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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DPIX LLC, a Delaware limited liability company,

Plaintiff,

vs.

YIELDBOOST TECH, INC., a California corporation, and KYO YOUNG CHUNG, an individual,

Defendants.

No. 3:14-CV-05382-JST

ORDER APPROVING STIPULATED PROTECTIVE ORDER

Re: ECF Nos. 70, 71

12 1. PURPOSES AND LIMITATIONS

13 Disclosure and discovery activity in this action are likely to involve production of
14 confidential, proprietary, or private information for which special protection from public disclosure
15 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
16 the Parties hereby stipulate to and petition the court to enter the following Stipulated Protective
17 Order. The Parties acknowledge that this Stipulated Protective Order does not confer blanket
18 protections on all disclosures or responses to discovery and that the protection it affords from public
19 disclosure and use extends only to the limited information or items that are entitled to confidential
20 treatment under the applicable legal principles. The Parties further acknowledge, as set forth in
21 Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential
22 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
23 the standards that will be applied when a Party seeks permission from the court to file material
24 under seal.

25 2. DEFINITIONS

26 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
27 information or items under this Stipulated Protective Order.
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1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
3 Civil Procedure 26(c).

4 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
5 as their support staff).

6 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter and (1) who has no
8 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for
9 this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
10 and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed.

11 2.5 Designating Party: a Party or Non-Party that designates information or items that it
12 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
14 COUNSEL EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

15 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
16 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
17 transcripts, and tangible things), that are produced or generated in disclosures or responses to
18 discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
20 the litigation who (1) has been retained by a Party or its Outside Counsel of Record to serve as a
21 disclosed expert witness in this action, (2) is not a past or current employee of a Party or of a Party’s
22 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
23 of a Party’s competitor. Expert does not include experts or consultants who have not been retained
24 by Outside Counsel of Record to be a disclosed Expert, who have not been disclosed as an Expert,
25 and/or who will not be a disclosed Expert in this action.

26 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
27 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
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1 Non-Party would create a substantial risk of serious harm that could not be avoided by less
2 restrictive means.

3 2.9 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” Information
4 or Items: extremely sensitive “Confidential Information or Items,” including without limitation
5 proprietary or trade secret information, disclosure of which to another Party or Non-Party would
6 create a substantial risk of serious harm that could not be avoided by less restrictive means.

7 2.10 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
8 sensitive “Confidential Information or Items” representing computer code and associated comments
9 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
10 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
11 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
12 by less restrictive means.

13 2.11 House Counsel: attorneys who are employees of a Party to this action. House
14 Counsel does not include Outside Counsel of Record.

15 2.12 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.13 Outside Counsel of Record: attorneys who are not employees of a Party to this action
18 but are retained to represent or advise a Party to this action and have appeared in this action on
19 behalf of that Party or, for the purpose of this action, are affiliated with a law firm which has
20 appeared on behalf of that Party. Outside Counsel of Record does not include House Counsel or
21 Designated House Counsel.

22 2.14 Party: any party to this action, including all of its officers, directors, employees,
23 consultants, retained Experts, and Outside Counsel of Record (and their support staffs).

24 2.15 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
25 Material in this action.

26 2.16 Professional Vendors: persons or entities that provide Outside Counsel of Record
27 litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their
2 employees and subcontractors.

3 2.17 Protected Material: any Disclosure or Discovery Material that is designated as
4 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
5 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” or as “HIGHLY
6 CONFIDENTIAL – SOURCE CODE.”

7 2.18 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 3. SCOPE

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

23 4. DURATION

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

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5 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

25 Designation in conformity with this Stipulated Protective Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents, but
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party

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

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

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

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

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

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

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating Party's
5 right to secure protection under this Stipulated Protective Order for such material. Upon timely
6 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
7 material is treated in accordance with the provisions of this Stipulated Protective Order.

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9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
13 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
14 confidentiality designation by electing not to mount a challenge promptly after the original
15 designation is disclosed.

