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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 (WHA)

PROTECTIVE ORDER

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 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 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 the standards that

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

2 2. DEFINITIONS

3 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
4 information or items under this Order.

5 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how  
6 it is generated, stored or maintained) or tangible things that qualify for protection under Federal  
7 Rule of Civil Procedure 26(c).

8 2.3 “HIGHLY CONFIDENTIAL— ATTORNEYS’ EYES ONLY”  
9 Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure  
10 to another Party or non-party would create a substantial risk of serious injury that could not be  
11 avoided by less restrictive means.

12 2.4 “HIGHLY CONFIDENTIAL—SOURCE CODE” Information or Items:  
13 extremely sensitive “Confidential Information or Items” representing computer code and  
14 associated comments and revision histories, formulas, engineering specifications, or schematics  
15 that define or otherwise describe in detail the algorithms or structure of software or hardware  
16 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
17 serious harm that could not be avoided by less restrictive means.

18 2.5 Counsel (without qualifier): Outside Counsel of Record and House  
19 Counsel (as well as their support staff).

20 2.6 Designating Party: a Party or Non-Party that designates information or  
21 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,”  
22 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY  
23 CONFIDENTIAL—SOURCE CODE.”

24 2.7 Disclosure or Discovery Material: all items or information, regardless of  
25 the medium or manner in which it is generated, stored, or maintained (including, among other  
26 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
27 or responses to discovery in this matter.

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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 However, protections conferred by this Stipulation and Order do not cover the following  
4 information: (a) any information that is in the public domain at the time of disclosure to a  
5 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
6 a result of publication not involving a violation of this Order, including becoming part of the  
7 public record through trial or otherwise; and (b) any information known to the Receiving Party  
8 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
9 obtained the information lawfully and under no obligation of confidentiality to the Designating  
10 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations imposed by  
13 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
14 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
15 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
16 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
17 including the time limits for filing any motions or applications for extension of time pursuant to  
18 applicable law.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
28 are shown to be clearly unjustified or that have been made for an improper purpose (e.g. to

1 unnecessarily encumber or retard the case development process or to impose unnecessary  
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
7 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
8 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
9 designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents,  
12 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
13 Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS'  
14 EYES ONLY," or "HIGHLY CONFIDENTIAL—SOURCE CODE" in the margin of each page  
15 that contains protected material. If only a portion or portions of the material on a page qualifies  
16 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
17 making appropriate markings in the margins) and must specify, for each portion, the level of  
18 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—  
19 ATTORNEYS' EYES ONLY").

20 A Party or Non-Party that makes original documents or materials available for  
21 inspection need not designate them for protection until after the inspecting Party has indicated  
22 which material it would like copied and produced. During the inspection and before the  
23 designation, all of the material made available for inspection shall be deemed "HIGHLY  
24 CONFIDENTIAL—ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
25 documents it wants copied and produced, the Producing Party must determine which documents,  
26 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
27 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL,"  
28 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," or "HIGHLY

1 CONFIDENTIAL—SOURCE CODE”) at the top of each page that contains Protected Material.  
2 If only a portion or portions of the material on a page qualifies for protection, the Producing Party  
3 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
4 margins) and must specify, for each portion, the level of protection asserted (either  
5 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or  
6 “HIGHLY CONFIDENTIAL—SOURCE CODE”).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
8 unless otherwise designated before the close of deposition, pre-trial or trial proceedings,  
9 testimony given therein shall be treated as “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES  
10 ONLY” for at least fifteen (15) calendar days after the final transcript has been sent by the court  
11 reporter to counsel for the Producing Party whose information has been disclosed (or until such  
12 other date as may be agreed upon by the parties). Receipt of rough transcripts shall not trigger  
13 this 15-day period. Such testimony may be designated “CONFIDENTIAL,” “HIGHLY  
14 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE  
15 CODE” during the 15-day (or other agreed upon) period by written notice to all counsel  
16 indicating the specific testimony to be designated (by page and line numbers or other specific  
17 reference) and the level of protection being asserted (“CONFIDENTIAL,” “HIGHLY  
18 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE  
19 CODE”). Unless so designated, any confidentiality is waived after the expiration of the 15-day  
20 (or other agreed upon) period, unless otherwise stipulated or ordered.

