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15
 16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)**

18	Adobe Systems Incorporated,)	Case No.: C10-2769 CW (DMRx)
19)	
20	Plaintiff,)	STIPULATED PROTECTIVE
21	v.)	ORDER; ORDER
22)	
23	Tony Kornrumpf, et al.,)	Honorable Judge Claudia Wilken
24	Defendants.)	
25)	
26	ALL RELATED CLAIMS		
27)	
28)	

1 It is stipulated and agreed by and between Plaintiff/Counter-Defendant
2 Adobe Systems, Inc. and Defendants/Counter-Plaintiffs Hoops Enterprise, LLC and Tony
3 Kornrumpf, by and through their respective counsel of record, (hereinafter singularly
4 “Party” or collectively (the Parties”), that the terms and conditions of this Stipulated
5 Protective Order shall govern the handling of documents, answers to interrogatories,
6 depositions, pleadings, exhibits, and all other information exchanged by the Parties in this
7 action. Disclosure and discovery activity in this action is likely to involve the production of
8 confidential, proprietary, or private information for which special protection from public
9 disclosure and from use for any purpose other than prosecuting, defending or the resolution
10 of this litigation is warranted. The Parties acknowledge that this Order does not confer
11 blanket protections on all disclosures, productions or responses to discovery and that the
12 protection it affords extends only to the limited information or items that are entitled under
13 applicable legal principles to treatment as confidential. The Parties further acknowledge
14 that this Stipulated Protective Order creates no entitlement to file confidential information
15 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
16 reflects the standards that will be applied when a Party seeks permission from the Court to
17 file material under seal.

18 It is ORDERED as follows:

19 1. This Order shall govern:

20 a. all testimony at depositions, pre-trial hearings, and at trial;

21 b. all documents, information, materials or things produced by any
22 Party or third-party in response to discovery requests and subpoenas, under the Federal Rules
23 of Civil Procedure, or otherwise;

24 c. all copies, abstracts, excerpts, analyses, summaries, or other
25 materials (written, electronic, or in other form) that contain, reflect, or disclose information
26 contained in such testimony, documents, or other materials.

27 The items listed in (a)-(c) above shall be referred to as “Discovery Materials.”
28

1 2. Any Party to this litigation shall have the right to designate Discovery
2 Materials as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” pursuant to the terms
3 of this Protective Order. Discovery Materials designated “CONFIDENTIAL” or
4 “HIGHLY CONFIDENTIAL” will be referred to as “Designated Materials.” The Party
5 making such designation will be deemed the “Designating Party.” Any third-party
6 producing documents pursuant to a subpoena or otherwise may designate Discovery
7 Materials pursuant to this Protective Order only if an authorized representative of the
8 producing third-party executes a written acknowledgment, substantially in the form of
9 Exhibit 1 annexed to this Protective Order, that the non-party has reviewed a copy of the
10 Protective Order, will comply with its terms, and will submit to the jurisdiction of this
11 Court for adjudication of any dispute regarding that third-party’s designations under
12 the Protective Order. All designations must be made in good faith and on reasonable
13 belief that the designation accurately reflects the definition of “CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL” materials.

15 a. Materials marked “CONFIDENTIAL” shall be those Discovery
16 Materials, including any document, file, portion of file, transcribed testimony or other
17 material that the Designating Party in good faith reasonably believes to comprise non-
18 public, proprietary or confidential information (including but not limited to trade
19 secrets¹, confidential research, or commercial information, such as costs, pricing,
20 financial data, marketing plans and strategies, and any other confidential or proprietary
21 information not shared or disclosed to third parties) of the Designating Party.

22 b. Materials marked “HIGHLY CONFIDENTIAL” shall be
23 those Discovery Materials, including any document, file, portion of file, transcribed
24 testimony or other material that the Designating Party in good faith reasonably believes to
25 comprise trade secrets, or other competitively sensitive confidential information, and

26 _____
27 ¹ Cal. Civil Code § 3426.1 provides that trade secret “means information, including a formula,
28 pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1 financial or other commercial information of the Designating Party, the disclosure of
2 which would be likely to cause competitive harm. Discovery Materials may only be
3 designated “HIGHLY CONFIDENTIAL” if the Designating Party believes in good faith
4 that designation as “CONFIDENTIAL” will not provide adequate protection.

