

EXHIBIT C

Dalton, Amy

From: Avalos, Julio
Sent: Tuesday, October 19, 2010 4:15 PM
To: 'Brian Hancock'
Cc: Gray, Thomas; Metanat, Morvarid; Dalton, Amy; Kim, Elizabeth
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses
Attachments: Comparison Protective Order.pdf; 261003008(4)_Miller Protective Order DRAFT.DOC

Brian,

Please find attached Facebook's proposed edits to the protective order. We had an issue with respect to tracking changes in the document. In order to allow you to pinpoint our changes, we went ahead and ran a comparison between our proposal and the original court document. This comparison is also attached hereto. The original document is on the left column, with our proposed draft on the right. Lines highlighted in red have been redacted; material underlined in blue has been added.

If you have any proposed edits of your own, please go ahead and make them in the .doc file, with track changes on.

Thanks,

Julio



JULIO AVALOS

attorney at law

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 MARSH ROAD
MENLO PARK, CA 94025-1015

tel/ 650.289.7184
javalos@orrick.com

www.orrick.com

From: Brian Hancock [<mailto:bdhancock@hgdlawfirm.com>]
Sent: Wednesday, October 13, 2010 3:11 PM
To: Avalos, Julio
Cc: Gray, Thomas; Dalton, Amy
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Julio,

Thank you for this information. As described in your e-mail below, I have no problem with the confidentiality distinctions. I look forward to receiving the approved mark-ups from your client.

Thanks,

Brian D. Hancock, Esq.
Heninger Garrison Davis, LLC
2224 1st Avenue North
Birmingham, AL 35203
(205) 327-9112 (direct)
(205) 326-3336 (office)
(205) 326-3332 (fax)
bdhancock@hgdlawfirm.com

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.

From: Avalos, Julio [mailto:javalos@orrick.com]
Sent: Wednesday, October 13, 2010 1:32 PM
To: Brian Hancock
Cc: Gray, Thomas; Dalton, Amy
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

My Outlook says that I replied to you yesterday at 3:10 p.m. PST, but I don't see the e-mail in my sent mail. I apologize if you're receiving a duplicate e-mail.

We have sent our proposed markup of the protective order to the client and are awaiting their sign-off. The major edit that we have made to the order relates to creating different categories of protected documents. So for instance we're proposing that rather than having one catch-all category, we would have a base level of protection for documents marked CONFIDENTIAL and then a higher-level of protection for documents marked HIGHLY CONFIDENTIAL. Highly confidential documents would be, with limited exceptions, attorneys' eyes only. In addition to attorneys, such documents might be disclosed to experts to whom disclosure is reasonably necessary for this litigation and who have signed an acknowledgment to be bound by the PO, the court and its personnel, court reporters, and the author of the document or the original source of the information.

While we await our client's feedback on the PO, perhaps we could get started discussing any issues that you anticipate with respect to this new category of protection.

You have also asked about an anticipated timeline within which we expect to supplement our discovery responses. We are in the process of collecting responsive information and expect to be interviewing possible custodians of records later this week. We are aiming to serve supplemental responses shortly thereafter.



ORRICK

JULIO AVALOS

attorney at law

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 MARSH ROAD

MENLO PARK, CA 94025-1015

tel/ 650.289.7184
javalos@orrick.com
www.orrick.com

From: Brian Hancock [<mailto:bdhancock@hgdlawfirm.com>]
Sent: Tuesday, October 12, 2010 3:01 PM
To: Avalos, Julio
Cc: Gray, Thomas
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Julio,
What's the status of the PO?

Brian D. Hancock, Esq.
Heninger Garrison Davis, LLC
2224 1st Avenue North
Birmingham, AL 35203
(205) 327-9112 (direct)
(205) 326-3336 (office)
(205) 326-3332 (fax)
bdhancock@hgdlawfirm.com

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.

From: Avalos, Julio [<mailto:javalos@orrick.com>]
Sent: Friday, October 08, 2010 10:48 AM
To: Brian Hancock
Cc: Gray, Thomas
Subject: Re: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

I apologize for the delay with the PO. I got into a fairly serious car wreck and haven't been able to mark it up. I'm hoping to send it to you later today or Monday.

