

# **ATTACHMENT B**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re SONY PS3 "Other OS"  
LITIGATION

CASE No. 3:10-CV-01811 RS (EMC)  
**[PROPOSED] 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. 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. As set forth in Section 12.3, below, this Protective Order does not entitle the parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

2. DEFINITIONS

1           2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
2 information or items under this Order.

3           2.2    “CONFIDENTIAL” Information or Items: information (regardless of how  
4 it is generated, stored or maintained) or tangible things that qualify for protection under Federal  
5 Rule of Civil Procedure 26(c).

6           2.3    Counsel (without qualifier): Outside Counsel of Record and House  
7 Counsel (as well as their support staff).

8           2.4    Designating Party: a Party or Non-Party that designates information or  
9 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
10 ““HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.””

11          2.5    Disclosure or Discovery Material: all items or information, regardless of  
12 the medium or manner in which it is generated, stored, or maintained (including, among other  
13 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
14 or responses to discovery in this matter.

15          2.6    Expert: a person with specialized knowledge or experience in a matter  
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
17 witness or as a consultant in this action.

18          2.7    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
19 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of  
20 which to another Party or Non-Party would create a substantial risk of serious harm that could not  
21 be avoided by less restrictive means.

22          2.8    House Counsel: attorneys who are employees of a party to this action.  
23 House Counsel does not include Outside Counsel of Record or any other outside counsel.

24          2.9    Non-Party: any natural person, partnership, corporation, association, or  
25 other legal entity not named as a Party to this action.

26          2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
27 this action but are retained to represent or advise a party to this action and have appeared in this  
28 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of

1 that party.

2 2.11 Party: any party to this action, including all of its officers, directors,  
3 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
4 staffs).

5 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
6 Discovery Material in this action.

7 2.13 Professional Vendors: persons or entities that provide litigation support  
8 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
9 organizing, storing, or retrieving data in any form or medium) and their employees and  
10 subcontractors.

11 2.14 Protected Material: any Disclosure or Discovery Material that is designated  
12 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
14 from a Producing Party.

15 3. SCOPE

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

1           4.     DURATION

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

9           5.     DESIGNATING PROTECTED MATERIAL

10                   5.1    Exercise of Restraint and Care in Designating Material for Protection. Each  
11 Party or Non-Party that designates information or items for protection under this Order must take  
12 care to limit any such designation to specific material that qualifies under the appropriate  
13 standards. To the extent practical to do so, the Designating Party must designate for protection  
14 only those parts of material, documents, items, or oral or written communications that qualify –  
15 so that other portions of the material, documents, items, or communications for which protection  
16 is not warranted are not swept unjustifiably within the ambit of this Order.

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

21                   If it comes to a Designating Party's attention that information or items that it  
22 designated for protection do not qualify for protection or do not qualify for the level of protection  
23 initially asserted, that Designating Party must promptly notify all other parties that it is  
24 withdrawing the mistaken designation.

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

1 Designation in conformity with this Order requires:

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

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

20 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
21 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
22 other proceeding, all protected testimony and specify the level of protection being asserted.  
23 When it is impractical to identify separately each portion of testimony that is entitled to protection  
24 and it appears that substantial portions of the testimony may qualify for protection, the  
25 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding  
26 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to  
27 which protection is sought and to specify the level of protection being asserted. Only those  
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1 portions of the testimony that are appropriately designated for protection within the 21 days shall  
2 be covered by the provisions of this Protective Order.

3 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
4 other proceeding to include Protected Material so that the other parties can ensure that only  
5 authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound"  
6 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
7 shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY  
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY "

9 Transcripts containing Protected Material shall have an obvious legend on the title page  
10 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
11 pages (including line numbers as appropriate) that have been designated as Protected Material and  
12 the level of protection being asserted by the Designating Party. The Designating Party shall  
13 inform the court reporter of these requirements. Any transcript that is prepared before the  
14 expiration of a 21-day period for designation shall be treated during that period as if it had been  
15 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless  
16 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
17 actually designated.

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 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions of  
22 the information or item warrant protection, the Producing Party, to the extent practicable, shall  
23 identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
25 to designate qualified information or items does not, standing alone, waive the Designating  
26 Party's right to secure protection under this Order for such material. Upon timely correction of a  
27 designation, the Receiving Party must make reasonable efforts to assure that the material is  
28 treated in accordance with the 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 court  
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
24 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
25 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
26 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 and who have signed the “Acknowledgment and Agreement to Be  
3 Bound” that is attached hereto as Exhibit A;

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

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

10 (d) the Court and its personnel;

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

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

20 (g) the author or recipient of a document containing the information or a  
21 custodian or other person who otherwise possessed or knew the information.

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

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
28 information for this litigation and who have signed the “Acknowledgment and Agreement to Be

1 Bound” that is attached hereto as Exhibit A;

2 (b) the Receiving Party’s House Counsel and their staff to whom it is  
3 reasonably necessary to disclose the information for this litigation and who have signed the  
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

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

8 (d) the Court and its personnel;

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

12 (f) the author or recipient of a document containing the information or a  
13 custodian or other person who otherwise possessed or knew the information.

14 (g) Except as provided in Section 7.3(f), a Receiving Party shall not disclose  
15 any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY” to anyone who is a director, officer, employee, independent contractor, or consultant of  
17 the Designating Party’s competitors or otherwise employed by any of the Designating Party’s  
18 competitors.

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

21 If a Party is served with a subpoena or a court order issued in other litigation that  
22 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”  
23 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

1 and

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

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

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

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

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

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

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

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

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

10               10.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

1           12.    MISCELLANOUS

2                   12.1   Right to Further Relief. Nothing in this Order abridges the right of any  
3 person to seek its modification by the Court in the future.

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

9                   12.3   Filing Protected Material. Without written permission from the Designating  
10 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
11 file in the public record in this action any Protected Material. A Party that seeks to file under seal  
12 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
13 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material  
14 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
15 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
16 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
17 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the  
18 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
19 79-5(e) unless otherwise instructed by the Court.

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

1 summaries or any other format reproducing or capturing any of the Protected Material.  
2 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
3 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
4 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
5 work product, even if such materials contain Protected Material. Any such archival copies that  
6 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
7 Section 4 (DURATION).

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9 IT IS SO ORDERED.

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11 Dated:

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By: \_\_\_\_\_

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Honorable Edward M. Chen  
United States Magistrate 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 in any manner any information or item that is subject to  
this Protective Order 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]

Signature: \_\_\_\_\_

[signature]