5 c. A Designating Party has the right to have persons present in the
6 inspection room at all times during any inspection of Discovery Materials by counsel for
7 the Party receiving the Discovery Materials (the “Receiving Party”). If the Designating
8 Party does have a person present in the inspection room during inspection by counsel for
9 the Receiving Party, another room nearby shall be set aside for counsel to confer. In
10 addition to counsel for the Receiving Party, the Receiving Party may also have present
11 during any inspection of Discovery Materials individuals meeting the criteria set forth in
12 Paragraphs 5(a), 5(b), 5(f) and 6, *infra*. All Discovery Materials produced for
13 inspection and the information contained therein shall be treated as “HIGHLY
14 CONFIDENTIAL” prior to the receipt of copies of materials. Upon receipt of copies, the
15 designation indicated on the copy, if any, shall be the operative designation.

16 3. Discovery Materials shall be used by the Receiving Party solely for the
17 purpose of conducting this litigation, but not for any other purpose whatsoever.

18 4. Information designated as “CONFIDENTIAL” shall be used by the
19 Receiving Party solely for the purposes of litigation between the Parties, and may be
20 disclosed only to the following persons:

21 a. any employee or former employee of a Party to whom it is
22 deemed necessary that the documents be shown for purposes of the litigation, provided that
23 any such employee or former employee shall (i) be advised that they are subject to the
24 terms of this protective order; and (ii) signs the acknowledgement in the form of Exhibit
25 1 attached to this Protective Order, before being provided Designated Materials;

26 b. outside counsel for the respective Parties, and employees of and
27 independent contractors for outside counsel that are engaged in work for such counsel
28 necessary to assist in this litigation. The term “outside counsel” shall mean the attorneys

1 and their firms who have entered an appearance in this case. If any of the Parties seek to
2 add additional law firms, it shall notify the opposing Party(ies) of the intended addition.
3 The opposing Party(ies) shall have 10 days from the date of notification in which to
4 object to the disclosure of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
5 material to the intended additional law firm. If objection is timely made, no
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material may be disclosed to said
7 law firm(s) unless otherwise agreed to by the Parties or ordered by the Court. Prior to
8 disclosure of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material, the
9 additional law firm shall acknowledge in writing that it is familiar with and agrees to
10 comply with all provisions of this Protective Order;

11 c. experts or consultants retained for purposes of this litigation,
12 but only to the extent necessary to: (a) prepare a written opinion, (b) prepare to testify
13 in the Litigation, or (c) assist counsel in the prosecution or defense of the Litigation;
14 provided that such expert or consultant (i) is using the “CONFIDENTIAL” material
15 solely in connection with the Litigation, and (ii) signs the acknowledgement in the form of
16 Exhibit 1 attached to this Protective Order before being provided “CONFIDENTIAL”
17 materials;

18 d. witnesses in the course of deposition, hearing, or trial testimony
19 where counsel has a reasonable and good faith belief that examination with respect to the
20 “CONFIDENTIAL” materials is necessary, and any person being prepared to testify where
21 counsel has a reasonable and good faith belief that such person will be a witness in this
22 action and that his examination with respect to the “CONFIDENTIAL” material is
23 necessary in connection with such testimony; persons to whom “CONFIDENTIAL”
24 materials are disclosed pursuant to this subparagraph must execute the acknowledgement
25 in the form of Exhibit 1 attached to this Protective Order prior to being given
26 “CONFIDENTIAL” materials; and may not be permitted to retain copies of the
27 “CONFIDENTIAL” materials;

28 e. the author of the document and anyone shown on the document

1 as having received it in the ordinary course of business;

2 f. court reporters and persons preparing transcripts of depositions;

3 g. in-house lawyers for the respective Parties, and employees
4 regularly engaged in clerical work for such in-house lawyers, provided that any such
5 lawyers or employees thereof shall sign the Acknowledgement in the form of Exhibit 1
6 attached to this Protective Order before being provided “CONFIDENTIAL” materials;

