

EXHIBIT Q

From: James Pizzirusso [jpizzirusso@hausfeldllp.com]
Sent: Monday, October 18, 2010 3:32 PM
To: Sacks, Luanne; Ott, Carter; Fischer, Kathleen
Cc: 'jqadra@calvoclarck.com'; Rebecca Coll; Rosemary M. Rivas; Warshaw, Daniel L.
Subject: RE: Sony PS3 "Other OS" Meeting Tomorrow

Attachments: ND Cal Model Prot Ord Standard 6-9-2010.pdf



ND Cal Model Prot
Ord Standard...

Luanne:

I was a bit taken aback by the tone of your email. We are trying to be accommodating of your schedule.

We believe we can discuss all of the items we need to cover within two hours on Wednesday. But, if we are unable to do so, we will just schedule another session (let's hold Oct. 29th - assuming you don't have jury duty - just in case). As long as we can try to fully cover SCEA's responses to our RFPs, that is all we ask. If we need to take other things off of the agenda or go over SCEA's responses first, we would rather do that.

I am not sure how my "demand" for a protective order is "shocking" - we discussed that at our first meet and confer months ago. In fact, the parties put it in their joint CMC and Carter was supposed to get us a draft back then. I have attached the standard ND Cal. Order. Why don't you go through that and tell us if there is anything you all would want to change? At the very least, we are amenable to SCEA producing the documents to which it has no objection and we will agree to treat them as "Attorneys Eyes Only" until we can enter into a protective order in order to prevent further delay. Hopefully, that would resolve any concerns.

I am available to discuss until 7 PM ET tonight - tomorrow morning I have several calls but you can always try my office and I will call you back once I am free.

Sincerely,

James Pizzirusso

-----Original Message-----

From: Sacks, Luanne [mailto:Luanne.Sacks@dlapiper.com]
Sent: Monday, October 18, 2010 5:01 PM
To: James Pizzirusso; Ott, Carter; Fischer, Kathleen
Cc: 'jqadra@calvoclarck.com'; Rebecca Coll; Rosemary M. Rivas
Subject: RE: Sony PS3 "Other OS" Meeting Tomorrow

James

First, we served deposition notices for the names plaintiffs in the Consolidated Complaint on September 24 -- today is October 18 and you have yet to confirm on which of those dates Plaintiffs will indeed appear or provide us with proposed alternative dates. Last week, you said you would get back to us regarding deposition dates by October 20, regardless of whether we did in fact meet that day or not. So we will expect to receive dates by

October 20, especially since your email below seems to suggest that you are not going to be appearing on any of the dates we proposed in late October and early November.

Second, SCEA's written response to Plaintiffs' document requests was served on October 8, 2010 -- we provided those responses without seeking for or obtaining an extension of time, confirming that delay has nothing to do with SCEA's recent correspondence.

Third, Rosemary emailed us at 4:24 last Thursday == the day before we were supposed to meet to discuss ESI and your letter regarding various preservation and discovery issues on which Plaintiffs may move for a protective order. Rosemary said at that time that plaintiffs needed to reschedule the meeting due to "scheduling conflicts among other things." Whatever "among other things" was intended to mean, we understood that Plaintiffs literally could not go forward with the Friday meeting because of sudden and unavoidable scheduling problems. To accommodate Plaintiffs we agreed to move the meeting into the current week - which we openly told you was going to be very difficult, which should have come as no surprise to you, given that our reply briefs are due on Thursday. Yes, Rosemary did say that she would like to also talk about SCEA's discovery responses in her Thursday afternoon email -- and yes I continue to be happy to discuss them at that time, but I am not prepared to conduct a complete meet and confer regarding all of the responses as a precursor to presenting the parties positions to the Magistrate Judge during that meeting. Indeed, I can meet for up to 2 hours, and as you note in your email below, we already have several items on the agenda and it is likely that those will take up most if not all of that time.

Fourth, your demand for a stipulated protective order to be delivered to you tomorrow, is really shocking -- especially given that the parties have not yet met regarding ESI issues, and given the impending due date of our reply papers, not to mention the delay in confirming dates for Plaintiffs' depositions.

