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 Plaintiff SOPHOS LTD.

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17 FORTINET, INC., a corporation
 Plaintiff,
 18 vs.
 19 SOPHOS, INC., a corporation, MICHAEL
 VALENTINE, an individual, and JASON
 20 CLARK, an individual.
 21 Defendants.

Case No. 3:13-cv-05831-EMC

**STIPULATED PROTECTIVE ORDER
 FOR LITIGATION INVOLVING
 PATENTS, HIGHLY SENSITIVE
 CONFIDENTIAL INFORMATION
 AND/OR TRADE SECRETS**

Judge: Honorable Edward M. Chen

22 SOPHOS INC. and SOPHOS LTD.,
 23 corporations,
 24 Counterclaim Plaintiffs,
 25 vs.
 26 FORTINET, INC., a corporation,
 27 Counterclaim Defendant.

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 parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4,
10 below, that this Stipulated Protective Order does not entitle them to file confidential information
11 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
12 that will be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
17 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
18 of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
20 (as well as their support staff).

21 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

23 2.5 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
26 SOURCE CODE.”

1 2.6 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner in which it is generated, stored, or maintained (including, among other things,
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
4 responses to discovery in this matter.

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

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

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

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

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

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

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1 2.13 Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

3 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
4 Discovery Material in this action.

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

9 2.16 Protected Material: any Disclosure or Discovery Material that is designated
10 as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
11 as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

12 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected
16 Material (as defined above), but also (1) any information copied or extracted from Protected
17 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
18 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
19 Material. However, the protections conferred by this Stipulation and Order do not cover the
20 following information: (a) any information that is in the public domain at the time of disclosure to
21 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
22 a result of publication not involving a violation of this Order, including becoming part of the
23 public record through trial or otherwise; and (b) any information known to the Receiving Party
24 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
25 obtained the information lawfully and under no obligation of confidentiality to the Designating
26 Party. Any use of Protected Material at 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) dismissal
5 of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein
6 after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
7 action, including the time limits for filing any motions or applications for extension of time
8 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 it is 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 – so
15 that other portions of the material, documents, items, or communications for which protection is
16 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 at all or do not qualify for the level of
23 protection 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,
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1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

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

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

25 (b) for testimony given in deposition or in other pretrial or trial proceedings,
26 that the Designating Party identify on the record, before the close of the deposition, hearing, or
27 other proceeding, all protected testimony and specify the level of protection being asserted. When
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1 it is impractical to identify separately each portion of testimony that is entitled to protection and it
2 appears that substantial portions of the testimony may qualify for protection, the Designating Party
3 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
4 to have up to 21 days to identify the specific portions of the testimony as to which protection is
5 sought and to specify the level of protection being asserted. Only those portions of the testimony
6 that are appropriately designated for protection within the 21 days shall be covered by the
7 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
8 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
9 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY.”

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

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

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

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
7 to designate qualified information or items does not, standing alone, waive the Designating Party’s
8 right to secure protection under this Order for such material. Upon timely correction of a
9 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
10 in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

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

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order. When
6 the litigation has been terminated, a Receiving Party must comply with the provisions of section
7 15 below (FINAL DISPOSITION).

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

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
13 disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

23 (d) the court and its personnel;

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

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

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

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless
11 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party
12 may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

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

17 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
18 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,
19 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to
20 whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed, except that
21 items or information of a technical nature that are designated “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY” and items or information designated “HIGHLY CONFIDENTIAL
23 – SOURCE CODE” may not be disclosed to Designated House Counsel.

24 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
25 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
26 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

27 (d) the court and its personnel;

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

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

6 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
8 CODE” Information or Items to Designated House Counsel or Experts.

9 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
10 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has
11 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
12 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the
13 full name of the Designated House Counsel and the city and state of his or her residence, and (2)
14 describes the Designated House Counsel’s current and reasonably foreseeable future primary job
15 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may
16 become involved, in any competitive decision-making.

