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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12	PETROLIAM NASIONAL BERHAD,)	CASE NO: 09-CV-5939 PJH
13	Plaintiff,)	
14	vs.)	STIPULATED PROTECTIVE
15	GODADDY.COM, INC.,)	ORDER
16	Defendant.)	
17)	

18
19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve production of
21 confidential, proprietary, or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
23 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
24 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
25 all disclosures or responses to discovery and that the protection it affords from public disclosure
26 and use extends only to the limited information or items that are entitled to confidential treatment
27 under the applicable legal principles. The parties further acknowledge, as set forth in Section
28 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential

1 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
2 the standards that will be applied when a party seeks permission from the court to file material
3 under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
8 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
9 Rule of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
11 (as well as their support staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

14 2.5 Disclosure or Discovery Material: all items or information, regardless of the
15 medium or manner in which it is generated, stored, or maintained (including, among other things,
16 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
17 responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
20 witness or as a consultant in this action.

21 2.7 House Counsel: attorneys who are employees of a party to this action.
22 House Counsel does not include Outside Counsel of Record or any other outside counsel.

23 2.8 Non-Party: any natural person, partnership, corporation, association, or
24 other legal entity not named as a Party to this action.

25 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
26 this action but are retained to represent or advise a party to this action and have appeared in this
27 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that
28 party.

1 2.10 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 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
4 Discovery Material in this action.

5 2.12 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 2.13 Protected Material: any Disclosure or Discovery Material that is designated
10 as "CONFIDENTIAL."

11 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
12 from a Producing Party.

13 3. SCOPE

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

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations imposed by this
28 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order

1 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
2 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
3 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
4 including the time limits for filing any motions or applications for extension of time pursuant to
5 applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
28 Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected

1 material. If only a portion or portions of the material on a page qualifies for protection, the
2 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
3 markings in the margins).

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

14 (b) for testimony given in deposition or in other pretrial or trial
15 proceedings, that the Designating Party identify on the record, before the close of the deposition,
16 hearing, or other proceeding, all protected testimony.

17 (c) for information produced in some form other than documentary and
18 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
19 the container or containers in which the information or item is stored the legend
20 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
21 the Producing Party, to the extent practicable, shall identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
23 to designate qualified information or items does not, standing alone, waive the Designating Party's
24 right to secure protection under this Order for such material. Upon timely correction of a
25 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
26 in accordance with the provisions of this Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
5 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
6 right to challenge a confidentiality designation by electing not to mount a challenge promptly after
7 the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process by providing written notice of each designation it is challenging and describing
10 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
11 written notice must recite that the challenge to confidentiality is being made in accordance with
12 this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge
13 in good faith and must begin the process by conferring directly (in voice to voice dialogue; other
14 forms of communication are not sufficient) within 14 days of the date of service of notice. In
15 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
16 designation was not proper and must give the Designating Party an opportunity to review the
17 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
18 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage
19 of the challenge process only if it has engaged in this meet and confer process first or establishes
20 that the Designating Party is unwilling to participate in the meet and confer process in a timely
21 manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
24 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
25 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
26 process will not resolve their dispute, whichever is earlier. Each such motion must be
27 accompanied by a competent declaration affirming that the movant has complied with the meet
28 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to

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

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

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this case only for
18 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
19 disclosed only to the categories of persons and under the conditions described in this Order. When
20 the litigation has been terminated, a Receiving Party must comply with the provisions of section
21 13 below (FINAL DISPOSITION).

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

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
25 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
26 disclose any information or item designated "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as
28 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to

1 disclose the information for this litigation and who have signed the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A;

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

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

9 (d) the court and its personnel;

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

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

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

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
22 OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
25 must:

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

28

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

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

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

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

16 (a) The terms of this Order are applicable to information produced by a
17 Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by
18 Non-Parties in connection with this litigation is protected by the remedies and relief provided by
19 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
20 seeking additional protections.

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

25 1. promptly notify in writing the Requesting Party and the Non-
26 Party that some or all of the information requested is subject to a confidentiality agreement with a
27 Non-Party;
28

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

5 Acceptance by a party or its attorney of information disclosed under designation as
6 protected shall not constitute an admission that the information is, in fact, entitled to protection.
7 Inadvertent disclosure of information which the disclosing party intended to designate as protected
8 shall not constitute waiver of any right to claim the information as protected upon discovery of the
9 error. The inadvertent production of any privileged material shall not be deemed a waiver or
10 impairment of any claim of privilege with respect to that material, including, but not limited to, the
11 attorney-client privilege and/or work-product doctrine. Any party or its counsel recognizing that
12 he/she/it has obtained material containing in whole or in part information protected by the
13 attorney-client privilege and/or work-product doctrine that appears to have been inadvertently
14 disclosed shall not read or review the privileged material but shall immediately return the material
15 to the producing party. Within five (5) business days of receiving written notice from a person or
16 party who represents that he/she/it has inadvertently produced any privileged material, the
17 recipient(s) of such request shall return the original and all copies of such inadvertently produced
18 privileged material within his/her/its possession, custody, or control.

