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7 Attorneys for Plaintiff
SYNOPSYS, INC.
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 SYNOPSYS, INC., a Delaware corporation,
13 Plaintiff,
14 v.
15 DEEPAK SABHARWAL, an individual,
16 Defendant.

Case No. 3:12-cv-05334-RS
**STIPULATION AND [PROPOSED
ORDER] FOR ENTRY OF
TEMPORARY RESTRAINING ORDER,
ORDER FOR EXPEDITED
DISCOVERY AND ENTRY OF
PROTECTIVE ORDER**
Date:
Time:
Dept:
Judge:

1 1. Plaintiff Synopsys, Inc. ("Plaintiff") has filed a Complaint against Defendant
2 Deepak Sabharwal. The Complaint alleges copyright infringement, trade secret misappropriation,
3 computer abuse and fraud and unfair business practices against Mr. Sabharwal. Based on its
4 complaint, Plaintiff believes good cause exists which supports entry of a temporary restraining
5 order by the Court and is prepared to file such application and supporting papers.

6 2. In an effort to resolve any issues which might support entry of a Court restraining
7 order, Defendant and Plaintiff agree to immediate entry of the following.

8 **Temporary Restraining Order:**

- 9 1. Defendant Deepak Sabharwal shall not use, disclose, transfer, copy, destroy, license or
10 otherwise encumber any Synopsys confidential or proprietary information, including any
11 document or file from his Synopsys-issued laptop and all Synopsys algorithms, processes,
12 data, know-how, computer software in both source and object form, interfaces, designs,
13 data structures, improvements, inventions, works of authorship, techniques, development
14 roadmaps, resource allocation plans, business or marketing plans, strategies, forecasts and
15 customer or contact lists;
- 16 2. Mr. Sabharwal shall not use, disclose, transfer, copy, destroy, license or otherwise
17 encumber any third party confidential or proprietary information that he received access to
18 during his employment at Synopsys, including all Intel confidential or proprietary
19 information;
- 20 3. Mr. Sabharwal shall immediately return all Synopsys confidential or proprietary
21 information and third party confidential or proprietary information to Synopsys; and
- 22 4. This order shall remain in effect for at least twenty-eight (28) days from entry to allow the
23 parties to complete expedited discovery and attempt to reach final and permanent
24 resolution of this matter.

25 **Expedited Discovery:**

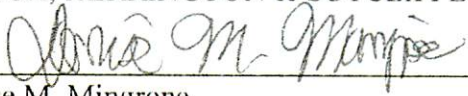
- 26 5. Mr. Sabharwal shall comply with expedited discovery. A Protective Order, attached as
27 Exhibit A is entered by the Court to facilitate expedited discovery.
- 28 6. Mr. Sabharwal shall produce for forensic inspection all electronic storage media,

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including all external hard drives and flash drives that have ever contained any Synopsys confidential or proprietary or third party confidential or proprietary information that Sabharwal received access to during his employment at Synopsys, including all Intel confidential or proprietary information, by October 26, 2012.

- 7. To the extent Mr. Sabharwal used any internet cloud-based storage application, any social networking, any internet based email application, or similar application to store any Synopsys confidential or proprietary information or third party confidential or proprietary information, he shall provide the user access credentials to each such application to Plaintiffs' counsel by October 26, 2012. These credentials will be designated "Highly Confidential – Attorneys' Eyes Only" pursuant to the Protective Order.
- 8. Synopsys shall immediately propound to Mr. Sabharwal requests for production, interrogatories and a notice of deposition.
- 9. Mr. Sabharwal shall provide substantive responses to each interrogatory and make responsive documents and things available in response to Synopsys' requests for production by October 26, 2012.
- 10. Mr. Sabharwal shall appear for his deposition on or about November 1, 2012, as mutually agreed by the parties.

Dated: 16 October, 2012

Respectfully submitted
 ORRICK, HERRINGTON & SUTCLIFFE LLP

 Denise M. Mingrone
 Attorneys for Plaintiff SYNOPSIS, INC.

