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 GURFINKEL, individually and on behalf of all
 others similarly situated

15 UNITED STATES DISTRICT COURT
 16
 17 NORTHERN DISTRICT OF CALIFORNIA

19 DOUGLAS O’CONNOR, THOMAS
 20 COLOPY, MATTHEW MANAHAN, and
 21 ELIE GURFINKEL, individually and on
 22 behalf of all others similarly situated,

23 Plaintiffs,

24 v.

25 UBER TECHNOLOGIES, INC.,

26 Defendant.

CASE NO. 13-03826-EMC

HON. Edward M. Chen

**SECOND AMENDED STIPULATED
 PROTECTIVE ORDER AND ~~PROPOSED~~
 ORDER**

Complaint Filed: August 16, 2013

1 This Second Amended Stipulated Protective Order (the “Order” or “Protective Order”) is
2 intended to amend and supersede the prior protective orders entered by the Court on October 21,
3 2014 (Dkt. 181) and November 26, 2014 (Dkt. 208). Disclosure and discovery activity in this action
4 are likely to involve production of confidential, proprietary, or private information for which special
5 protection from public disclosure and from use for any purpose other than prosecuting this litigation
6 may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
7 following Protective Order. The parties acknowledge that this Order does not confer blanket
8 protections on all disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled to confidential
10 treatment under the applicable legal principles. The parties further acknowledge that this Protective
11 Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets
12 forth the procedures that must be followed and the standards that will be applied when a party seeks
13 permission from the court to file material under seal.

14 1. The Protective Order shall govern all materials deemed to be “Confidential
15 Information” and “Highly Confidential—Attorneys’ Eyes Only Information.” Nothing in this
16 Protective Order shall be deemed to require the production of information that a Party or a Non-Party
17 believes to be objectionable on other grounds, nor shall anything in this Protective Order be deemed
18 to allow for non-production of confidential information that is otherwise discoverable.

19 2. A Party or a Non-Party may designate as “Confidential Information” any documents
20 or information produced in response to informal or formal discovery requests, subpoenas and/or other
21 exchanges of documents/information which, in good faith, such Party deems confidential, including
22 without limitation, any documents or information:

23 (a) Referring or related to confidential and proprietary human resources, business
24 or pricing information and/or financial records and information of Defendant;

25 (b) Referring or related to any current, former or prospective business partner or
26 third-party vendor of Defendant;

27 (c) Referring or related to any other confidential or trade secret information of
28 Defendant; and

1 (d) Any portions of depositions (including audio or video) where Confidential
2 Information is disclosed or used as exhibits.

3 3. A Party or a Non-Party may designate as “Highly Confidential—Attorneys’ Eyes Only
4 Information” any documents or information produced in response to informal or formal discovery
5 requests, subpoenas and/or other exchanges of documents/information which, in good faith, such
6 designating Party or Non-Party believes could place it at a competitive disadvantage if disclosed to
7 anyone other than the receiving Party’s counsel of record in this litigation because such documents or
8 information contain commercially sensitive information, proprietary information, or trade secrets, the
9 disclosure of which is likely to cause irreparable harm or significant injury to the competitive position
10 of the designating Party.

11 4. In the case of documents and the information contained therein, designation of
12 Confidential Information produced pursuant to this Order shall be made by placing the following
13 legend on the face of the document or collection of documents: “CONFIDENTIAL – PRODUCED
14 PURSUANT TO PROTECTIVE ORDER.” Upon such designation, all parties shall treat the
15 identified information as confidential under this agreement until and unless it is otherwise agreed by
16 all parties or ordered by the Court. In the event a party or a Non-Party neglects to identify any
17 disclosed information as confidential, it may do so after disclosure by sending notice to all parties
18 that clearly delineates the confidential information.

19 5. Confidential Information shall be held in confidence by each qualified recipient to
20 whom it is disclosed, shall be used only for purposes of this action, shall not be used for any business
21 purpose, and shall be disclosed only to qualified recipients for purposes that are specifically and
22 directly related to the reasonable conduct of this litigation.