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

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1 has engaged in this meet and confer process first or establishes that the Designating Party is
2 unwilling to participate in the meet and confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
5 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
6 initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer process
7 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
8 competent declaration affirming that the movant has complied with the meet and confer
9 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
10 motion including the required declaration within 21 days (or 14 days, if applicable) shall
11 automatically waive the confidentiality designation for each challenged designation. In addition, the
12 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
13 good cause for doing so, including a challenge to the designation of a deposition transcript or any
14 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and confer
16 requirements imposed by the preceding paragraph.

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

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
26 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
27 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
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1 the categories of persons and under the conditions described in this Stipulated Protective Order.
2 When the litigation has been terminated, a Receiving Party must comply with the provisions of
3 section 15 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a location and in a
5 secure manner that ensures that access is limited to the persons authorized under this Stipulated
6 Protective Order. Electronic Protected Material digitally stored for retrieval by the Receiving Party
7 shall be stored in a manner that requires password protection for access thereto.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
9 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
10 information or item designated “CONFIDENTIAL” only to:

11 (a) (i) the Receiving Party’s Outside Counsel of Record in this action, as well as (ii)
12 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
13 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
14 Bound” that is attached hereto as Exhibit A;

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

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

21 (d) the court and its personnel;

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

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

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

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
8 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

10 (a) (i) the Receiving Party’s Outside Counsel of Record in this action, as well as (ii)
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
12 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
13 Bound” that is attached hereto as Exhibit A;

14 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
15 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3)
16 who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to
17 whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

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

21 (d) the court and its personnel;

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

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

1 7.4 Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”
2 or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise
3 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
4 disclose any information or item designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL
5 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

6 (a) (i) the Receiving Party’s Outside Counsel of Record in this action, as well as (ii)
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
8 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
9 Bound” that is attached hereto as Exhibit A;

10 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for
11 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
12 A), and (3) as to whom the procedures set forth in paragraph 7.5(a)(2), below, have been followed;

13 (c) the court and its personnel;

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

17 (e) the author or recipient of a document containing the information or a custodian or
18 other person who otherwise possessed or knew the information.

19 7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES
21 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Designated
22 House Counsel or Experts.

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

4 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
5 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
6 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” or “HIGHLY
8 CONFIDENTIAL – SOURCE CODE”] pursuant to paragraph 7.3(c) or 7.4(b) first must make a
9 written request to the Designating Party that (1) identifies the general categories of “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
11 COUNSEL EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that
12 the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the
13 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
14 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity
15 from whom the Expert has received compensation or funding for work in his or her areas of
16 expertise or to whom the Expert has provided professional services, including in connection with a
17 litigation, at any time during the preceding five years,² and (6) identifies (by name and number of
18 the case, filing date, and location of court) any litigation in connection with which the Expert has
19 offered expert testimony, including through a declaration, report, or testimony at a deposition or
20 trial, during the preceding five years.

21 (b) A Party that makes a request and provides the information specified in the
22 preceding respective paragraphs may disclose the subject Protected Material to the identified

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24 ¹ It may be appropriate in certain circumstances to require any Designated House Counsel who
25 receives “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this
26 Order to disclose any relevant changes in job duties or responsibilities prior to final disposition of
the litigation to allow the Designating Party to evaluate any later-arising competitive decision-

27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-
28 party, then the Expert should provide whatever information the Expert believes can be disclosed
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 Designated House Counsel or Expert, as the case may be, unless, within 14 days of delivering the
2 request, the Party receives a written objection from the Designating Party. Any such objection must
3 set forth in detail the grounds on which it is based.

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

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

21 8. PROSECUTION BAR

22 Absent written consent from the Producing Party, any individual who reviews technical
23 materials designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
24 "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" or "HIGHLY
25 CONFIDENTIAL – SOURCE CODE" information shall not be involved in the prosecution of
26 patents or patent applications concerning the subject matter of the technical document that is not
27 publicly known or otherwise available, and the patent asserted in this action and any patent or
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1 application claiming priority to or otherwise related to the patent asserted in this action, before any
2 foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent
3 Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly drafting,
4 amending, advising, or otherwise affecting the scope or maintenance of patent claims.³ To avoid any
5 doubt, “prosecution” as used in this paragraph does not include representing the patent owner or a
6 challenger or any other party in a challenge to the validity of the patent-in-suit before a domestic or
7 foreign agency (including, but not limited to, a reissue protest, ex parte reexamination or inter
8 partes review), so long as such representation does not involve the drafting or amendment of claims.
9 This Prosecution Bar shall begin when said “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” or “HIGHLY
11 CONFIDENTIAL – SOURCE CODE” information is first reviewed by the affected individual and
12 shall end two (2) years after final termination of this action.⁴

