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18 *Attorneys for Defendant Acer America Corporation*

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 SAN FRANCISCO DIVISION

22 LORA and CLAY WOLPH, on behalf of
 23 themselves and all others similarly situated,

24 Plaintiffs,

25 v.

26 ACER AMERICA CORPORATION, a
 27 California corporation,

28 Defendant.

Case No. CV 09 1314 JSW

CLASS ACTION

STIPULATED PROTECTIVE ORDER

[Complaint Filed: March 25, 2009]

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
17 medium or manner generated, stored, or maintained (including, among other things, testimony,
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
19 in this matter.

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

23 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
26 Material in this action.

27 2.7 Designating Party: a Party or non-party that designates information or items
28

1 that it produces in disclosures or in responses to discovery as “Confidential.”

2 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
3 “Confidential.”

4 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
5 retained to represent or advise a Party in this action.

6 2.10 House Counsel: attorneys who are employees of a Party.

7 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
8 their support staffs).

9 2.12 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
11 witness or as a consultant in this action and who is not a past or a current employee of a Party or of
12 a competitor of a Party’s and who, at the time of retention, is not anticipated to become an
13 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial
14 consultant retained in connection with this litigation.

15 2.13 Professional Vendors: persons or entities that provide litigation support
16 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;
17 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
18 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 4. DURATION

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

1 5. DESIGNATING PROTECTED MATERIAL

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

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified, or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses
12 and burdens on other 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
14 designated for protection do not qualify for protection at all, or do not qualify for the level of
15 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
16 withdrawing the mistaken designation.

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

21 Designation in conformity with this Order requires:

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

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

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

22 Transcript pages containing Protected Material must be separately bound by the
23 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” as
24 instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

25 (c) for information produced in some form other than documentary, and for any
26 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
27 container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If
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1 only portions of the information or item warrant protection, the Producing Party, to the extent
2 practicable, shall identify the protected portions, specifying whether they qualify as
3 “CONFIDENTIAL.”

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

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
12 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
13 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
14 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
15 after the original designation is disclosed.

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

25 6.3 Judicial Intervention. A Party that elects to press a challenge to a
26 confidentiality designation after considering the justification offered by the Designating Party may
27 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
28

1 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
2 Each such motion must be accompanied by a competent declaration that affirms that the movant has
3 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
4 forth with specificity the justification for the confidentiality designation that was given by the
5 Designating Party in the meet and confer dialogue.

6 The burden of persuasion in any such challenge proceeding shall be on the Designating
7 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
8 question the level of protection to which it is entitled under the Producing Party's designation.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a non-party in connection with this case only for
12 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
13 disclosed only to the categories of persons and under the conditions described in this Order. When
14 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
15 below (FINAL DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
20 disclose any information or item designated CONFIDENTIAL only to:

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

24 (b) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary for this litigation;

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

2 (d) the Court and its personnel;

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

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

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

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a Receiving Party is served with a subpoena or an order issued in other litigation that would
15 compel disclosure of any information or items designated in this action as “CONFIDENTIAL,” the
16 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
17 and in no event more than three court days after receiving the subpoena or order. Such notification
18 must include a copy of the subpoena or court order.

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

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

3 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 10. FILING PROTECTED MATERIAL

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

16 11. FINAL DISPOSITION

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

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
7 to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
9 Order no Party waives any right it otherwise would have to object to disclosing or producing any
10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
11 Party waives any right to object on any ground to use in evidence of any of the material covered by
12 this Protective Order.

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

14 DATED: March 1, 2010

PEARSON, SIMON, WARSHAW & PENNY, LLP
DANIEL L. WARSHAW
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JORI BLOOM NAEGELE
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21
22 By: _____ /s/
23 DANIEL L. WARSHAW
24 Attorneys for Plaintiffs and the Proposed Class

1 DATED: March 1, 2010

AKIN GUMP STRAUSS HAUER & FELD LLP
CHAD A STEGEMAN
JAMES J. SCHESKE

2
3
4 By: _____ /s/
CHAD A. STEGEMAN
5 Attorneys for Defendant Acer America Corporation

6
7 I, Chad A. Stegeman, am the ECF user whose ID and password are being used to file this
8 Stipulated Protective Order. In compliance with the Northern District of California General Order 45,
9 X.B., I hereby attest that Daniel L. Warshaw concurred in this filing.

10 Dated: March 1, 2010

AKIN GUMP STRAUSS HAUER & FELD LLP

11 By _____ /s/
12 CHAD A. STEGEMAN
13 Attorneys for Defendant Acer America Corporation

14
15 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

16 DATED: March 2, 2010

17 _____
Honorable Jeffrey S. White
18 United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Lora and Clay Wolph v. Acer America Corporation*, Case No. CV 09 1314 JSW. 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]