23 6. Qualified recipients shall include only the following:

24 (a) In-house counsel and law firms for each Party and the secretarial, clerical and
25 paralegal staff of each, if/as needed to perform their job duties;

26 (b) Deposition notaries;

27 (c) Persons other than legal counsel who have been retained or specially employed
28 by a Party as an expert witness or consultant for purposes of this lawsuit or to perform investigative

1 work or fact research, provided that the disclosing counsel identify to opposing counsel and to
2 counsel for any Non-Party who produced the Confidential Information to be disclosed such expert
3 witness or consultant, and provide to opposing counsel and to counsel for any Non-Party who
4 produced the Confidential Information to be disclosed that individual's full curriculum vitae, at least
5 one week before the disclosure for the sole purpose of affording the opposing party or the Non-Party
6 who produced the Confidential Information to be disclosed an opportunity to object to the disclosure
7 if necessary. However, the opposing party or the Non- Party who produced the Confidential
8 Information to be disclosed shall not be permitted to use the disclosure of any such expert witness or
9 consultant for any other purpose in the litigation. The opposing party or the Non-Party who produced
10 the Confidential Information to be disclosed shall have one week to notify the disclosing counsel of
11 an objection to the disclosure. If any objections are raised, no confidential materials shall be shown
12 to the expert witness or consultant until after all objections have been resolved by the Court;

13 (d) Deponents during the course of their depositions or potential witnesses of this
14 case;

15 (e) A mediator selected by mutual agreement of the Parties; and

16 (f) The Parties as defined above through their employees who are engaged directly
17 in this litigation on a need to know basis.

18 7. Persons to whom Confidential Information is shown shall be informed of the terms of
19 this Order, advised that its breach may be punished or sanctioned as contempt of the Court and
20 required to sign the Acknowledgement and Agreement to Be Bound by Protective Order in the form
21 attached this Order as Exhibit A. Deponents may be shown Confidential materials during their
22 deposition but shall not be permitted to keep copies of said Confidential materials nor any portion of
23 the deposition transcript reflecting the Confidential Information. Portions of deposition testimony
24 deemed confidential by any party may be so designated at the deposition, and any such testimony
25 shall be segregated in the deposition transcript and identified as "confidential" by the stenographer
26 assigned to the deposition.

27 8. In the case of documents and the information contained therein, designation of Highly
28 Confidential—Attorneys' Eyes Only Information produced pursuant to this Order shall be made by

1 placing the following legend on the face of and/or in the title of the document or collection of
2 documents: “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Upon such designation,
3 all parties shall treat the identified information as highly confidential under this agreement until and
4 unless it is otherwise agreed by all parties or ordered by the Court. In the event a Party or a Non-
5 Party neglects to identify any disclosed information as highly confidential, it may do so after
6 disclosure by sending notice to all parties that clearly delineates the highly confidential information.

7 9. Highly Confidential—Attorneys’ Eyes Only Information shall be disclosed only to the
8 receiving Party’s counsel of record in this litigation for purposes that are specifically and directly
9 related to the reasonable conduct of this litigation, and to no other persons. Such information shall be
10 held in the highest confidence by each person to whom it is disclosed, shall be used only for purposes
11 that are specifically and directly related to the conduct of this litigation, and shall not be used for any
12 business purpose. The receiving Party shall maintain a log of all electronic images and paper copies
13 of Highly Confidential—Attorneys’ Eyes Only Information in its possession and all such copies shall
14 be securely destroyed subject to the provisions of Paragraph 12 herein.

15 10. The unauthorized disclosure of Confidential Information or Highly Confidential—
16 Attorneys’ Eyes Only Information shall give the producing Party or Non-Party the right to seek and
17 obtain immediate injunctive or other equitable relief to enjoin any unauthorized use or disclosure of
18 its Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information, in addition
19 to any other rights or remedies that it may have at law or otherwise.