21 (c) for information produced in some form other than documentary and for any  
22 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
23 container or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
24 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY  
25 CONFIDENTIAL—SOURCE CODE.” If only a portion or portions of the information or item  
26 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
27 portion(s), specifying whether they qualify as “CONFIDENTIAL,” “HIGHLY  
28 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE

1 CODE.”

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
3 to designate qualified information or items as “CONFIDENTIAL,” “HIGHLY  
4 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL—SOURCE  
5 CODE” does not, standing alone, waive the Designating Party’s right to secure protection under  
6 this Order for such material. If material is appropriately designated as “CONFIDENTIAL,”  
7 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY  
8 CONFIDENTIAL—SOURCE CODE” after the material was initially produced, the Receiving  
9 Party must make reasonable efforts to assure that the material is treated in accordance with the  
10 provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
19 resolution process by providing written notice of each designation it is challenging and describing  
20 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
21 written notice must recite that the challenge to confidentiality is being made in accordance with  
22 this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge  
23 in good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
24 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
25 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
26 designation was not proper and must give the Designating Party an opportunity to review the  
27 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
28 to explain the basis for the chosen designation. A Challenging Party may proceed to the next

1 stage of the challenge process only if it has engaged in this meet and confer process first or  
2 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
3 a timely manner.

4           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without  
5 court intervention, the Designating Party shall file and serve a motion to retain confidentiality  
6 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21  
7 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and  
8 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
9 accompanied by a competent declaration affirming that the movant has complied with the meet  
10 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
11 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
12 shall automatically waive the confidentiality designation for each challenged designation. In  
13 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
14 time if there is good cause for doing so, including a challenge to the designation of a deposition  
15 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
16 accompanied by a competent declaration affirming that the movant has complied with the meet  
17 and confer requirements imposed by the preceding paragraph.

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

## 25           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

26           7.1     Basic Principles. A Receiving Party may use Protected Material that is  
27 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
28 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be

1 disclosed only to the categories of persons and under the conditions described in this Order.

2 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
3 section 13 below (FINAL DISPOSITION).

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

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
9 disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

19 (d) the court and its personnel;

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

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

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

2 7.3 Disclosure of “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES  
3 ONLY” and “HIGHLY CONFIDENTIAL—SOURCE CODE” Information or Items. Unless  
4 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving  
5 Party may disclose any information or item designated “HIGHLY CONFIDENTIAL—  
6 ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL—SOURCE CODE” only to:

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

10 (b) Experts of the Receiving Party (as defined in this Order) (1) to whom  
11 disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment  
12 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in  
13 paragraph 7.4, below, have been followed;

14 (d) the court and its personnel;

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

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

19 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL—  
20 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”:

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

27 (b) A party that makes a request and provides the information specified in the  
28 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,

1 within ten 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 and must provide times during which the Designating Party is available to meet and confer on the  
4 issue during the succeeding three business days.

5 (c) A Party that receives a timely written objection must meet and confer with  
6 the Designating Party (through direct voice to voice dialogue to try to resolve the matter by  
7 agreement. If no agreement is reached, the Party seeking to prevent the disclosure to the Expert  
8 may file a motion within ten court days of the meet and confer in Civil Local Rule 7 (and in  
9 compliance with Civil Local Rule 79-5, if applicable). Failure to bring the motion within the  
10 required time period shall be deemed a withdrawal of the objection. Any such motion must  
11 describe the circumstances and reasons for why the disclosure to the Expert presents a risk of  
12 harm and why protection of this Order would not suffice to ameliorate such risk.

13 8. SOURCE CODE

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

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

22 (c) Any source code covered by the “HIGHLY CONFIDENTIAL—SOURCE  
23 CODE” designation shall be made available for inspection, in a format allowing it to be  
24 reasonably reviewed and searched, during normal business hours or at other mutually agreeable  
25 times, at an office of the Producing Party’s lead trial counsel. The source code shall be made  
26 available for inspection on a secured computer in a secured room without Internet access or  
27 network access to other computers, and the Receiving Party shall not copy, remove, or otherwise  
28 transfer any portion of the source code onto any recordable media or recordable device. The

1 secured computer shall have all external data access ports disabled, including, but not limited to,  
2 external media drives, USB slots, and/or peripheral slots. The Producing Party may visually  
3 monitor the activities of the Receiving Party’s representatives during any source code review, but  
4 only to ensure that there is no unauthorized recording, copying, or transmission of the source  
5 code.

