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14
 15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

<p>17 TEXTSCAPE LLC, a New Jersey Corporation, 18 Plaintiff, 19 v. 20 ADOBE SYSTEMS INCORPORATED, a Delaware Corporation, 21 Defendant. 22</p> <hr/> <p>23 ADOBE SYSTEMS INCORPORATED, a Delaware Corporation, 24 Counterclaimant, 25 v. 26 TEXTSCAPE LLC, a New Jersey Corporation, 27 Counterdefendant. 28</p>
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Case No. CV 09-4550 BZ

STIPULATED PROTECTIVE ORDER

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.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords extends only to the limited
8 information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
10 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
11 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
12 when a party seeks permission 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,
15 employees, 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
19 discovery in this matter.

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

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

27 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from
28 a Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
2 Material in this action.

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

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated
7 as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

8 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
9 retained to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
12 their support staffs).

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

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

23 3. SCOPE

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

28 4. DURATION

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

4 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of
26 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of
28 each page that contains protected material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
2 by making appropriate markings in the margins) and must specify, for each portion, the level of
3 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY”).

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

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

1 EYES ONLY”). Only those portions of the testimony that are appropriately designated for
2 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

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

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

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

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
28 Party’s confidentiality designation must do so in good faith and must begin the process by

1 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
2 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
3 for its belief that the confidentiality designation was not proper and must give the Designating Party
4 an opportunity to review the designated material, to reconsider the circumstances, and, if no change
5 in designation is offered, to explain the basis for the chosen designation. A challenging Party may
6 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
7 process first.

8 6.3 Judicial Intervention. A Party that elects to press a challenge to a
9 confidentiality designation after considering the justification offered by the Designating Party may
10 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
11 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
12 Each such motion must be accompanied by a competent declaration that affirms that the movant has
13 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
14 forth with specificity the justification for the confidentiality designation that was given by the
15 Designating Party in the meet and confer dialogue.

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

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated CONFIDENTIAL only to:

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

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

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

14 (d) the Court and its personnel;

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

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

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

24 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
25 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:
28

1 (a)(1) Textscape LLC's Outside Counsel of record in this action as well as
2 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
3 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
4 hereto as Exhibit A;

5 (A) Absent the written consent of the Designating Party, any of the
6 individuals identified in this paragraph 7.3(a)(1) who receives access to "HIGHLY
7 CONFIDENTIAL - ATTORNEYS' EYES ONLY" information shall not be involved in the
8 prosecution of patents or patent applications relating to the subject matter of the patent(s)
9 asserted in this action or relating in any way to software for use with portable document
10 format (PDF) files or otherwise related to graphical user interface (GUI) design including
11 without limitation the patent(s) asserted in this action and any patent or application claiming
12 priority to or otherwise related to the patent(s) asserted in this action, before any foreign or
13 domestic agency, including the United States Patent and Trademark Office ("the Patent
14 Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly
15 drafting, amending, advising or otherwise affecting the scope or maintenance of patent
16 claims. To avoid any doubt, "prosecution" as used in this paragraph does not include
17 representing a party challenging a patent before a domestic or foreign agency (including, but
18 not limited to, a reissue protest, ex parte reexamination or inter partes reexamination). This
19 prosecution bar shall begin when access to "HIGHLY CONFIDENTIAL – ATTORNEYS'
20 EYES ONLY" information is first received by the affected individual, and shall end two (2)
21 years after final termination of this action.

22 (B) Teddy K. Joe, counsel for Textscape LLC, does not wish to
23 receive access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
24 information and subjected to the patent prosecution bar of paragraph 7.3(a)(1)(A).
25 Accordingly, Mr. Joe's co-counsel shall take reasonable steps to ensure that Mr. Joe does
26 not receive access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
27 information of any Designating Party that Mr. Joe does not represent. Further, to avoid
28 inadvertent access, all communications from Adobe Systems Incorporated's Outside