Dated: _____ October, 2012

Defendant DEEPAK SABHARWAL

Good cause appearing therefor, **IT IS SO ORDERED.**

Dated: 10/18 2012


 United States District Court Judge

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Dated: _____ October, 2012

Respectfully submitted
ORRICK, HERRINGTON & SUTCLIFFE LLP

Denise M. Mingrone
Attorneys for Plaintiff SYNOPSYS, INC.

Dated: 16 October, 2012


Defendant DEEPAK SABHARWAL

Good cause appearing therefor, **IT IS SO ORDERED.**

Dated: _____ 2012

United States District Court Judge

EXHIBIT A

1 DENISE M. MINGRONE (STATE BAR NO. 135224)
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7 Attorneys for Plaintiff
 SYNOPSISYS, INC.
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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

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 12 SYNOPSISYS, INC., a Delaware corporation,
 13 Plaintiff,
 14 v.
 15 DEEPAK SABHARWAL, an individual,
 16 Defendant.

Case No. 3:12-cv-05334 RS

**[PROPOSED] PROVISIONAL
 PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the Court hereby GRANTS the following Provisional Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords from public disclosure and use extends only to the
8 limited information or items that are entitled to confidential treatment under the applicable legal
9 principles. The parties further acknowledge, as set forth in Section 14.4, below, that this
10 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
11 Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the
12 standards that will be applied when a party seeks permission from the court to file material under
13 seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
19 of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
21 well as their support staff).

22 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24 2.5 Designating Party: a Party or Non-Party that designates information or items that it
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
27 CODE”.

28 2.6 Disclosure or Discovery Material: all items or information, regardless of the

1 medium or manner in which it is generated, stored, or maintained (including, among other things,
2 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
3 responses to discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
5 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
6 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
7 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
8 or of a Party's competitor.

9 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
10 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
11 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
12 less restrictive means.

13 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
14 extremely sensitive "Confidential Information or Items" representing computer code and
15 associated comments and revision histories, formulas, engineering specifications, or schematics
16 that define or otherwise describe in detail the algorithms or structure of software or hardware
17 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
18 serious harm that could not be avoided by less restrictive means.

19 2.10 House Counsel: attorneys who are employees of a party to this action. House
20 Counsel does not include Outside Counsel of Record or any other outside counsel.

21 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
22 entity not named as a Party to this action.

23 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
24 action but are retained to represent or advise a party to this action and have appeared in this action
25 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

26 2.13 Party: any party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

28 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

1 Material in this action.

2 2.15 Professional Vendors: persons or entities that provide litigation support services
3 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
4 organizing, storing, or retrieving data in any form or medium) and their employees and
5 subcontractors.

6 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
7 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or as
8 "HIGHLY CONFIDENTIAL – SOURCE CODE."

9 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
10 Producing Party.

11 3. SCOPE

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

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
28 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after

1 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
2 including the time limits for filing any motions or applications for extension of time pursuant to
3 applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

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

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

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
21 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
22 Disclosure or Discovery

23 Material that qualifies for protection under this Order must be clearly so designated before
24 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,
27 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
28 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'

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

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

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

1 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
2 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY.”

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

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

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items does not, standing alone, waive the Designating Party’s
28 right to secure protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the material is
2 treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
26 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if
27 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
28 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each

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

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

17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

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

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

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

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

11 (d) the court and its personnel;

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

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

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

23 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and
24 "HIGHLY CONFIDENTIAL – SOURCE CODE" 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 "HIGHLY CONFIDENTIAL – ATTORNEYS'
27 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" 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) Experts of the Receiving Party (1) to whom disclosure is reasonably
5 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
6 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
7 have been followed;

8 (c) the court and its personnel;

9 (d) 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 (e) 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 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
16 CODE”: Information or Items to Experts.