20 11. Challenging Confidentiality Designations

21 (a) Timing of Challenges. Any Party or Non-Party may challenge a designation of
22 confidentiality at any time. Unless a prompt challenge to a designating party’s or non-party’s
23 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
24 economic burdens, or a significant disruption or delay of the litigation, a party does not waive its
25 right to challenge a confidentiality designation by electing not to mount a challenge promptly after
26 the original designation is disclosed.

27 (b) Meet and Confer. The party challenging a confidentiality designation shall
28 initiate the dispute resolution process by providing written notice of each designation it is challenging

1 and describing the basis for each challenge. The parties and the non-party who designated the
2 information as confidential shall attempt to resolve each challenge in good faith and must begin the
3 process by conferring directly (in voice to voice dialogue; other forms of communication are not
4 sufficient) within 14 days of the date of service of notice. In conferring, the challenging party must
5 explain the basis for its belief that the confidentiality designation was not proper and must give the
6 designating party and the non-party who designated the information as confidential an opportunity to
7 review the designated material, to reconsider the circumstances, and, if no change in designation is
8 offered, to explain the basis for the chosen designation.

9 (c) Judicial Intervention.

10 (i) Party Designations. If the parties who designated the information as
11 confidential or highly confidential cannot resolve a challenge without court intervention, the parties
12 shall submit their dispute to Magistrate Judge Ryu for resolution in accordance with her Standing
13 Order regarding resolution of discovery disputes. All parties shall continue to afford the material in
14 question the level of protection to which it is entitled under the producing Party's designation until
15 the court rules on the challenge.

16 (ii) Non-Party Designations. In the event of designations by Non-Parties,
17 if the Parties and the Non-Party who designated the information as confidential cannot resolve a
18 challenge without court intervention, the dispute shall be submitted to Magistrate Judge Ryu for
19 resolution in accordance with her Standing Order regarding resolution of discovery disputes. All
20 parties shall continue to afford the material in question the level of protection to which it is entitled
21 under the producing Non-Party's designation until the court rules on the challenge.

22 12. No copies of Confidential Information or Highly Confidential—Attorneys' Eyes Only
23 Information shall be made except as required for the conduct of this litigation and by or on behalf of
24 attorneys of record in this action. Any person making copies of such information shall maintain all
25 copies within their possession or the possession of those entitled to access to such information under
26 this Order. Copies of documents containing Confidential Information that are attached to pleadings
27 or motions filed with the court may be retained in counsel's file. Any other copies of documents
28 containing Confidential Information shall be destroyed when no longer required for purposes of this

1 litigation. All copies of documents containing Highly Confidential—Attorneys’ Eyes Only
2 Information shall be securely and immediately destroyed when no longer required for purposes of
3 this litigation.

4 13. All information and/or documents produced in this action that are Confidential or
5 Highly Confidential—Attorneys’ Eyes Only shall be used only for purposes of this litigation and not
6 for any other purpose.

7 14. In the event that a Party or Non-Party wishes to use any Confidential Information or
8 Highly Confidential—Attorneys’ Eyes Only Information in any papers filed in Court in this
9 litigation, the Party or Non-Party shall file a motion requesting that the Court maintain the documents
10 containing Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information
11 under seal pursuant to Civil Local Rule 79-5. In the event the Party or Non-Party does not believe
12 the documents should be filed under seal, it shall meet and confer with regard to which documents, if
13 any, should be filed under seal. Should the Parties and designating Non-Party not agree upon which
14 documents should be placed under seal, the Party or Non-Party seeking the maintenance of such
15 documents under seal shall file a motion requesting that the Court maintain the documents under seal.
16 The Parties acknowledge that whether Confidential Information or Highly Confidential—Attorneys’
17 Eyes Only Information submitted to the Court is maintained under seal is subject to the Court’s
18 ultimate decision on any motion to place and/or accept confidential documents under seal. The
19 parties and non-parties shall follow the procedure set forth in Civil Local Rule 79-5 regarding filing
20 documents under seal in civil cases.

21 15. The termination of this action shall not relieve the Parties and persons obligated
22 hereunder from their responsibility to maintain the confidentiality of information designated
23 confidential pursuant to this Order.