7 h. The records of Defendants Tony Kornrumpf and/or Hoops
8 Enterprise, LLC relating to the purchase or sale of any of Plaintiff Adobe Systems
9 Incorporated’s products may be disclosed to Scott Bain of the Software & Information
10 Industry Association subject to the terms of this protective order for the limited purpose of
11 facilitating settlement of this action, provided that Mr. Bain executes a written
12 acknowledgement, substantially in the form of Exhibit 1 attached hereto, attesting that he
13 has reviewed a copy of this Protective Order, will comply with its terms in all respects and
14 will submit to the jurisdiction of this Court for adjudication of any dispute about whether he
15 has complied with the terms of this Protective Order. Mr. Bain will not be permitted to
16 keep copies of any documents provided pursuant to this paragraph 4(h).

17 i. the Court, Court personnel, and jurors or potential jurors; and

18 j. any other person only upon order of the Court or upon
19 stipulation of the Designating Party, in writing or on the record of a deposition, or at a
20 hearing or trial.

21 5. Information designated as “HIGHLY CONFIDENTIAL” shall be
22 used by the Receiving Party solely for the purposes of litigation between the Parties and
23 may be disclosed only to the following persons:

24 a. outside counsel for the respective Parties, and employees of and
25 independent contractors for outside counsel engaged in work for such counsel necessary
26 to assist in this action. The term “outside counsel” shall have the same meaning as defined in
27 paragraph 4(b) above, and the same restrictions, terms and conditions set forth in paragraph
28 4(b) above shall apply equally to this paragraph 5(a);

1 b. experts or consultants retained for purposes of this litigation, but
2 only to the extent necessary to: (a) prepare a written opinion, (b) prepare to testify in the
3 Litigation, or (c) assist counsel in the prosecution or defense of the Litigation; provided
4 that such expert or consultant (i) is using the “HIGHLY CONFIDENTIAL” material solely
5 in connection with the Litigation, (ii) signs the Acknowledgement attached to this
6 Protective Order before being provided “HIGHLY CONFIDENTIAL” materials, and (iii)
7 complies with the requirements of Paragraph 6, *infra*;

8 c. the author of the document and anyone shown on the document
9 as having received it in the ordinary course of business;

10 d. a current officer or director of the Designating Party for
11 purposes of questioning the officer or director as a witness at a deposition, hearing, or trial,
12 provided that (1) the “HIGHLY CONFIDENTIAL” materials to be shown the witness relate
13 to the topics on which the witness has been demonstrated to have knowledge or has been
14 designated as the person most knowledgeable by the Designating Party; (2) counsel for the
15 Receiving Party provides counsel for the Designating Party advance notice of the intent
16 to question the witness at his/her deposition regarding the “HIGHLY CONFIDENTIAL”
17 materials, including a specific identification of the “HIGHLY CONFIDENTIAL” materials
18 on which the witness is to be questioned; and (3) counsel for the Receiving Party provides
19 counsel for the Designating Party no less than twenty-four (24) hours advance notice in
20 writing, of the intent to question the witness at a hearing or at trial regarding the
21 “HIGHLY CONFIDENTIAL” materials, including a specific identification of the
22 “HIGHLY CONFIDENTIAL” materials on which the witness is to be questioned;

23 e. court reporters and persons preparing transcripts of depositions;

24 f. the Court, Court personnel, and jurors or potential jurors; and

25 g. any other person only upon order of the Court or upon
26 stipulation of the Designating Party, in writing or on the record of a deposition, hearing or
27 trial.

28 h. The records of Defendants Tony Kornrumpf and/or Hoops

1 Enterprise, LLC relating to the purchase or sale of any of Plaintiff Adobe Systems
2 Incorporated's products may be disclosed to Scott Bain of the Software & Information
3 Industry Association subject to the terms of this protective order for the limited purpose of
4 facilitating settlement of this action, provided that Mr. Bain executes a written
5 acknowledgement, substantially in the form of Exhibit 1 attached hereto, attesting that he
6 has reviewed a copy of this Protective Order, will comply with its terms in all respects and
7 will submit to the jurisdiction of this Court for adjudication of any dispute about whether he
8 has complied with the terms of this Protective Order. Mr. Bain will not be permitted to
9 keep copies of any documents provided pursuant to this paragraph 5(h).