17 (a) Unless otherwise ordered by the court or agreed to in writing by the
18 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
19 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c)
21 first must make a written request to the Designating Party that (1) identifies the general categories
22 of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
23 CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to
24 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her
25 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s
26 current employer(s), (5) identifies each person or entity from whom the Expert has received
27 compensation or funding for work in his or her areas of expertise or to whom the expert has
28 provided professional services, including in connection with a litigation, at any time during the

1 preceding five years, and (6) identifies (by name and number of the case, filing date, and location
2 of court) any litigation in connection with which the Expert has offered expert testimony,
3 including through a declaration, report, or testimony at a deposition or trial, during the preceding
4 five years.

5 (b) A Party that makes a request and provides the information specified in the
6 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
7 within 14 days of delivering the request, the Party receives a written objection from the
8 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with
10 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
11 agreement within seven days of the written objection. If no agreement is reached, the Party
12 seeking to make the disclosure to an Expert may file a motion as provided in Civil Local Rule 7
13 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking
14 permission from the court to do so. Any such motion must describe the circumstances with
15 specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,
16 assess the risk of harm that the disclosure would entail, and suggest any additional means that
17 could be used to reduce that risk. In addition, any such motion must be accompanied by a
18 competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the
19 extent and the content of the meet and confer discussions) and setting forth the reasons advanced
20 by the Designating Party for its refusal to approve the disclosure.

21 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
22 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
23 outweighs the Receiving Party's need to disclose the Protected Material to its Designated House
24 Counsel.

25 8. SOURCE CODE

26 (a) To the extent production of source code becomes necessary in this case, a
27 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"
28 if it comprises or includes confidential, proprietary or trade secret source code.

1 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
2 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY” information, and may be disclosed only to the individuals to
4 whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be
5 disclosed, as set forth in Paragraphs 7.3 and 7.4.

6 (c) Any source code produced in discovery shall be made available for
7 inspection in a format through which it could be reasonably reviewed and searched during normal
8 business hours or other mutually agreeable times at a location that is reasonably convenient for
9 the Receiving Party and any experts to whom the source code may be disclosed.

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

20 (e) The Receiving Party shall maintain a record of any individual who has
21 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
22 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
23 Receiving Party shall not create any electronic or other images of the paper copies and shall not
24 convert any of the information contained in the paper copies into any electronic format. The
25 Receiving Party shall only make additional paper copies if such additional copies are (1)
26 necessary to prepare court filings, pleadings, or other papers (including a testifying expert’s
27 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its
28 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the

1 end of each day and must not be given to or left with a court reporter or any other individual.

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

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

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

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

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

16 If the Designating Party timely seeks a protective order, the Party served with the
17 subpoena or court order shall not produce any information designated in this action as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
19 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from
20 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
21 permission. The Designating Party shall bear the burden and expense of seeking protection in that
22 court of its confidential material – and nothing in these provisions should be construed as
23 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
24 another court.

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

27 (a) The terms of this Order are applicable to information produced by a Non-
28 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE". Such
2 information produced by Non-Parties in connection with this litigation is protected by the
3 remedies and relief provided by this Order. Nothing in these provisions should be construed as
4 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

24 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
26 Material to any person or in any circumstance not authorized under this Stipulated Protective
27 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
28 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the

1 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
2 made of all the terms of this Order, and (d) request such person or persons to execute the
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

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

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

15 13. MISCELLANEOUS

16 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
17 seek its modification by the court in the future.

18 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
19 Order no Party waives any right it otherwise would have to object to disclosing or producing any
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
21 Party waives any right to object on any ground to use in evidence of any of the material covered
22 by this Protective Order.

23 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
24 laws and regulations relating to the export of technical data contained in such Protected Material,
25 including the release of such technical data to foreign persons or nationals in the United States or
26 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
27 data, and the Receiving Party shall take measures necessary to ensure compliance.

1 13.4 Filing Protected Material. Without written permission from the Designating Party
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
5 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
7 sealing order will issue only upon a request establishing that the Protected Material at issue is
8 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
9 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
10 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected
11 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
12 the court.

13 14. FINAL DISPOSITION

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

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IT IS SO ORDERED.

Dated: 10/18, 2012


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 Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on [date] in the case of _____ [insert
formal name of the case and the number and initials assigned to it by the court]. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated 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 Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]