24 16. Upon termination of this action by entry of a final judgment (inclusive of any appeals
25 or petitions for review), the Parties and designating Non-Parties may request the return or destruction
26 of all previously furnished Confidential Information and Highly Confidential—Attorneys’ Eyes Only
27 Information, including any copies thereof, and each person or Party to whom such Confidential
28 Information and Highly Confidential—Attorneys’ Eyes Only Information has been furnished or

1 produced shall be obligated to comply with such request within thirty (30) days, with the exception of
2 copies of Confidential Information and Highly Confidential—Attorneys’ Eyes Only Information that
3 were filed with the Court as part of this action, which the Parties’ counsel shall be permitted to retain.
4 Any Confidential Information and Highly Confidential—Attorneys’ Eyes Only Information that is
5 not requested shall be destroyed, subject to the provisions of paragraph 12 herein.

6 17. Nothing in this Protective Order shall be construed as an admission as to the
7 relevance, authenticity, foundation or admissibility of any document, material, transcript, or other
8 information.

9 18. Nothing in the Protective Order shall be deemed to preclude any Party or Non- Party
10 from moving to modify or dissolve this Order.

11 19. This Protective Order, until it is entered by the Court, *and even if it is never entered by*
12 *the Court*, shall be deemed to be an enforceable agreement between the Parties, except that either
13 Party may apply to the Court to challenge a confidentiality designation.

14
15
16 Respectfully submitted,

17 Dated: January 26, 2016

GIBSON, DUNN & CRUTCHER LLP

18
19 /s/ Dhananjay S. Manthripragada
20 Dhananjay S. Manthripragada
21 Attorneys for Defendant

22 Dated: January 26, 2016

LICHTEN & LISS-RIORDAN, P.C.

23
24 /s/ Shannon Liss-Riordan
25 Shannon Liss-Riordan, *pro hac vice*
26 Attorneys for Plaintiffs
27
28

ECF ATTESTATION

I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/s/) within this e-filed document.

Dated: January 26, 2016

GIBSON DUNN & CRUTCHER, LLP

By /s/ Dhananjay S. Manthripragada
Dhananjay S. Manthripragada
Attorneys for Defendant

PURSUANT TO THIS STIPULATION, IT IS SO ORDERED.

Date: Feb. 10, 2016

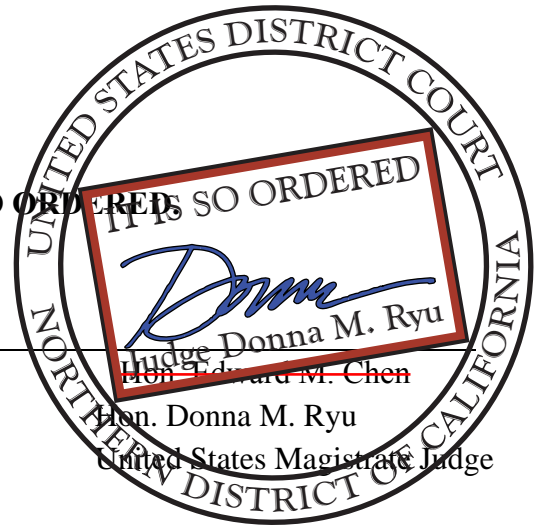


EXHIBIT A

Acknowledgement and Agreement to Be Bound by Protective Order:

I, _____, acknowledge that I have received a copy of the Stipulated Confidentiality Agreement and Protective Order (Order) in the lawsuit *Douglas O'Connor, et al., v. Uber Technologies, Inc.*, pending in United States District Court, Case No. 13-03826-EMC. Having read and understood its terms, I agree to be bound by the Order and consent to the jurisdiction of said Court for any proceeding to enforce the terms of the Order.

I further agree that, within thirty (30) days after my responsibilities relating to this case end, I will destroy all copies of any confidential documents that were provided to me in this case.

Name of individual:

Present occupation/job description:

Name of Company or Firm:

Address:

Dated:

Signature