Thanks,

Julio

From: Avalos, Julio
Sent: Tuesday, October 05, 2010 09:44 PM
To: 'Brian Hancock' <bdhancock@hgdlawfirm.com>

Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

I'll work up the Word document and send to you tomorrow. Thanks

From: Brian Hancock [mailto:bdhancock@hgdlawfirm.com]

Sent: Tuesday, October 05, 2010 11:41 AM

To: Avalos, Julio

Subject: Re: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Julio,

I'm afraid I don't. I'm going to be in trial until Thursday. Would you mind drawing up a Word copy incorporating my previously discussed revision to the standard order and then including Facebook's edits to the standard order and then forwarding for my review? Does Facebook have any edits?

Sent from my iPhone

On Oct 5, 2010, at 12:37 PM, "Avalos, Julio" <javalos@orrick.com> wrote:

Brian,

Do you have a word document of the protective order with your proposed edit? It would be easier to exchange markups in a common file.


ORRICK
JULIO AVALOS
attorney at law
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 MARSH ROAD
MENLO PARK, CA 94025-1015
tel 650.289.7184
javalos@orrick.com
www.orrick.com

From: Brian Hancock [mailto:bdhancock@hgdlawfirm.com]

Sent: Friday, October 01, 2010 11:56 AM

To: Avalos, Julio

Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Ok. Thanks.

Brian D. Hancock, Esq.

Heninger Garrison Davis, LLC

2224 1st Avenue North

Birmingham, AL 35203

(205) 327-9112 (direct)

(205) 326-3336 (office)

(205) 326-3332 (fax)

bdhancock@hgdlawfirm.com

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.

From: Avalos, Julio [mailto:javalos@orrick.com]
Sent: Friday, October 01, 2010 10:48 AM
To: Brian Hancock
Subject: Re: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

I'll confirm with my client, but I think we can accept this edit.

I'll send you any proposed edits from our side, if any, by Tuesday.

Thanks,

Julio

From: Brian Hancock [mailto:bdhancock@hgdlawfirm.com]
Sent: Tuesday, September 28, 2010 04:20 PM
To: Avalos, Julio
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Julio,

The only mark-up I have is to Paragraph 5.2(b). I would request that it read as follows:

“for testimony given in deposition or in other pretrial or trial proceedings, unless otherwise designated before the close of a deposition, pre-trial or trial proceeding, testimony given therein shall be treated as “CONFIDENTIAL” for at least fifteen (15) calendar days after the final transcript has been sent by the court reporter to counsel for the Producing Party whose information has been disclosed (or until such other date as may be agreed upon by the parties.) Receipt of rough transcripts shall not trigger this 15-day period. Such testimony may be designated “CONFIDENTIAL” during the 15-day (or other agreed) period by written notice to all counsel indicating the specific testimony to be designated (by page and line or other specific reference). Unless so designated, any confidentiality is waived after the expiration of the 15-day (or other agreed) period, unless otherwise stipulated or ordered.”

This should relieve the parties of having to identify on the record, before the close of the deposition and without the benefit of a transcript, which testimony should appropriately be designated as confidential. The Plaintiff has no other proposed mark-ups to the Standard Order. Should Facebook have any mark-ups or revisions, please provide me with a copy of same for my review at your earliest convenience.

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Brian D. Hancock, Esq.

Heninger Garrison Davis, LLC

2224 1st Avenue North

Birmingham, AL 35203

(205) 327-9112 (direct)

(205) 326-3336 (office)

(205) 326-3332 (fax)

bdhancock@hgdlawfirm.com

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.

From: Avalos, Julio [mailto:javalos@orrick.com]

Sent: Tuesday, September 28, 2010 5:08 AM

To: Brian Hancock

Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

[Mr. Hancock,](#)

We are generally amenable to the Standard Model Protective Order. In order to begin exchanging edits, please send us a document file containing the order along with any markups that you may have.

Julio

From: Brian Hancock [mailto:bdhancock@hgdllawfirm.com]
Sent: Wednesday, September 22, 2010 8:14 AM
To: Chatterjee, I. Neel; Gray, Thomas; Avalos, Julio; Sutton, Theresa A.
Subject: FW: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

As an addendum to the previous email (see below), the Plaintiff is willing to stipulate to the entry of the Standard Model Protective Order last updated on June 9, 2010, that is provided by the Court on its website.