10 6. Procedures for Approving Disclosure of “HIGHLY
11 CONFIDENTIAL” Material to Experts:

12 a. Unless otherwise ordered by the Court or agreed to in writing
13 by the Designating Party, a Receiving Party that seeks to disclose to an Expert any
14 information or item that has been designated “HIGHLY CONFIDENTIAL” must first
15 make a written request to the Designating Party that (1) sets forth the full name of the
16 Expert and the city and state of his or her primary residence, (2) attaches a copy of the
17 Expert's current resume, (3) identifies the Expert's current employer(s), (4)
18 identifies each person or entity from whom the Expert has received compensation for
19 work in his or her areas of expertise or to whom the Expert has provided professional
20 services at any time during the preceding five years, and (5) identifies (by name and
21 number of the case, filing date, and location of court) any litigation in connection with
22 which the Expert has provided any professional services during the preceding five years.

23 b. A Receiving Party that makes a request and provides the
24 information specified in the preceding paragraph may disclose Designated Materials
25 to the identified Expert unless, within seven court days of delivering the request, the
26 Receiving Party receives a written objection from the Designating Party. Any such
27 objection must set forth in detail the grounds on which it is based.

28 c. A Receiving Party that receives a timely written objection must

1 meet and confer with the Designating Party (through direct voice to voice dialogue) to try to
2 resolve the matter by agreement. If no agreement is reached, the Receiving Party seeking to
3 make the disclosure to the Expert may file a motion seeking permission from the court
4 to do so. Any such motion must describe the circumstances with specificity, set forth
5 in detail the reasons for which the disclosure to the Expert is reasonably necessary,
6 assess the risk of harm that the disclosure would entail and suggest any additional means
7 that might be used to reduce that risk. In addition, any such motion must be accompanied
8 by a competent declaration in which the Receiving Party describes the Parties' efforts to resolve
9 the matter by agreement (i.e., the extent and the content of the meet and confer discussions)
10 and sets forth the reasons advanced by the Designating Party for its refusal to approve the
11 disclosure.

12 d. In any such proceeding, the Designating Party shall bear the
13 burden of proving that the risk of harm that the disclosure would entail (under the
14 safeguards proposed) outweighs the Receiving Party's need to disclose the Designated
15 Materials to its Expert.

16 7. Persons who are authorized to review Designated Materials shall hold
17 such materials in confidence and shall not disclose their contents, either verbally or in
18 writing, to any person not otherwise authorized to receive such information under this
19 Protective Order, or otherwise required by law. Copies of Designated Materials shall be
20 made only to the extent necessary to facilitate permitted use under this Protective Order.

21 8. The recipient of Designated Materials provided under this Order shall
22 maintain such information in a secure and safe area and shall exercise the same standard of
23 due and proper care with respect to the storage, custody, use and/or dissemination of such
24 information as is exercised by the recipient with respect to its own proprietary information.
25 Designated Materials shall not be copied, reproduced, summarized or abstracted, except to
26 the extent that such copying, reproduction, summarization or abstraction is reasonably
27 necessary for the conduct of this lawsuit. All such copies, reproductions, summarizations,
28 extractions, and abstractions shall be subject to the terms of the Order, and labeled in the

1 same manner as the Designated Materials on which they are based.

2 9. In the event a Party deems it necessary to disclose any Materials
3 designated as “CONFIDENTIAL” to any person not specified in paragraph 4, or to disclose
4 any Material designated as “HIGHLY CONFIDENTIAL” to any person not specified in
5 paragraph 5 (the “Proposed Disclosure”), that Party shall notify counsel for the Designating
6 Party in writing of: (i) the Designated Materials it wishes to disclose, and (ii) the person or
7 persons to whom such disclosure is to be made. The Proposed Disclosure shall not be made
8 absent written permission of the Designating Party, unless the Party wishing to make the
9 Proposed Disclosure obtains an order from the Court permitting the Proposed Disclosure.
10 Counsel shall obtain from all persons to whom disclosures are made pursuant to this
11 paragraph 9 a written acknowledgement, substantially in the form of Exhibit 1 attached
12 hereto, that such person or persons have reviewed a copy of this Protective Order, will
13 comply with its terms in all respects and will submit to the jurisdiction of this Court for
14 adjudication of any dispute about whether such person or persons have complied with the
15 terms of this Protective Order.