1 Counsel of record in this action that include “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” information may clearly indicate the inclusion of such information in at least
3 one prominent location (e.g., at a position in the communication prior to the disclosure of
4 such information, in the subject line of an email, in the re: line of a letter, etc.), so that Mr.
5 Joe may destroy his copy of such communications prior to viewing the contents. Adobe
6 Systems Incorporated’s outside counsel of record are encouraged to refrain from copying
7 Mr. Joe as a recipient of communications that include “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” information. In the event that a communication including
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is transmitted
10 by Adobe Systems Incorporated’s outside counsel of record with Mr. Joe as a recipient and
11 without an indication that “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 information is included, such inadvertent disclosure will not automatically subject Mr. Joe to
13 the patent prosecution bar of paragraph 7.3(a)(1)(A). Upon learning that he has received
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, Mr. Joe shall
15 make diligent and reasonable efforts to destroy any copies of such information or materials
16 derived from or based upon such information that are in his possession. If Mr. Joe receives
17 access to Adobe’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
18 information through other than inadvertent disclosure, Mr. Joe shall notify Adobe Systems
19 Incorporated’s Outside Counsel of record in writing that the patent prosecution bar of
20 paragraph 7.3(a)(1)(A) is in place and that the provisions of this paragraph 7.3(a)(1)(B) are
21 no longer necessary.

22 (2) Adobe Systems Incorporated's Outside Counsel of record in this action, as
23 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
24 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
25 attached hereto as Exhibit A;

26 (b) House Counsel of Adobe Systems Incorporated (1) who has no
27 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for
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1 this litigation, and (3) who has signed the “Agreement to Be Bound by Protective Order” (Exhibit
2 A);

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

7 (d) the Court and its personnel;

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

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

12 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

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

26 (b) A Party that makes a request and provides the information specified in
27 the preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
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1 within seven court days of delivering the request, the Party receives a written objection from the
2 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

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

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

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
19 OTHER LITIGATION

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

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

1 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
2 caused the subpoena or order to issue.

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

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
13 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
14 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
15 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
16 Be Bound” that is attached hereto as Exhibit A.

17 10. FILING PROTECTED MATERIAL

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

22 11. FINAL DISPOSITION

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

1 Material is returned or destroyed, the Receiving Party must submit a written certification to the
2 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
3 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,
5 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
6 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
7 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
8 even if such materials contain Protected Material. Any such archival copies that contain or
9 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
10 (DURATION), above.

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
13 to seek its modification by the Court in the future. In particular, the parties have agreed that
14 "technical and infringement discovery, including Patent L.R. 3-4 disclosures, should be limited to
15 publicly available information related to the functionality of the accused products and not to any
16 non-public source code and related technical materials." Should it become necessary to for Adobe
17 Systems Incorporated to produce confidential technical information, the parties agree that it may be
18 proper to modify this protective order to provide an additional level of protection for such
19 information.

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

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, DATED:

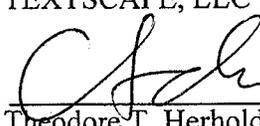
7 DATED: April 27, 2010

By: 
Michael E. Dergosits
Teddy K. Joe

Edward W. Goldstein (*pro hac vice application expected*)
Corby R. Vowell (*pro hac vice application expected*)

Attorneys for Plaintiff and Counterdefendant
TEXTSCAPE, LLC

13 DATED: April 28, 2010

By:  
Theodore T. Herhold
Andrew T. Oliver
Eric M. Hutchins

Gary S. Morris (*pro hac vice*)

Attorneys for Defendant and Counterclaimant
ADOBE SYSTEMS INCORPORATED

19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 DATED: May 3, 2010

By: 
Hon. Bernard Zimmerman
United States Magistrate Judge

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 TEXTSCAPE LLC, a New Jersey
4 Corporation,

5 Plaintiff,

6 v.

7 ADOBE SYSTEMS INCORPORATED, a
8 Delaware Corporation,

9 Defendant.

10 ADOBE SYSTEMS INCORPORATED, a
11 Delaware Corporation,

12 Counterclaimant,

13 v.

14 TEXTSCAPE LLC, a New Jersey
15 Corporation,

16 Counterdefendant.

Case No. CV 09-4550 BZ

**ACKNOWLEDGEMENT AND
AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

17 I, _____ [print or type full name], of

18 _____ [print or type full address], declare under

19 penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that

20 was issued by the United States District Court for the Northern District of California on

21 _____, 2010 in the case of *Textscape LLC v. Adobe Systems Incorporated*, Case No.

22 09-CV-04550 BZ. I agree to comply with and to be bound by all the terms of this Stipulated

23 Protective Order and I understand and acknowledge that failure to so comply could expose me to

24 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in

25 any manner any information or item that is subject to this Stipulated Protective Order to any person

26 or entity except in strict compliance with the provisions of this Order.

27 I further agree to submit to the jurisdiction of the United States District Court for the

28 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.

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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]