<http://www.cand.uscourts.gov/cand/form.nsf/7813fd3053452aef88256d4a0058fb31/5e428ee77bf8e03b88256dd3005d9450?OpenDocument>

Brian D. Hancock, Esq.

Heninger Garrison Davis, LLC

2224 1st Avenue North

Birmingham, AL 35203

(205) 327-9112 (direct)

(205) 326-3336 (office)

(205) 326-3332 (fax)

bdhancock@hgdllawfirm.com

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.

From: Brian Hancock
Sent: Wednesday, September 22, 2010 8:31 AM
To: Chatterjee, I. Neel; 'Gray, Thomas'; Avalos, Julio; Sutton, Theresa A.
Subject: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Dear Counsel,

Facebook's responses to Plaintiff's First Consolidated Discovery Requests are more than a month past due. Please have your client fully respond to these requests within the next ten (10) days so as to avoid having to involve the Court. If it is Facebook's position that it cannot

produce all responsive documents requested until the entry of a protective order, please forward a draft of the desired protective order for my review within the next five (5) days.

Should Facebook be unwilling to comply with these demands, please let me know immediately so that the Plaintiff can take appropriate action with the Court. Please contact me should you have any questions or comments.

Sincerely,

Brian D. Hancock, Esq.

Heninger Garrison Davis, LLC

2224 1st Avenue North

Birmingham, AL 35203

(205) 327-9112 (direct)

(205) 326-3336 (office)

(205) 326-3332 (fax)

bdhancock@hgdlawfirm.com

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.

=====

IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

=====

NOTICE TO RECIPIENT: THIS E-MAIL IS MEANT FOR ONLY THE INTENDED RECIPIENT OF THE TRANSMISSION, AND MAY BE A COMMUNICATION PRIVILEGED BY LAW. IF YOU RECEIVED THIS E-MAIL IN ERROR, ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY OF THE ERROR BY RETURN E-MAIL AND PLEASE DELETE THIS MESSAGE FROM YOUR

SYSTEM. THANK YOU IN ADVANCE FOR YOUR COOPERATION.

For more information about Orrick, please visit
<http://www.orrick.com/>

=====

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL M. MILLER
Plaintiff,
v.
FACEBOOK, INC. and YAO WEI YEO,
Defendants.

Case No. CV-10-264
STIPULATED PROTECTIVE ORDER FOR
STANDARD LITIGATION

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and

1 the standards that will be applied when a party seeks permission from the court to file material
2 under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
7 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
8 Rule of Civil Procedure 26(c).

9 2.3 “HIGHLY CONFIDENTIAL— ATTORNEYS’ EYES ONLY”
10 Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure
11 to another Party or non-party would create a substantial risk of serious injury that could not be
12 avoided by less restrictive means.

13 2.4 “HIGHLY CONFIDENTIAL—SOURCE CODE” Information or Items:
14 extremely sensitive “Confidential Information or Items” representing computer code and
15 associated comments and revision histories, formulas, engineering specifications, or schematics
16 that define or otherwise describe in detail the algorithms or structure of software or hardware
17 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
18 serious harm that could not be avoided by less restrictive means.

19 2.5 Counsel (without qualifier): Outside Counsel of Record and House
20 Counsel (as well as their support staff).

21 2.6 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,”
23 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY
24 CONFIDENTIAL—SOURCE CODE.”

25 2.7 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including, among other
27 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
28 or responses to discovery in this matter.

1 2.8 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action.

4 2.9 House Counsel: attorneys who are employees of a party to this action.
5 House Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.10 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
9 this action but are retained to represent or advise a party to this action and have appeared in this
10 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
11 that party.

12 2.12 Party: any party to this action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their support
14 staffs).

15 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this action.

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

21 2.15 Protected Material: any Disclosure or Discovery Material that is designated
22 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or
23 “HIGHLY CONFIDENTIAL—SOURCE CODE.”

24 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected Material
28 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)

1 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
2 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
3 Any use of Protected Material at trial shall be governed by a separate agreement or order.