16 10. In the event of any inadvertent disclosure of attorney-client privileged
17 information or information subject to the attorney work product doctrine or any other
18 privilege, the Party making such inadvertent disclosure, after learning of such inadvertent
19 disclosure, shall notify the Party to whom the inadvertent disclosure was made; the
20 Party to whom the inadvertent disclosure was made shall then immediately return such
21 material and all copies the Party made thereof. Also, in the event any Party hereto receives
22 any document from another Party that upon its face is subject to the attorney-client
23 privilege, attorney work product doctrine, or any other privilege, that Party shall
24 immediately return such document and all copies the Party made thereof to the Party who
25 produced the document.

26 11. Disclosing Parties shall designate Discovery Materials
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” as follows:

28 a. In the case of documents, interrogatory answers, responses to

1 requests to admit, and the information contained therein, designation shall be made by
2 placing the following legend on every page of any such document prior to production:
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL;”

4 b. In the case of depositions, designation of the portion of the
5 transcript (including exhibits) which contains Designated Materials shall be made by a
6 statement to such effect on the record in the course of the deposition or, upon review of such
7 transcript, by counsel for the Party to whose Designated Materials the deponent has had
8 access, which counsel shall designate within thirty (30) days after counsel’s receipt of a
9 certified transcript from the court reporter. If a portion of a deposition is designated as
10 Designated Materials before the deposition is transcribed, the transcript of the
11 “Designated Materials” shall be bound in a separate volume marked “CONFIDENTIAL”
12 or “HIGHLY CONFIDENTIAL” as appropriate. Any transcript or portion thereof so
13 designated shall not be produced by the court reporter of record to any non-party or
14 third party without the prior written consent of the Designating Party. If a portion of a
15 deposition is designated as Designated Materials during the course of a deposition,
16 counsel may request all persons, except persons entitled to receive Designated Materials
17 pursuant to this Protective Order, to leave the room while the deposition is proceeding
18 until completion of the answer or answers containing Designated Materials. If a portion of a
19 deposition is designated as Designated Materials after the deposition is transcribed,
20 counsel shall list on a separate piece of paper the numbers of the pages of the transcript
21 containing Designated Materials, inserting the list at the end of the transcript, and mailing
22 copies of the list to counsel for all Parties and the court reporter of record so that it may be
23 affixed to the face of the transcript and each copy thereof. Any transcript or portion thereof
24 so designated shall not be produced by the court reporter of record to any non-party or third
25 party without the prior written consent of the Designating Party. The court reporter shall
26 also maintain the original transcript file appropriately marked as “HIGHLY
27 CONFIDENTIAL” or “CONFIDENTIAL” as designated by the Designating Party and shall
28 not produce further or additional copies to any Party, non-party or third party without the

1 prior written consent of the Designating Party. Pending such designation by counsel, the
2 entire deposition transcript, including exhibits, shall be deemed
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” as designated. If no
4 designation is made within thirty (30) days after receipt of a certified transcript from the
5 court reporter, the transcript shall be considered not to contain any Designated Materials;

6 c. Transcripts of depositions or documentation produced in the
7 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” will not be
8 filed with the Court unless it is necessary to do so for purposes of trial, motions for
9 summary judgment, or other matters. The Parties shall use their best efforts to include
10 Designated Materials in Court filings only when absolutely necessary, and shall, to the extent
11 possible, file redacted versions of sealed filings that redact any portions of those filings that
12 contain or reflect Designated Materials. If a motion to seal is pending, any materials filed
13 under seal shall remain under seal and shall not be disclosed to any person other than Court
14 personnel, opposing counsel, and any other person permitted under the terms of this
15 Protective Order to have access to the sealed materials until the Court has ruled on that
16 motion. If the Court grants the motion to file under seal, the documents shall remain
17 under seal and shall not be disclosed except as provided in this Protective Order or other
18 Court Order. A complete, unredacted set of documents filed under seal shall be provided
19 by the filing Party to opposing counsel.