6 (d) The Receiving Party may request paper copies of limited portions of source code  
7 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
8 other papers, or for deposition or trial, but shall not request paper copies for the purposes of  
9 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
10 instance. The Producing Party shall provide all such source code in paper form including bates  
11 numbers and the label “HIGHLY CONFIDENTIAL—SOURCE CODE.” The Producing Party  
12 may challenge the amount of source code requested in hard copy form pursuant to the dispute  
13 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the  
14 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute  
15 resolution.

16 (e) The Receiving Party shall maintain a record, or inspection log, of any individual  
17 who has inspected any portion of the source code in electronic or paper form. The Receiving  
18 Party shall maintain all paper copies of any printed portions of the source code in a secured,  
19 locked area. The Receiving Party shall not create any electronic or other images of the paper  
20 copies and shall not convert any information contained in the paper copies into any electronic  
21 format. The Receiving Party shall only make additional paper copies if such additional copies are  
22 (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert’s  
23 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its  
24 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the  
25 end of each day and must not be given to or left with a court reporter or any other individual.  
26 Upon written request by the Producing Party, the Receiving Party shall within a reasonable time  
27 following the request produce to the Producing Party a copy of the Receiving Party’s inspection  
28 log showing any and all individuals who have inspected any portion of the source code in

1 electronic or paper form.

2 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
3 OTHER LITIGATION

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

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

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

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

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

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

26 (a) The terms of this Order are applicable to information produced by a Non-  
27 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—  
28 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with

1 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
2 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to  
4 produce a Non-Party's confidential information in its possession, and the Party is subject to an  
5 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
6 Party shall:

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

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

13 3. make the information requested available for inspection by the  
14 Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from this court  
16 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
17 produce the Non-Party's confidential information responsive to the discovery request. If the Non-  
18 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
19 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
20 determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the  
21 burden and expense of seeking protection in this court of its Protected Material.

22 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
24 Protected Material to any person or in any circumstance not authorized under this Protective  
25 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
26

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27 <sup>1</sup> 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 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
2 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
3 made of all the terms of this Order, and (d) request such person or persons to execute the  
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

5 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain  
8 inadvertently produced material is subject to a claim of privilege or other protection, the  
9 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
10 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in  
11 an e-discovery order that provides for production without prior privilege review. Pursuant to  
12 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of  
13 disclosure of a communication or information covered by the attorney-client privilege or work  
14 product protection, the parties may incorporate their agreement in the stipulated protective order  
15 submitted to the court.

16 13. MISCELLANEOUS

17 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
18 person to seek its modification by the court in the future.

19 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
20 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
21 producing any information or item on any ground not addressed in this Protective Order.  
22 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
23 material covered by this Protective Order.

24 13.3 Filing Protected Material. Without written permission from the Designating  
25 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
26 file in the public record in this action any Protected Material. A Party that seeks to file under seal  
27 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
28 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material

1 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
2 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
3 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
4 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the  
5 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)  
6 unless otherwise instructed by the court.

7 14. FINAL DISPOSITION. Within 60 days after the final disposition of this  
8 action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the  
9 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"  
10 includes all copies, abstracts, compilations, summaries, and any other format reproducing or  
11 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,  
12 the Receiving Party must submit a written certification to the Producing Party (and, if not the  
13 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
14 category, where appropriate) all the Protected Material that was returned or destroyed and (2)  
15 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries  
16 or any other format reproducing or capturing any of the Protected Material. Notwithstanding this  
17 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,  
18 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial  
19 exhibits, expert reports, attorney work product, and consultant and expert work product, even if  
20 such materials contain Protected Material. Any such archival copies that contain or constitute  
21 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

22 IT IS SO ORDERED:

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25 DATE: November 23, 2010.

  
26 \_\_\_\_\_  
27 William H. Alsup  
28 United States District Judge

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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 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 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 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 Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Printed name: \_\_\_\_\_  
[signature]