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations imposed by
6 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
7 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
8 claims and defenses in this action, with prejudice; and (2) final judgment herein after the
9 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
10 including the time limits for filing any motions or applications for extension of time pursuant to
11 applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or Non-Party that designates information or items for protection under this Order will
15 take due care to limit any such designation to specific material that qualifies under the appropriate
16 standards. The Designating Party must designate for protection only those parts of material,
17 documents, items, or oral or written communications that qualify – so that other portions of the
18 material, documents, items, or communications for which protection is not warranted are not
19 swept unjustifiably within the ambit of this Order.

20 If it comes to a Designating Party's attention that information or items that it
21 designated for protection do not qualify for protection, that Designating Party must promptly
22 notify all other Parties that it is withdrawing the mistaken designation.

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

27 Designation in conformity with this Order requires:
28

1 (a) for information in documentary form (e.g., paper or electronic documents,
2 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
3 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL—ATTORNEYS’
4 EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE CODE” in the margin of each page
5 that contains protected material. If only a portion or portions of the material on a page qualifies
6 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
7 making appropriate markings in the margins) and must specify, for each portion, the level of
8 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
9 ATTORNEYS’ EYES ONLY”).

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

25 (b) for testimony given in deposition or in other pretrial or trial proceedings,
26 unless otherwise designated before the close of deposition, pre-trial or trial proceedings,
27 testimony given therein shall be treated as “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
28 ONLY” for at least fifteen (15) Calendar days after the final transcript has been sent by the court

1 reporter to counsel for the Producing Party whose information has been disclosed (or until such
2 other date as may be agreed upon by the parties). Receipt of rough transcripts shall not trigger
3 this 15-day period. Such testimony may be designated “CONFIDENTIAL,” “HIGHLY
4 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE
5 CODE” during the 15-day (or other agreed upon) period by written notice to all counsel
6 indicating the specific testimony to be designated (by page and line numbers or other specific
7 reference) and the level of protection being asserted (“CONFIDENTIAL,” “HIGHLY
8 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE
9 CODE”). Unless so designated, any confidentiality is waived after the expiration of the 15-day
10 (or other agreed upon) period, unless otherwise stipulated or ordered.

11 (c) for information produced in some form other than documentary and for any
12 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
13 container or containers in which the information or item is stored the legend “CONFIDENTIAL,”
14 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY
15 CONFIDENTIAL—SOURCE CODE.” If only a portion or portions of the information or item
16 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
17 portion(s), specifying whether they qualify as “CONFIDENTIAL,” “HIGHLY
18 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE
19 CODE.”

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
21 to designate qualified information or items as “CONFIDENTIAL,” “HIGHLY
22 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE
23 CODE” does not, standing alone, waive the Designating Party’s right to secure protection under
24 this Order for such material. If material is appropriately designated as “CONFIDENTIAL,”
25 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY
26 CONFIDENTIAL—SOURCE CODE” after the material was initially produced, the Receiving
27 Party must make reasonable efforts to assure that the material is treated in accordance with the
28 provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
5 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
6 right to challenge a confidentiality designation by electing not to mount a challenge promptly
7 after the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process by providing written notice of each designation it is challenging and describing
10 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
11 written notice must recite that the challenge to confidentiality is being made in accordance with
12 this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge
13 in good faith and must begin the process by conferring directly (in voice to voice dialogue; other
14 forms of communication are not sufficient) within 14 days of the date of service of notice. In
15 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
16 designation was not proper and must give the Designating Party an opportunity to review the
17 designated material, to reconsider the circumstances, and, if no change in designation is offered,
18 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
19 stage of the challenge process only if it has engaged in this meet and confer process first or
20 establishes that the Designating Party is unwilling to participate in the meet and confer process in
21 a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
23 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
24 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
25 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
26 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
27 accompanied by a competent declaration affirming that the movant has complied with the meet
28 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to

1 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
2 shall automatically waive the confidentiality designation for each challenged designation. In
3 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
4 time if there is good cause for doing so, including a challenge to the designation of a deposition
5 transcript or any portions thereof. Any motion brought pursuant to this provision must be
6 accompanied by a competent declaration affirming that the movant has complied with the meet
7 and confer requirements imposed by the preceding paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
10 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
11 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
12 file a motion to retain confidentiality as described above, all parties shall continue to afford the
13 material in question the level of protection to which it is entitled under the Producing Party's
14 designation until the court rules on the challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this case only for
18 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
19 disclosed only to the categories of persons and under the conditions described in this Order.
20 When the litigation has been terminated, a Receiving Party must comply with the provisions of
21 section 13 below (FINAL DISPOSITION).