17 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
18 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
19 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a
21 written request to the Designating Party that (1) identifies the general categories of “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
23 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
24 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches
25 a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies
26 each person or entity from whom the Expert has received compensation or funding for work in his
27 or her areas of expertise or to whom the expert has provided professional services, including in
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1 connection with a litigation, at any time during the preceding five years,¹ and (6) identifies (by
2 name and number of the case, filing date, and location of court) any litigation in connection with
3 which the Expert has offered expert testimony, including through a declaration, report, or
4 testimony at a deposition or trial, during the preceding five years.

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

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

23 In any such proceeding, the Party opposing disclosure to Designated House
24 Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure

25 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a
26 third-party, then the Expert should provide whatever information the Expert believes can be
27 disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the
28 Expert shall be available to meet and confer with the Designating Party regarding any such
engagement.

1 would entail (under the safeguards proposed) outweighs the Receiving Party’s need to disclose the
2 Protected Material to its Designated House Counsel or Expert.

3 8. PROSECUTION BAR

4 Absent written consent from the Producing Party, any individual who receives
5 access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
6 CONFIDENTIAL – SOURCE CODE” information shall not be involved in the prosecution of
7 patents or patent applications relating to network security intrusion detection/prevention or end-
8 point security technology, including without limitation the patents asserted in this action and any
9 patent or application claiming priority to or otherwise related to the patents asserted in this action,
10 before any foreign or domestic agency, including the United States Patent and Trademark Office
11 (“the Patent Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly
12 drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.²
13 To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party
14 challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue
15 protest, ex parte reexamination or inter partes reexamination). This Prosecution Bar shall begin
16 when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
17 CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and
18 shall end two (2) years after final termination of this action.

19 9. SOURCE CODE

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

23 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
24 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph
26 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –

27 ² Prosecution includes, for example, original prosecution, reissue and reexamination
28 proceedings.

1 ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in Paragraphs 7.3 and
2 7.4, with the exception of Designated House Counsel.

3 (c) Any source code produced in discovery shall be made available for inspection, in a
4 format allowing it to be reasonably reviewed and searched, during normal business hours or at
5 other mutually agreeable times, at an office of the Producing Party's counsel or another mutually
6 agreed upon location. The source code shall be made available for inspection on a secured
7 computer in a secured room without Internet access or network access to other computers, and the
8 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto
9 any recordable media or recordable device. The Producing Party may visually monitor the
10 activities of the Receiving Party's representatives during any source code review, but only to
11 ensure that there is no unauthorized recording, copying, or transmission of the source code.
12 Outside counsel may request that additional software tools be installed on the secured computer to
13 assist the reviewing Party's review of the source code. If the Parties are unable to agree on the
14 additional requested software tools, they may seek an Order from the Court after making a good
15 faith effort to resolve their dispute.

16 (d) The Receiving Party shall be allowed to make up to 750 pages of hard (non-
17 electronic) copies of those portions of source code that it, in good faith, considers necessary to the
18 preparation of its case, and may remove the hard (non-electronic) copies from the premises of the
19 source code custodians but only after the Producing Party has (i) reviewed such hard copies for
20 compliance with this Protective Order, (ii) made its own copies of the hard copy source code, and
21 (iii) placed Bates numbers and/or any other designations upon them as necessary. A Receiving
22 Party shall not, however, print hard copies of source code for the purposes of reviewing the source
23 code in the first instance. A party can request that additional pages of source code be printed in
24 hard copy beyond the 750 page limit without seeking leave of the court, and this request must be
25 granted so long as it is reasonable. Notwithstanding the foregoing, a Receiving Party may not
26 make any hard copy of more than 30 consecutive pages of source code absent express permission
27 of the Producing Party or an order from the Court. A "page" for purposes of this limitation is
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1 defined as an 8.5 x 11 inch sheet of paper with 12 point font. This consecutive page limitation
2 will not preclude any Party from seeking additional consecutive pages for good reason. If any
3 dispute arises concerning the number of consecutive pages, the Parties shall meet and confer in
4 good faith to attempt to resolve the dispute without the Court's intervention. Subject to any
5 challenge related to the amount of source code printed, the Producing Party shall provide all such
6 source code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL -
7 SOURCE CODE" no later than five (5) business days after such source code is printed. The
8 Producing Party may challenge the amount of source code requested in hard copy form pursuant to
9 the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing
10 Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for purposes
11 of dispute resolution.

