONFIDENTIAL, and if filed
3 with the Court, shall be filed under seal and in compliance with Civil Local Rule 79-5. The
4 Receiving Party shall only include such excerpts as are reasonably necessary for the purposes for
5 which such part of the HIGHLY RESTRICTED CONFIDENTIAL material is used – as an example,
6 excerpts of approximately 25-40 lines in length would be allowed. If the Receiving Party intends to
7 file with the Court any pleading, motion or other document that it expects to contain more than 40
8 lines of HIGHLY RESTRICTED CONFIDENTIAL material, it shall disclose to the Disclosing
9 Party the nature and volume of the HIGHLY RESTRICTED CONFIDENTIAL material so that the
10 Disclosing Party may seek appropriate relief from the Court, as necessary. Such disclosure shall be
11 made at least five business days prior to the anticipated date of filing.
12

13
14 (h) Receiving party shall not convert any of the information contained in the hard copies
15 into an electronic format.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
17 LITIGATION.

18 If a Receiving Party is served with a subpoena or an order issued in other litigation that
19 would compel disclosure of any information or items designated in this action as
20 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY,” or “HIGHLY
21 RESTRICTED CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in
22 writing (by fax, if possible) immediately and in no event more than three court days after receiving
23 the subpoena or order. Such notification must include a copy of the subpoena or court order.
24

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

1 caused the subpoena or order to issue.

2 The purpose of imposing these duties is to alert the interested parties to the existence of this
3 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
4 confidentiality interests in the court from which the subpoena or order issued. The Designating Party
5 shall bear the burdens and the expenses of seeking protection in that court of its confidential material
6 – and nothing in these provisions should be construed as authorizing or encouraging a Receiving
7 Party in this action to disobey a lawful directive from another court.
8

9 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
11 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
12 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
13 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
14 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and
15 (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
16 that is attached hereto as Exhibit A.
17

18 **10. FILING PROTECTED MATERIAL.** Without written permission from the Designating
19 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
20 in the public record in this action any Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5.
22

23 **11. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by the Producing
24 Party, within sixty days after the final termination of this action, each Receiving Party must return all
25 Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”
26 includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing
27 any of the Protected Material. With permission in writing from the Designating Party, the Receiving
28 Party may destroy some or all of the Protected Material instead of returning it. Whether the

1 Protected Material is returned or destroyed, the Receiving Party must submit a written certification
2 to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty
3 day deadline that identifies (by category, where appropriate) all the Protected Material that was
4 returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,
5 compilations, summaries or other forms of reproducing or capturing any of the Protected Material.

6 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
7 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such
8 materials contain Protected Material. Any such archival copies that contain or constitute Protected
9 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

10 12. MISCELLANEOUS

11
12 12.1 Any person who receives, sees, reviews, or otherwise has access to technical
13 information designated CONFIDENTIAL -- OUTSIDE COUNSEL ONLY or HIGHLY
14 RESTRICTED CONFIDENTIAL shall not (i) prepare or participate in the prosecution of any patent
15 application for the receiving party; (ii) prepare or participate in the prosecution of any patent
16 application in subject areas related to that of any patent in suit on behalf of any entity (except on
17 behalf of the producing party) whether or not a party; or (iii) prosecute any patent application related
18 in any way to any patent in suit (including any continuation, continuation in part, or divisional
19 relationship, including any parent or child relationship, and including any re-examination or
20 interference proceeding). The prohibition set forth in the preceding sentence shall be in effect from
21 the time such person receives, sees, reviews, or otherwise has access to such Confidential
22 Information or Items through and including two (2) years following the termination of the Action,
23 including any appeals thereof. Nothing set forth herein, however, shall preclude any Counsel for
24 Defendants from involvement in (including but not limited to commencement of) reexamination
25 proceedings based on prior art.

26 Further, to ensure compliance with the protections intended by this paragraph, each law firm

1 appearing as counsel in the Action, and any corporate representative permitted access to technical
2 information designated “CONFIDENTIAL -- OUTSIDE COUNSEL ONLY” or “HIGHLY
3 RESTRICTED CONFIDENTIAL” under the terms of this Protective Order, is to implement an
4 “Ethical Barrier” to prevent disclosure of technical information designated CONFIDENTIAL --
5 OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED CONFIDENTIAL to any attorneys,
6 employees, or other staff who are not permitted access to such Confidential Information or Items
7 under the terms of this Protective Order.
8

9 This paragraph shall not be construed, however, to prevent such persons from generally
10 discussing patents or patent applications relating to the subject matter of the patent in suit with other
11 persons engaged in the prosecution or preparation of new patent applications relating to such
12 technology, provided that no technical information designated CONFIDENTIAL -- OUTSIDE
13 COUNSEL ONLY or HIGHLY RESTRICTED CONFIDENTIAL may be disclosed to such other
14 persons.
15

16 12.2 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
17 modification by the Court in the future.

18 12.3 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
19 Party waives any right it otherwise would have to object to disclosing or producing any information
20 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives
21 any right to object on any ground to use in evidence of any of the material covered by this Protective
22 Order.
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24 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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DATED: July 2, 2009

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 7/2/09



Honorable Susan Illston
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Trace-Wilco, Inc. v. Symantec Corporation, McAfee, Inc., Cisco Systems, Inc. and Google Inc.*, Case No. CV-09-00810 SI. 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]