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

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

- 28 (a) the Receiving Party's Outside Counsel of Record in this action, as well as

1 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
2 information for this litigation;

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

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, and
11 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

20 7.3 Disclosure of “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
21 ONLY” and “HIGHLY CONFIDENTIAL—SOURCE CODE” Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
23 Party may disclose any information or item designated “HIGHLY CONFIDENTIAL—
24 ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL—SOURCE CODE” only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
27 information for this litigation;

28 (b) Experts of the Receiving Party (as defined in this Order) (1) to whom

1 disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment
2 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
3 paragraph 7.4, below, have been followed;

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

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

9 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL—
10 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”:

11 (a) Unless otherwise ordered by the court or agreed in writing by the
12 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any
13 information or item that has been designated “HIGHLY CONFIDENTIAL—ATTORNEYS’
14 EYES ONLY” first must make a written request to the Designating Party that (1) sets forth the
15 full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy
16 of the Expert’s current resume, and (3) identifies the Expert’s current employer(s).

17 (b) A party that makes a request and provides the information specified in the
18 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
19 within ten court days of delivering the request, the Party receives a written objection from the
20 Designating Party. Any such objection must set forth in detail the grounds on which it is based,
21 and must provide times during which the Designating Party is available to meet and confer on the
22 issue during the succeeding three business days.

23 (c) A Party that receives a timely written objection must meet and confer with
24 the Designating Party (through direct voice to voice dialogue to try to resolve the matter by
25 agreement. If no agreement is reached, the Party seeking to prevent the disclosure to the Expert
26 may file a motion within ten court days of the meet and confer in Civil Local Rule 7 (and in
27 compliance with Civil Local Rule 79-5, if applicable). Failure to bring the motion within the
28 required time period shall be deemed a withdrawal of the objection. Any such motion must

1 describe the circumstances and reasons for why the disclosure to the Expert presents a risk of
2 harm and why protection of this Order would not suffice to ameliorate such risk.

3 8. SOURCE CODE

4 (a) To the extent production of source code becomes necessary in this case, a
5 Producing Party may designate source code as “HIGHLY CONFIDENTIAL—SOURCE CODE”
6 if it is confidential, non-public source code.

7 (b) Protected Material designated as “HIGHLY CONFIDENTIAL—SOURCE
8 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL—
9 ATTORNEYS’ EYES ONLY” information, and may be disclosed only to the individuals to
10 whom “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” information may be
11 disclosed, as set forth in Paragraphs 7.3 and 7.4.

12 (c) Any source code covered by the “HIGHLY CONFIDENTIAL—SOURCE
13 CODE” designation shall be made available for inspection, in a format allowing it to be
14 reasonably reviewed and searched, during normal business hours or at other mutually agreeable
15 times, at an office of the Producing Party’s Outside Counsel located within the Northern District
16 of California. The source code shall be made available for inspection on a secured computer in a
17 secured room without Internet access or network access to other computers, and the Receiving
18 Party shall not copy, remove, or otherwise transfer any portion of the source code onto any
19 recordable media or recordable device. The secured computer shall have all external data access
20 ports disabled, including, but not limited to, external media drives, USB slots, and/or peripheral
21 slots. The Producing Party may visually monitor the activities of the Receiving Party’s
22 representatives during any source code review, but only to ensure that there is no unauthorized
23 recording, copying, or transmission of the source code.

24 (d) The Receiving Party may request paper copies of limited portions of source code
25 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
26 other papers, or for deposition or trial, but shall not request paper copies for the purposes of
27 reviewing the source code other than electronically as set forth in paragraph (c) in the first
28 instance. The Producing Party shall provide all such source code in paper form including bates

1 numbers and the label “HIGHLY CONFIDENTIAL—SOURCE CODE.” The Producing Party
2 may challenge the amount of source code requested in hard copy form pursuant to the dispute
3 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
4 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute
5 resolution.

