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27 UNITED STATES DISTRICT COURT
 28 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

29 DANIEL IMPEY, an individual,
 30 Plaintiff,
 31 v.
 32 THE OFFICE DEPOT, INC., and DOES 1-
 33 100, inclusive,
 34 Defendant.

Case No. C 09-01973 EDL

**STIPULATION AND ~~PROPOSED~~
 PROTECTIVE ORDER**

Trial Date: September 27, 2010

1 WHEREAS, the parties herein agree that the proceedings in the above-entitled action
2 may involve the production of financial and/or other information that either party or a third party
3 considers to be sensitive, confidential and/or proprietary; and

4 WHEREAS, the parties herein have read and understand the Court's Standing Order
5 on Confidential and Sealed Documents and agree to abide by its terms;

6 THEREFORE, IT IS HEREBY STIPULATED by and among the undersigned
7 parties, through their counsel of record, as follows:

8 1. This Stipulation and Protective Order and the Order ("Order") issued thereon
9 shall govern all documents and discovery materials produced within the context of this litigation.

10 2. As used herein, the term "counsel of record" shall mean the attorneys of
11 record in this proceeding, their partners and associates, paralegals, clerks, assistants and other
12 persons employed by such attorneys, all of whom shall be bound by the provisions of this Order.

13 3. In connection with discovery proceedings in this action, any party to this
14 action (hereinafter the "designating party") shall have the right to designate any document, thing,
15 material, testimony, or other information derived therefrom, as CONFIDENTIAL INFORMATION
16 under the terms of this Order, CONFIDENTIAL INFORMATION is information that the
17 designating party reasonably believes to constitute confidential or proprietary information and/or
18 trade secrets relating to its business and/or information in which the party or third parties have a
19 privacy interest. In accordance with the Court's Standing Order on Confidential and Sealed
20 Documents, prior to designating any specific information as CONFIDENTIAL INFORMATION,
21 the designating party shall make a good faith determination that the information warrants protection
22 under Rule 26(c) of the Federal Rules of Civil Procedure.

23 4. Any party who objects to the designation of material as CONFIDENTIAL
24 INFORMATION shall notify the designating party in writing of that objection, specifying the
25 designated material to which the objection is made. The parties shall, within 10 days of service of
26 the written objection, meet and confer concerning the objection. If the objection is not resolved at
27 the meeting, the objecting party may proceed in good faith to challenge the designation in a timely
28 manner. All documents designated CONFIDENTIAL INFORMATION pursuant to this Order shall

1 remain confidential until any such motion by the objecting party is granted and the Court declares
2 that the designated material is not subject to the protection of this Order. The party making the
3 designation shall have the burden of establishing the confidential nature of the designated material
4 and that it is entitled to protection under applicable law. If no such motion is filed within 45 days
5 after the parties “meet and confer” as provided above, the material will be deemed conclusively
6 subject to the protection of this Order for purposes of discovery.

7 5. Persons receiving CONFIDENTIAL INFORMATION shall not reveal to or
8 discuss such information with any person who is not entitled to receive such information and shall
9 not use such information for any purpose other than for the prosecution or defense of this action.

10 6. As used herein, the term CONFIDENTIAL INFORMATION shall refer to:

11 (a) Any documents (including any portions thereof and any information
12 contained therein) designated to be confidential by any party and which has had stamped or affixed
13 thereon the word “CONFIDENTIAL.” Stamping the legend “CONFIDENTIAL” on the cover of
14 any multi-page document shall designate all pages of the document as confidential, unless otherwise
15 indicated by the designating party.

16 (b) All deposition testimony, including oral testimony, deposition
17 transcripts and the information contained therein, shall initially be treated as CONFIDENTIAL
18 INFORMATION and be included within the terms of this Order without the necessity of designating
19 the testimony as CONFIDENTIAL INFORMATION. Upon transcription of the deposition, counsel
20 shall have 20 days after receipt of the transcript to notify the deposition reporter and other counsel of
21 record in writing of the portions of the transcript designated as confidential. Depositing the written
22 notice in the United States mail within such twenty 20 days shall be deemed timely compliance with
23 this requirement. All other portions, or the entire transcript if no designation is made, shall not be
24 confidential and shall not be within the terms of this Order. Alternatively, the parties may agree
25 during any deposition that a part or all of the testimony shall be designated as CONFIDENTIAL
26 INFORMATION. The parties may agree that the transcript of the designated testimony shall be
27 bound in a separate volume and marked “CONFIDENTIAL” by the reporter. Alternatively, the
28 parties may agree that part of the testimony is Confidential without having that designated part

1 transcribed in a separate volume.