13 9. SOURCE CODE

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

17 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
18 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
19 OUTSIDE COUNSEL EYES ONLY” information including the Prosecution Bar set forth in
20 Paragraph 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
21 OUTSIDE COUNSEL EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.4
22 and 7.5, with the exception of Designated House Counsel.

23
24 ³ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.
25 ⁴ Alternative: It may be appropriate for the Prosecution Bar to apply only to individuals who receive
26 access to another Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
27 “HIGHLY CONFIDENTIAL –OUTSIDE COUNSEL EYES ONLY” or “HIGHLY
28 CONFIDENTIAL – SOURCE CODE” technical or source code information pursuant to this Order,
such as under circumstances where one or more Parties is not expected to produce “HIGHLY
CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
COUNSEL EYES ONLY” information that is technical in nature or “HIGHLY CONFIDENTIAL –
SOURCE CODE” information.

1 (c) Any source code produced in discovery shall be made available for inspection
2 in a format and with tools through which it could be reasonably reviewed and searched during
3 normal business hours or other mutually agreeable times at a mutually agreed-upon location that is
4 reasonably convenient for the Receiving Party and any Experts to whom the source code may be
5 disclosed. The source code shall be made available for inspection on a secured computer in a
6 secured room without Internet access or network access to other computers, and the Receiving Party
7 shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable
8 media or recordable device. The Producing Party may only visually monitor the activities of the
9 Receiving Party's representatives during any source code review, but only to ensure that there is no
10 unauthorized recording, copying, or transmission of the source code.⁵

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

26 _____
27 ⁵ The Receiving Party shall keep a log indicating the names of any individuals inspecting the source
28 code and date and time of each such individual's initial inspection, and the names of any individuals
to whom paper copies of portions of source code are provided.

1 additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a
2 testifying Expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the
3 preparation of its case. Any paper copies used during a deposition shall be retrieved by the
4 Producing Party at the end of each day and must not be given to or left with a court reporter or any
5 other unauthorized individual.

6
7
8 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
9 LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation that compels
11 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
13 OUTSIDE COUNSEL EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” that
14 Party must:

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court
24 order shall not produce any information designated in this action as “CONFIDENTIAL” or
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
26

27 ⁶ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
confidentiality interests in the court from which the subpoena or order issued.

1 OUTSIDE COUNSEL EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before
2 a determination by the court from which the subpoena or order issued, unless the Party has obtained
3 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
4 seeking protection in that court of its confidential material – and nothing in these provisions should
5 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
6 directive from another court.

7 ///

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

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

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

- 20 1. promptly notify in writing the Requesting Party and the Non-Party that some
21 or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 22 2. promptly provide the Non-Party with a copy of the Stipulated Protective
23 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the
24 information requested; and
- 25 3. make the information requested available for inspection by the Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court
27 within 14 days of receiving the notice and accompanying information, the Receiving Party may
28

1 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
2 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
3 possession or control that is subject to the confidentiality agreement with the Non-Party before a
4 determination by the court.⁷ Absent a court order to the contrary, the Non-Party shall bear the
5 burden and expense of seeking protection in this court of its Protected Material.

6 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).⁸ If information
19 produced in discovery is subject to a claim of privilege or of protection as trial-preparation material,
20

21 ⁷ The purpose of this provision is to alert the interested parties to the existence of confidentiality
22 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

23 ⁸ Alternative: The Parties may agree that the recipient of an inadvertent production may not
24 "sequester" or in any way use the document(s) pending resolution of a challenge to the claim of
25 privilege or other protection to the extent it would be otherwise allowed by Federal Rule of Civil
Procedure 26(b)(5)(B) as amended in 2006. This could include a restriction against "presenting" the
document(s) to the court to challenge the privilege claim as may otherwise be allowed under Rule
26(b)(5)(B) subject to ethical obligations.