Regarding the question of rescheduling a meeting so that we can discuss ESI, plaintiffs' preservation concerns, and SCEA's responses to Plaintiffs' discovery requests -- I am on the East Coast October 22 through 25 and set for jury duty on the 28th. Carter is out on vacation through the 28th but could participate by phone on the 29th, and I could meet on the 29th if I am not selected for a jury. We are both available on November 2nd, after our hearing on November 4th, or on November 5th (which is when Mr. Hertz' depo is currently noticed for.

If you want to pick any of these above dates, we are amenable to doing so, but we are not amenable to delaying hearing from you until those dates regarding Plaintiffs' depositions, as explained above.

With regard to the stipulated protective order, I anticipate we should have a draft for you mid-next week, although of course it may need to be revised further after our conversation regarding ESI.

I am going to be out of pocket for most of the rest of the day on a conference call, so if you want to talk about this, rather than exchanging further lengthy emails, let me know a good time to call you late this evening or early tomorrow am.

Best

Lu Sacks

Please note our new address.

Luanne Sacks
Partner

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-----Original Message-----

From: James Pizzirusso [mailto:jpizzirusso@hausfeldllp.com]
Sent: Monday, October 18, 2010 12:05 PM
To: Sacks, Luanne; Ott, Carter; Fischer, Kathleen
Cc: 'jquadra@calvoclarck.com'; Rebecca Coll; Rosemary M. Rivas
Subject: RE: Sony PS3 "Other OS" Meeting Tomorrow

Luanne:

We would like to resolve SCEA's objections to our document requests as soon as possible and wanted to do it as part of the meet and confer we already scheduled. We do not believe it makes sense to schedule a separate meet and confer at some point in November which is why we requested to put off the meet and confer to this week so we could discuss SCEA's objections to our document requests, as well. Rosemary's email made that clear. You indicated that this week was bad except for Wednesday so we agreed to your suggested date.

As you know, SCEA's position to us was that it would not seek a discovery stay and would produce documents during the briefing on the Motion to Dismiss. Indeed, we thought we would likely have documents by this point. Further, SCEA's representations in this regard led us to agree to the schedule we did.

SCEA agreed to provide limited answers to 8 of our requests, sought to meet and confer on 20 requests, and fully objected to 1.

(SCEA agreed to provide limited responses to 8 requests: 1, 2, 3, 4, 8, 23, 24, 26; requested that we meet and confer on 20 requests: 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 27, 28, 29; and objected to one request: 9.)

At the very least, for those document requests for which SCEA agreed to provide at least a limited response, please send us your proposed protective order by tomorrow so we can review it and propose edits if necessary.

We do not understand your statement, however, that you cannot have a "fulsome" or "full blown" meet and confer at this time since that was what we proposed (and SCEA agreed to) last week.

Nevertheless, we are willing to work in a spirit of cooperation. If this week truly does not work for you given that your reply briefs will be taking up all of your time, what about Friday or early next week to discuss all issues currently on the table (Plaintiffs' letter, ESI, SCEA's objections, Plaintiff depositions, protective order)? I do not think we will be able to agree to put this off until the plaintiff depositions occur:

Thanks,

James

-----Original Message-----

From: Sacks, Luanne [mailto:Luanne.Sacks@dlapiper.com]
Sent: Monday, October 18, 2010 2:12 PM
To: Sacks, Luanne; James Pizzirusso; 'rivasrm@yahoo.com'; Ott, Carter; Fischer, Kathleen

Cc: 'jqquadra@calvoclark.com'
Subject: RE: Sony PS3 "Other OS" Meeting Tomorrow

James

Also, you raised the possibility of discussing SCEA's responses to Plaintiffs' document requests during the meeting on October 20 -- we may be able to do so to some extent, but cannot affirm that we can have a full blown meet and confer at that time. As you know, SCEA's reply briefs are due the following day and so our schedule is a bit limited. We should be able to find a date in the following weeks to have a truly fulsome discussion, and may in fact be able to schedule it to coincide with plaintiffs' depositions.

Please let us know how many people will be attending on October 20 in person (if any -- we have no objection to conducting the discussion by telephone to save everyone time and expense).

Best

Lu

Please note our new address.