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to disclosing or
24 producing any information or item on any ground not addressed in this Stipulated Protective
25 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
26 the material covered by this Protective Order.

27 12.3 Filing Protected Material. Without written permission from the Designating
28 Party or a court order secured after appropriate notice to all interested persons, a Party may not file

1 in the public record in this action any Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
3 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
4 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
5 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
6 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
7 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving
8 Party may file the information in the public record pursuant to Civil Local Rule 79- 5(e) unless
9 otherwise instructed by the court.

10 13. FINAL DISPOSITION

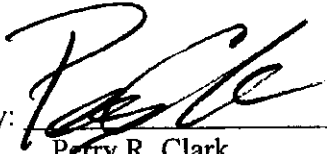
11 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
12 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
13 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
14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

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IT IS SO STIPULATED.

Dated: ~~June~~ ^{July 7} ___, 2011

LAW OFFICES OF PERRY R. CLARK

By: 
Perry R. Clark

Attorney for Plaintiff
PETROLIAM NASIONAL BERHAD
(PETRONAS)

Dated: June ___, 2011

PETROLIAM NASIONAL BERHAD

By: _____
Plaintiff

Dated: June ___, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____
John L. Slafsky
David E. Kramer
Hollis Beth Hire

Dated: June ___, 2011

GODADDY.COM, INC.

By: _____
Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June ___, 2011

Hon. Phyllis J. Hamilton
United States District Judge

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IT IS SO STIPULATED.

Dated: June __, 2011

LAW OFFICES OF PERRY R. CLARK

By: _____
Perry R. Clark

Attorney for Plaintiff
PETROLIAM NASIONAL BERHAD
(PETRONAS)

Dated: June 7, 2011

PETROLIAM NASIONAL BERHAD

By:  _____
Plaintiff

Dated: June __, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____
John L. Slafsky
David E. Kramer
Hollis Beth Hire

Dated: June __, 2011

GODADDY.COM, INC.

By: _____
Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June __, 2011

Hon. Phyllis J. Hamilton
United States District Judge

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IT IS SO STIPULATED.

Dated: June __, 2011

LAW OFFICES OF PERRY R. CLARK

By: _____
Perry R. Clark

Attorney for Plaintiff
PETROLIAM NASIONAL BERHAD
(PETRONAS)


Dated: June __, 2011

PETROLIAM NASIONAL BERHAD

By: _____
Plaintiff

Dated: ^{July} ~~June~~ 8, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
John L. Slafsky
David E. Kramer
Hollis Beth Hire

Dated: June __, 2011

GODADDY.COM, INC.

By: _____
Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June __, 2011

Hon. Phyllis J. Hamilton
United States District Judge

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IT IS SO STIPULATED.

Dated: June __, 2011

LAW OFFICES OF PERRY R. CLARK

By: _____
Perry R. Clark

Attorney for Plaintiff
PETROLIAM NASIONAL BERHAD
(PETRONAS)

Dated: June __, 2011

PETROLIAM NASIONAL BERHAD

By: _____
Plaintiff

Dated: June __, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____
John L. Slafsky
David E. Kramer
Hollis Beth Hire

Dated: June 28, 2011

GODADDY.COM, INC.

By: Kelly W Lewis
Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

July 11

Dated: ~~June~~ __, 2011

Hon. Phyllis J.
United States I



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IT IS SO STIPULATED.

Dated: June __, 2011

LAW OFFICES OF PERRY R. CLARK

By: _____
Perry R. Clark

Attorney for Plaintiff
PETROLIAM NASIONAL BERHAD
(PETRONAS)

Dated: June __, 2011

PETROLIAM NASIONAL BERHAD

By: _____
Plaintiff

Dated: June __, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____
John L. Slafsky
David E. Kramer
Hollis Beth Hire

Dated: June __, 2011

GODADDY.COM, INC.

By: _____
Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June __, 2011

Hon. Phyllis J. Hamilton
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 *Petroliam Nasional Berhad v. GoDaddy.com, Inc.*,
Case No. 09-CV-5939 PJH. 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: _____