6 (e) The Receiving Party shall maintain a record of any individual who has inspected
7 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all
8 paper copies of any printed portions of the source code in a secured, locked area. The Receiving
9 Party shall not create any electronic or other images of the paper copies and shall not convert any
10 of ht information contained in the paper copies into any electronic format. The Receiving Party
11 shall only make additional paper copies if such additional copies are (1) necessary to prepare
12 court filings, pleadings, or other papers (including a testifying expert’s expert report), (2)
13 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper
14 copies used during a deposition shall be retrieved by the Producing Party at the end of each day
15 and must not be given to or left with a court reporter or any other individual.

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

18 If a Receiving Party is served with a subpoena or a court order issued in other
19 litigation that compels disclosure of any information or items designated by the Designated Party
20 in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
21 ONLY,” that Party must:

22 (a) notify the Designating Party, in writing (by fax, if possible) immediately
23 and in no event more than three court days after receiving the subpoena or order. Such
24 information must include a copy of the subpoena or court order;

25 (b) immediately notify in writing the party who caused the subpoena or order
26 to issue in the other litigation that some or all of the material covered by the subpoena or order is
27 subject to this Protective Order. Such notification shall include a copy of this Stipulated
28 Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued by
2 the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any information designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” before a
6 determination by the court from which the subpoena or order issued, unless the Party has obtained
7 the Designating Party’s permission. Nothing in these provisions should be construed as
8 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
9 another court.

10 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
11 IN THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced by a Non-
13 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
14 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
15 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
16 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

17 (b) In the event that a Party is required, by a valid discovery request, to
18 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
19 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
20 Party shall:

21 1. promptly notify in writing the Requesting Party and the Non-Party
22 that some or all of the information requested is subject to a confidentiality agreement with a Non-
23 Party;

24 2. promptly provide the Non-Party with a copy of the Stipulated
25 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
26 description of the information requested; and

27 3. make the information requested available for inspection by the
28 Non-Party.

1 (c) If the Non-Party fails to object or seek a protective order from this court
2 within 14 days of receiving the notice and accompanying information, the Receiving Party may
3 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
4 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
5 possession or control that is subject to the confidentiality agreement with the Non-Party before a
6 determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the
7 burden and expense of seeking protection in this court of its Protected Material.

8 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other protection, the
20 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
21 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
22 an e-discovery order that provides for production without prior privilege review. Pursuant to
23 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
24 disclosure of a communication or information covered by the attorney-client privilege or work
25 product protection, the parties may incorporate their agreement in the stipulated protective order

26 _____
27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 submitted to the court.

2 13. MISCELLANEOUS

3 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
4 person to seek its modification by the court in the future.

5 13.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order no Party waives any right it otherwise would have to object to disclosing or
7 producing any information or item on any ground not addressed in this Stipulated Protective
8 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
9 the material covered by this Protective Order.

10 13.3 Filing Protected Material. Without written permission from the Designating
11 Party or a court order secured after appropriate notice to all interested persons, a Party may not
12 file in the public record in this action any Protected Material. A Party that seeks to file under seal
13 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
14 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material
15 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
16 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
17 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
18 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
19 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)
20 unless otherwise instructed by the court.

21 14. FINAL DISPOSITION. Within 60 days after the final disposition of this
22 action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the
23 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
24 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
25 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
26 the Receiving Party must submit a written certification to the Producing Party (and, if not the
27 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
28 category, where appropriate) all the Protected Material that was returned or destroyed and (2)

1 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries
2 or any other format reproducing or capturing any of the Protected Material. Notwithstanding this
3 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
4 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
5 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
6 such materials contain Protected Material. Any such archival copies that contain or constitute
7 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

DATED: _____
Attorneys for Plaintiff

DATED: _____
Attorneys for Defendant

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

DATED: _____
William H. Alsup
United States District/Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 _____ [insert] formal name of the case and the number and initials assigned to it by the court.]. 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 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]

Printed name: _____
[signature]