Luanne Sacks
Partner

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-----Original Message-----

From: Sacks, Luanne
Sent: Friday, October 15, 2010 4:04 PM
To: 'jpizzirusso@hausfeldllp.com'; 'rivasrm@yahoo.com'; Ott, Carter; Fischer, Kathleen
Cc: 'jqquadra@calvoclark.com'
Subject: Re: Sony PS3 "Other OS" Meeting Tomorrow

We will see you then. Please get dates to us for the deposition no later than the meeting.

----- Original Message -----

From: James Pizzirusso [mailto:jpizzirusso@hausfeldllp.com]
Sent: Friday, October 15, 2010 03:44 PM
To: Sacks, Luanne; rivasrm@yahoo.com <rivasrm@yahoo.com>; Ott, Carter; Fischer, Kathleen
Cc: jqquadra@calvoclark.com <jquadra@calvoclark.com>
Subject: Re: Sony PS3 "Other OS" Meeting Tomorrow

Wednesday at 11 am PT works for us. Thanks

James J. Pizzirusso, Partner
jpizzirusso@hausfeldllp.com

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----- Original Message -----

From: Sacks, Luanne <Luanne.Sacks@dlapiper.com>
To: Rosemary Rivas <rivasrm@yahoo.com>; Ott, Carter <Carter.Ott@dlapiper.com>; Fischer, Kathleen <Kathleen.Fischer@dlapiper.com>
Cc: James Pizzirusso; James Quadra <jquadra@calvoclarck.com>
Sent: Thu Oct 14 19:33:32 2010 Subject: RE: Sony PS3 "Other OS" Meeting Tomorrow

Next week is bad for us other than possibly Wednesday, October 20. Let us know your availability on that day -- otherwise we will have to look into the week of the 26th. We have not heard back from you regarding any of the noticed depositions. Please let us know early next week whether the depositions will proceed on the dates as noticed, or any alternative dates you are proposing.

Best

Lu Sacks

Luanne Sacks
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-----Original Message-----

From: Rosemary Rivas [mailto:rivasrm@yahoo.com]
Sent: Thursday, October 14, 2010 4:24 PM
To: Sacks, Luanne; Ott, Carter
Cc: James Pizzirusso; James Quadra
Subject: Sony PS3 "Other OS" Meeting Tomorrow

Luanne and Carter,

I apologize for the short notice, but we would like to reschedule our meeting tomorrow to next week due to recent scheduling conflicts, among other things. We would also like to take the opportunity to discuss SCEA's discovery responses at the meeting. Please let me know your availability for next week. Thanks.

Best regards,

Rosemary M. Rivas

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C
STIPULATED PROTECTIVE ORDER
FOR STANDARD LITIGATION

Plaintiff,
v.
Defendant.

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

11 2.4 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

13 2.5 Disclosure or Discovery Material: all items or information, regardless of
14 the medium or manner in which it is generated, stored, or maintained (including, among other
15 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
16 or responses to discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
19 witness or as a consultant in this action.

20 2.7 House Counsel: attorneys who are employees of a party to this action.
21 House Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or
23 other legal entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
25 this action but are retained to represent or advise a party to this action and have appeared in this
26 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
27 that party.

28 2.10 Party: any party to this action, including all of its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their support
2 staffs).

3 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
4 Discovery Material in this action.

5 2.12 Professional Vendors: persons or entities that provide litigation support
6 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
7 organizing, storing, or retrieving data in any form or medium) and their employees and
8 subcontractors.

9 2.13 Protected Material: any Disclosure or Discovery Material that is
10 designated as "CONFIDENTIAL."

11 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
12 from a Producing Party.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only Protected
15 Material (as defined above), but also (1) any information copied or extracted from Protected
16 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
17 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
18 Material. However, the protections conferred by this Stipulation and Order do not cover the
19 following information: (a) any information that is in the public domain at the time of disclosure
20 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
21 as a result of publication not involving a violation of this Order, including becoming part of the
22 public record through trial or otherwise; and (b) any information known to the Receiving Party
23 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
24 obtained the information lawfully and under no obligation of confidentiality to the Designating
25 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing

1 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
2 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
3 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
4 reviews of this action, including the time limits for filing any motions or applications for
5 extension of time pursuant to applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents, but
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
28 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only

1 a portion or portions of the material on a page qualifies for protection, the Producing Party also
2 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
3 margins).