26 An alternate provision could state: "If information is produced in discovery that is subject to a claim
27 of privilege or of protection as trial-preparation material, the party making the claim may notify any
28 party that received the information of the claim and the basis for it. After being notified, a party
must promptly return or destroy the specified information and any copies it has and may not
sequester, use or disclose the information until the claim is resolved. This includes a restriction
against presenting the information to the court for a determination of the claim."

1 the Party making the claim may notify any Party that received the information of the claim and the
2 basis for it. After being notified, a Party must promptly return, sequester, or destroy the specified
3 information and any copies it has; must not use or disclose the information until the claim is
4 resolved; must take reasonable steps to retrieve the information if the Party disclosed it before being
5 notified; and may promptly present the information to the court under seal for a determination of the
6 claim. This provision is not intended to modify whatever procedure may be established in an e-
7 discovery order that provides for production without prior privilege review. Pursuant to Federal
8 Rule of Evidence 502(d) and (e), insofar as the Parties reach an agreement on the effect of
9 disclosure of a communication or information covered by the attorney-client privilege or work
10 product protection, the Parties may incorporate their agreement in the stipulated protective order
11 submitted to the court.

12 14. MISCELLANEOUS

13 14.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the right
14 of any person to seek its modification by the court in the future.

15 14.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated
16 Protective Order no Party waives any right it otherwise would have to object to disclosing or
17 producing any information or item on any ground not addressed in this Stipulated Protective Order.
18 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
19 material covered by this Protective Order.

20 14.3 [Intentionally Left Blank]

21 14.4 Filing Protected Material. Without written permission from the Designating Party or
22 a court order secured after appropriate notice to all interested persons, a Party may not file in the
23 public record in this action any Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
25 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
26 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
27 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
28

1 to protection under the law. If a Receiving Party's request to file Protected Material under seal
2 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
3 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
4 instructed by the court.

5 15. FINAL DISPOSITION

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

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 HOGE, FENTON, JONES AND APPEL, INC.

23
24 DATED: _____

_____/Stephanie O. Sparks/

Stephanie O. Sparks

Shella Deen

Crystal N. Riggins

Justine M. Cannon

Attorneys for Plaintiff and Counter-Defendant

dpiX LLC

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PREBEG, FAUCETT & ABBOT PLLC

DATED: _____

Matthew J. M. Prebeg/
Matthew J. M. Prebeg, Ph.D
Matthew S. Compton, Jr.
Stephen W. Abbott
Attorneys for Defendant and Counterclaimant
Yieldboost Tech, Inc., and Defendant Kyo Young
Chung

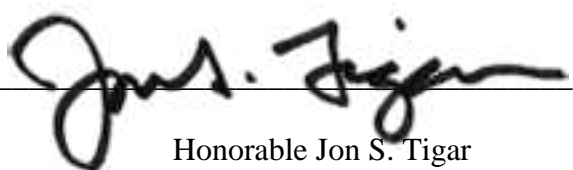
SUSMAN GODFREY L.L.P.

DATED: _____

Kalpana Srinivasan/
Kalpana Srinivasan
Max L. Tribble, Jr.
Attorneys for Defendant and Counterclaimant
Yieldboost Tech, Inc., and Defendant Kyo Young
Chung

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: September 11, 2015



Honorable Jon S. Tigar
United States District Court Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for
6 the Northern District of California on [date] in the case of dpiX LLC v. Yieldboost Tech, Inc., et al.,
7 Case No. 3:14-cv-05382-JST, in the United States District Court for the Northern District of
8 California, San Francisco Division. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
11 disclose in any manner any information or item that is subject to this Stipulated Protective Order to
12 any person or entity except in strict compliance with the provisions of this Stipulated Protective
13 Order.

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

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

21
22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____
25 [printed name]

26 Signature: _____
27 [signature]