12 (e) The Receiving Party shall maintain a record of any individual who has inspected
13 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all
14 paper copies of any printed portions of the source code in a secured, locked area. The Receiving
15 Party shall not create any electronic or other images of the paper copies and shall not convert any
16 of the information contained in the paper copies into any electronic format. The Receiving Party
17 shall only make additional paper copies if such additional copies are (1) necessary to prepare court
18 filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for
19 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during
20 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given
21 to or left with a court reporter or any other individual.

22 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
23 OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that compels
25 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
26 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
27 SOURCE CODE," that Party must:
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1 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
2 of the subpoena or court order;

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

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

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

16 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
17 THIS LITIGATION

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

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

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

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

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

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

14 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

22 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
23 PROTECTED MATERIAL

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

6 14. MISCELLANEOUS

7 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the court in the future.

9 14.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to disclosing or
11 producing any information or item on any ground not addressed in this Stipulated Protective
12 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
13 the material covered by this Protective Order.

14 14.3 Export Control. Disclosure of Protected Material shall be subject to all
15 applicable laws and regulations relating to the export of technical data contained in such Protected
16 Material, including the release of such technical data to foreign persons or nationals in the United
17 States or elsewhere. The Producing Party shall be responsible for identifying any such controlled
18 technical data, and the Receiving Party shall take measures necessary to ensure compliance.

19 14.4 Filing Protected Material. Without written permission from the Designating
20 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
21 in the public record in this action any Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
23 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
24 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
25 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
26 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
27 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving
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1 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
2 unless otherwise instructed by the court.

3 15. FINAL DISPOSITION

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

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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1 DATED: May 15, 2014

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

3 By /s/ John M. Neukom

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Attorneys for Plaintiff FORTINET, INC.

9 DATED: May 15, 2014

DLA PIPER LLP (US)

11 By /s/ Sean C. Cunningham

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Facsimile: 619.699.2701

Attorneys for Defendant and Counterclaim
Plaintiff SOPHOS INC. and Counterclaim
Plaintiff SOPHOS LTD.

18 **SIGNATURE ATTESTATION**

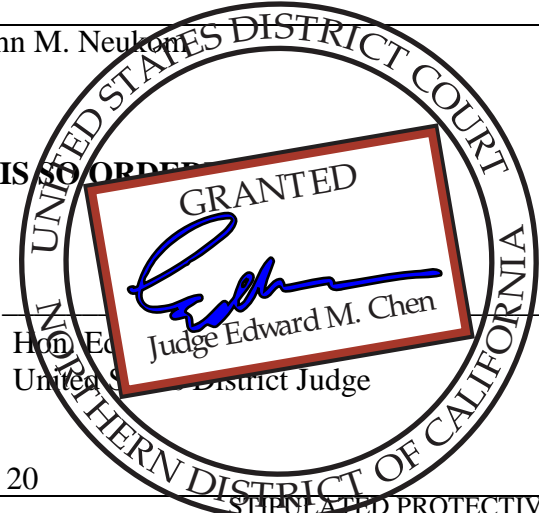
19 Pursuant to Local Rule 5.1(i)(3), I attest under penalty of perjury that concurrence in the
20 filing of this document has been obtained from Sean C. Cunningham.

21 /s/ John M. Neukom

22 John M. Neukom

24 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

26 DATED: 5/16/14



27 Hon. Ed
28 United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____[date] in the case of Fortinet, Inc. v. Sophos, Inc., et al, Case No. 3:13-cv-05831-EMC, 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: _____

Signature: _____