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

15 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
16 the Designating Party identify on the record, before the close of the deposition, hearing, or other
17 proceeding, all protected testimony.

18 (c) for information produced in some form other than documentary and for any
19 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
20 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
21 If only a portion or portions of the information or item warrant protection, the Producing Party, to
22 the extent practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive the Designating
25 Party's right to secure protection under this Order for such material. Upon timely correction of a
26 designation, the Receiving Party must make reasonable efforts to assure that the material is
27 treated in accordance with the provisions of this Order.

28 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
2 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
3 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
4 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
5 right to challenge a confidentiality designation by electing not to mount a challenge promptly
6 after the original designation is disclosed.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
8 resolution process by providing written notice of each designation it is challenging and describing
9 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
10 written notice must recite that the challenge to confidentiality is being made in accordance with
11 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
12 challenge in good faith and must begin the process by conferring directly (in voice to voice
13 dialogue; other forms of communication are not sufficient) within 14 days of the date of service
14 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
15 confidentiality designation was not proper and must give the Designating Party an opportunity to
16 review the designated material, to reconsider the circumstances, and, if no change in designation
17 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
18 the next stage of the challenge process only if it has engaged in this meet and confer process first
19 or establishes that the Designating Party is unwilling to participate in the meet and confer process
20 in a timely manner.

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

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

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

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
25 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
26 disclose any information or item designated "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
28 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the

1 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
2 Bound" that is attached hereto as Exhibit A;

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 disclosure is
7 reasonably necessary for this litigation and who have signed the "Acknowledgment and
8 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, mock
11 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
12 and who have 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 or recipient of a document containing the information or a custodian
20 or other person who otherwise possessed or knew the information.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
22 OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation that
24 compels disclosure of any information or items designated in this action as "CONFIDENTIAL,"
25 that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification
27 shall include a copy of the subpoena or court order;

28 (b) promptly notify in writing the party who caused the subpoena or order to issue

1 in the other litigation that some or all of the material covered by the subpoena or order is subject
2 to this Protective Order. Such notification shall include a copy of this Stipulated Protective
3 Order; and

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

6 If the Designating Party timely seeks a protective order, the Party served with the
7 subpoena or court order shall not produce any information designated in this action as
8 "CONFIDENTIAL" before a determination by the court from which the subpoena or order
9 issued, unless the Party has obtained the Designating Party's permission. The Designating Party
10 shall bear the burden and expense of seeking protection in that court of its confidential material --
11 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
12 Party in this action to disobey a lawful directive from another court.

13 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
14 PRODUCED IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a Non-
16 Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-
17 Parties in connection with this litigation is protected by the remedies and relief provided by this
18 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
19 additional protections.

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

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

27 2. promptly provide the Non-Party with a copy of the Stipulated
28 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific

1 description of the information requested; and

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

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

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
20 PROTECTED MATERIAL

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

5 12. MISCELLANEOUS

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

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

13 12.3 Filing Protected Material. Without written permission from the
14 Designating Party or a court order secured after appropriate notice to all interested persons, a
15 Party may not file in the public record in this action any Protected Material. A Party that seeks to
16 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
17 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
19 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
20 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
21 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
22 the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-
23 5(e) unless otherwise instructed by the court.

24 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action,
25 as defined in paragraph 4, each Receiving Party must return all Protected Material to the
26 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
27 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
28 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,

1 the Receiving Party must submit a written certification to the Producing Party (and, if not the
2 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
3 category, where appropriate) all the Protected Material that was returned or destroyed and
4 (2)affirms that the Receiving Party has not retained any copies, abstracts, compilations,
5 summaries or any other format reproducing or capturing any of the Protected Material.
6 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
7 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
8 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
9 work product, even if such materials contain Protected Material. Any such archival copies that
10 contain or constitute Protected Material remain subject to this Protective Order as set forth in
11 Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: _____
Attorneys for Plaintiff

DATED: _____
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____
[Name of Judge]
United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I have read
5 in its entirety and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Northern District of California on [date] in the case of _____ [insert
7 **formal name of the case and the number and initials assigned to it by the court**]. I agree to
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Northern District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]

27
28