2 (c) CONFIDENTIAL INFORMATION does not include any information
3 or documents lawfully obtained or produced by a party outside of the context of discovery in this
4 litigation. However, nothing in this Order shall affect the rights of any party to enforce any rights it
5 may have regarding the confidentiality of documents and other information disclosed or transferred
6 to another party or person prior to the institution of the present litigation.

7 7. CONFIDENTIAL INFORMATION shall be disclosed only to:

8 (a) The Court and its personnel in this litigation;

9 (b) The jury;

10 (c) Any party, or an officer, director, or employee of a party to the extent
11 deemed reasonably necessary by counsel to aid in the prosecution, defense, or settlement of this
12 action;

13 (d) Experts and/or consultants (together with their staff) retained by
14 counsel of record on behalf of the parties;

15 (e) Counsel of record and the respective personnel of the law firms as set
16 forth in paragraph 2;

17 (f) Court reporter(s) and their staff employed in this action;

18 (g) During their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary. For those witnesses who are under the control of either Party, that party must
20 assure that the witness signs the Confidentiality Agreement that is attached hereto as Exhibit A. If a
21 non-party witness is not under the control of either party, both parties shall attempt to have the
22 witness execute the Confidentiality Agreement that is attached hereto as Exhibit A. Under no
23 circumstances shall this agreement prevent a party from deposing a witness and utilizing all relevant
24 documents simply because the witness has refused to sign that the Confidentiality Agreement that is
25 attached hereto as Exhibit A.;

26 (h) The Mediator (and his/her staff) who has been mutually agreed upon
27 by the parties; and

28 (i) Any other person(s) as to whom the parties agree pursuant to

1 paragraph 10.

2 8. If counsel for any party should conclude that, for the purpose of this action,
3 such party needs to disclose any CONFIDENTIAL INFORMATION, or information derived
4 therefrom, to any person not described in paragraph 7 of this Order, counsel for such party must
5 request permission from counsel for the designating party in writing and state the purpose of the
6 disclosure. If the designating party objects to the proposed disclosure, no such disclosure shall be
7 made unless the Court, upon motion and for good cause shown, orders otherwise. However, each
8 party may disclose its own CONFIDENTIAL INFORMATION without regard to this Order unless
9 otherwise under an existing duty to another person not to do so.

10 9. CONFIDENTIAL INFORMATION shall be treated as confidential by all
11 persons to whom such information may be disclosed and shall be used by all such persons solely for
12 the prosecution, defense, or settlement of this action.

13 10. Except for those described in paragraph 7 (a) through (h), any person to whom
14 the CONFIDENTIAL INFORMATION may be shown pursuant to this agreement shall first be
15 shown and read a copy of this Stipulation and Order and shall agree in writing to be bound by its
16 terms by signing a copy of the Confidentiality Agreement attached hereto as "Exhibit A."

17 11. Upon final termination of this action, each party shall promptly assemble and
18 return all CONFIDENTIAL INFORMATION, including all copies thereof, to the designating party
19 or to such other party which produced the CONFIDENTIAL INFORMATION in this action upon
20 the written request of the party seeking return of the material. The party to whom such
21 CONFIDENTIAL INFORMATION is returned shall acknowledge receipt of such material in
22 writing. Counsel for parties shall be entitled to keep an archive copy of the CONFIDENTIAL
23 INFORMATION.

24 12. Counsel shall consult in good faith prior to the filing of any papers with the
25 court that include material designated as CONFIDENTIAL INFORMATION by another party, or
26 information derived therefrom. The parties will determine whether the party who made the
27 CONFIDENTIAL designation desires the filing to be under seal. If the party designating the
28 material as CONFIDENTIAL desires it to be filed under seal, the party seeking to file such material

1 with the Court shall secure an order from the Court permitting such filing in accordance with Local
2 Rule 79-5 of the Civil Local Rules, Northern District of California (or the applicable Rules in effect
3 at the time), and this Court's Standing Order on Confidential and Sealed Documents. All
4 CONFIDENTIAL INFORMATION lodged with the court in support of such a motion shall be
5 submitted in accordance with the requirements of the applicable Local Rules and the aforementioned
6 Standing Order.

