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ODL, INCORPORATED and INHOUZ, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

HOUZZ INC.,

Plaintiff,

v.

ODL, INCORPORATED and
INHOUZ, LLC,

Defendants.

Case No. 15-cv-03847-WHO
STIPULATED PROTECTIVE ORDER

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1. PURPOSES AND LIMITATIONS

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

2. DEFINITIONS

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

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

2.3 Counsel (without qualifier): Outside Counsel of Record.

2.4 Intentionally Omitted.

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

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

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

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

2.9 Intentionally Omitted.

2.10 Intentionally Omitted.

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

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

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

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

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

2.16 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEY EYES ONLY.”

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

1 3. SCOPE

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

13 4. DURATION

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

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
22 Party that designates information or items for protection under this Order must take care to limit any such
23 designation to specific material that qualifies under the appropriate standards. To the extent it is practical
24 to do so, the Designating Party must designate for protection only those parts of material, documents,
25 items, or oral or written communications that qualify – so that other portions of the material, documents,
26 items, or communications for which protection is not warranted are not swept unjustifiably within the
27 ambit of this Order.

28 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be

1 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or
2 retard the case development process or to impose unnecessary expenses and burdens on other parties)
3 expose the Designating Party to sanctions.

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
9 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

10 Material that qualifies for protection under this Order must be clearly so designated before the
11 material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
14 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" to each
16 page that contains protected material. If only a portion or portions of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins) and must specify, for each portion, the level of protection being
19 asserted.

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

5 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating
6 Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected
7 testimony and specify the level of protection being asserted. When it is impractical to identify separately
8 each portion of testimony that is entitled to protection and it appears that substantial portions of the
9 testimony may qualify for protection, the Designating Party may invoke on the record (before the
10 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific
11 portions of the testimony as to which protection is sought and to specify the level of protection being
12 asserted. Only those portions of the testimony that are appropriately designated for protection within the
13 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
14 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
15 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE
16 ATTORNEYS’ EYES ONLY.”

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

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

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

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

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

20 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
21 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
22 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
23 Designating Party has waived the confidentiality designation by failing to file a motion to retain
24 confidentiality as described above, all parties shall continue to afford the material in question the level of
25 protection to which it is entitled under the Producing Party's designation until the court rules on the
26 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 disclosed or
3 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
4 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
5 persons and under the conditions described in this Order. When the litigation has been terminated, a
6 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

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

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

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

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

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

21 (d) the court and its personnel;

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

25 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
26 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
27 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or
28 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and

1 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

4 The Parties reserve their right to apply for an appropriate order if the persons covered in Section
5 7.2(e) or 7.2(f) refuse to sign the Acknowledgment and Agreement to be Bound.

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

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

13 (b) intentionally omitted;

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

17 (d) the court and its personnel;

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

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

23 The Parties reserve their right to apply for an appropriate order if the persons covered in Section
24 7.3(e) or 7.3(f) refuse to sign the Acknowledgment and Agreement to be Bound.

25 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
26 OUTSIDE ATTORNEYS’ EYES ONLY” Information or Items to Experts.

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

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

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

2 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
3 proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs
4 the Receiving Party's need to disclose the Protected Material to its Expert.

5 8. Intentionally Omitted.

6 9. Intentionally Omitted.

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

9 If a Party is served with a subpoena or a court order issued in other litigation that compels
10 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
11 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" that Party must:

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

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

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

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

26 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
27 LITIGATION

28 (a) The terms of this Order are applicable to information produced by a Non-Party in this

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

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

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

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

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

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

21 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

2 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
3 MATERIAL

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

12 14. MISCELLANEOUS

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

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

19 14.3 Intentionally Omitted.

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

1 Rule 79-5(e)(2) unless otherwise instructed by the court.

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

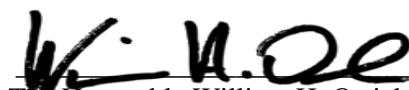
18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 DATED: February 18, 2016 /s/ Janet L. Cullum
20 Janet L. Cullum (104366)
21 COOLEY LLP
22 Attorneys for Plaintiff

23 DATED: February 18, 2016 /s/ Peter J. Mort
24 Peter J. Mort (SBN 102480)
25 BARNES & THORNBURG LLP
26 Attorneys for Defendants

27 PURSUANT TO STIPULATION, IT IS SO ORDERED.

28 DATED: February 22, 2016


The Honorable William H. Orrick
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 December ____, 2015 in the case of Houzz Inc. v. ODL, Incorporated et al., Case No. 15-cv-03847-WHO. 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: _____