7 13. This Stipulation and Order does not constitute a waiver of any party's rights to
8 object to discovery on any grounds. This Stipulation and Order does not constitute an admission by
9 any party that any information that it or any opponent designates as CONFIDENTIAL
10 INFORMATION is in fact proprietary information and/or a trade secret, and/or information in which
11 a party or third parties have a privacy right. Notwithstanding the foregoing, all parties to this
12 Stipulation reserve all trade secret, proprietary information, and/or privacy objections with respect to
13 materials they believe may be encompassed in a discovery request.

14 14. Notwithstanding the provisions of paragraph 13, above, where a party believes
15 that a third party or parties have a privacy interest in CONFIDENTIAL INFORMATION, that party
16 may, in place of or in addition to producing such CONFIDENTIAL INFORMATION pursuant to
17 the terms of this Stipulation and Order, meet and confer with other counsel to attempt to limit the
18 information produced or the use of the information so as to balance the privacy interests of the third
19 parties with the interest of the party seeking the material. In the event the parties are unable to agree
20 on terms for the production and use of the CONFIDENTIAL INFORMATION, the matter may be
21 submitted to the Court, either by way of motion for protective order or to compel responses to
22 discovery, so that the Court can make an appropriate order balancing the privacy rights of the third
23 parties with the needs of the parties for the information in prosecuting or defending the lawsuit.

24 15. This Order is not intended to govern the use of CONFIDENTIAL
25 INFORMATION at any trial of this action. Questions of the protection of such material during trial
26 will be presented to the Court prior to trial.

27 16. If another court or administrative agency subpoenas or orders production of
28 CONFIDENTIAL INFORMATION that a party has obtained under the terms of this Order, such


1 party shall promptly notify the designating party of the pendency of the subpoena or order and shall
2 not produce the CONFIDENTIAL INFORMATION until the designating party has had reasonable
3 time to object or otherwise to take appropriate steps to protect the material. The designating party
4 shall have such reasonable time as long as such time does not extend beyond the time provided to the
5 party who receives the subpoena or order for production of CONFIDENTIAL INFORMATION to
6 comply with said subpoena or order.

7 17. The parties agree that any CONFIDENTIAL INFORMATION they may
8 provide to one another after the execution of this Stipulation by counsel, but before the signing and
9 entering of the Order by the Court, shall have the same protection as it would if it were produced
10 after the signing and entry of the Order.


11 18. This Order shall not prevent any of the parties from moving this Court for an
12 order that CONFIDENTIAL INFORMATION may be disclosed other than in accordance with this
13 Order. This Order is without prejudice to the right of any party to seek modification of it from the
14 Court. It shall remain in effect until such time as it is modified, amended, or rescinded by the Court.
15 The Court shall have continuing jurisdiction to modify, amend, or rescind this Order notwithstanding
16 the termination of this action.

17 19. This Stipulation may be signed in counterparts.

19 Dated: December 4, 2009


MICHAEL E. BREWER
JILL A. FUKUNAGA
LITTLER MENDELSON
Attorneys for Defendant
OFFICE DEPOT, INC.

24 Dated: December 4, 2009


DAVID J. BECHT
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MYTHILY SIVARAJAH
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Attorneys for Plaintiff
DANIEL IMPEY

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ORDER

IT IS SO ORDERED.

Dated: December 10, 2009

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge

EXHIBIT A

Impey v. Office Depot, Inc.

CERTIFICATION RE STIPULATION AND PROTECTIVE ORDER

I have read the Stipulation and Protective Order concerning CONFIDENTIAL INFORMATION, and I have been advised by counsel pursuant to paragraph 5 thereof that I may not divulge or disseminate any CONFIDENTIAL INFORMATION or confidential information derived therefrom covered by said Stipulation and Protective Order to any other person or entity who is not defined therein. I understand that pursuant to said Stipulation and Protective Order, I may not divulge any such information to any other person or entity.

Furthermore, I agree to submit personally to the jurisdiction of the above Court and I waive all objections I may have concerning the Court's jurisdiction, including personal jurisdiction, or competence to determine whether the Stipulation and Protective Order has been violated and whether sanctions should be imposed upon me, including contempt of Court, or upon any entity.

Dated: _____

Signed: _____

Print Name: _____

Address: _____

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