20 d. Any Designated Materials produced in a non-paper media (e.g.
21 videotape, audiotape, computer disk, *etc.*) may be designated as such by labeling the
22 outside of such non-paper media as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”
23 In the event a Receiving Party generates any “hard copy,” transcription, or printout from
24 any such designated non-paper media, such Party must stamp each page
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and the hard copy, transcription or
26 printout shall be treated as it is designated.

27 12. If timely corrected, an inadvertent failure to designate qualified
28 information or items as “Confidential” or “HIGHLY CONFIDENTIAL” does not,

1 standing alone, waive the Designating Party’s right to secure protection under this Order
2 for such materials. If the material is appropriately designated as “CONFIDENTIAL” or
3 ““HIGHLY CONFIDENTIAL”” after it was initially produced, the Receiving Party, on
4 timely notification of the designation, must make reasonable efforts to assure that the
5 Designated Materials are treated in accordance with the provisions of this Order.

6 13. A Party shall not be obligated to challenge the propriety of a
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation at the time made,
8 and failure to do so shall not preclude a subsequent challenge thereto during the pendency
9 of this litigation. In the event that any Party to this litigation disagrees at any stage of
10 these proceedings with such designation, such Party shall provide to the Designating Party
11 written notice of its disagreement with the designation. The Parties shall first try to dispose
12 of such dispute in good faith on an informal basis. If the dispute cannot be resolved within
13 fourteen (14) days or such shorter time as may be necessary in the circumstances after the
14 objection is received, the Party seeking to de-designate the information as
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” may file a motion requesting that
16 this Court determine whether the disputed material shall be treated as “CONFIDENTIAL” or
17 “HIGHLY CONFIDENTIAL” under the Protective Order. The burden of proving that
18 information has been properly designated as “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL” is on the Designating Party. Discovery Material designated as
20 Designated Materials shall retain this status as well as its category of designation until such
21 time as either: (a) the Parties expressly agree otherwise in writing, or (b) the Court orders
22 otherwise, unless such order is stayed pending appellate review.

23 14. In the event that any Designated Materials is used in any Court
24 proceeding in connection with this litigation (other than trial), it shall not lose its
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” status through such use, and the
26 Parties shall take all steps reasonably required to protect its confidentiality during such
27 use.

28 15. In the event that the case proceeds to trial, any Designated Material

1 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” becomes public and
2 will be presumptively available to all members of the public, including the press, unless
3 sufficient cause is shown in advance of trial to proceed otherwise.

4 16. If Designated Materials are disclosed to any person other than in the
5 manner authorized by this Order, the person responsible for the disclosure must immediately
6 bring all pertinent facts relating to such disclosure to the attention of counsel for the
7 Designating Party and, without prejudice to any other rights and remedies of the Parties,
8 make every effort to prevent further disclosure by it or by the person who was the recipient
9 of such information.

10 17. In the event any Receiving Party having possession, custody or control
11 of any Discovery Materials provided by the Designating Party receives a subpoena or other
12 process or order to produce in another legal proceeding the Discovery Materials, such
13 Receiving Party shall notify counsel for the Designating Party of the subpoena or other
14 process or order, furnish counsel for the Designating Party with a copy of said subpoena
15 or other process or order, and cooperate with respect to all reasonable procedures sought to
16 be pursued by the Designating Party whose interests may be affected. The Designating
17 Party shall have the burden of defending against such subpoena, process or order. The
18 Receiving Party shall be entitled to comply with the subpoena or other process or order
19 except to the extent the Designating Party is successful in obtaining an order modifying or
20 quashing the subpoena or other process or order.

21 18. Entering into, agreeing to, and/or producing or receiving information
22 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” or otherwise complying
23 with the terms of this Protective Order shall not:

24 a. operate as an admission by any Party that any material
25 designated by another Party or non-party actually contains or reflects trade secrets or other
26 confidential information;

27 b. reduce in any way the rights of the Parties or non-parties from
28 whom discovery may be sought to object to a request for discovery or to the production of

1 documents or materials that they may consider not subject to discovery or privileged from
2 discovery;

3 c. prejudice in any way the rights of any Party to object to the
4 authenticity or admissibility of any document, materials, or testimony that is subject to this
5 Protective Order;

6 d. prejudice in any way the rights of any Party to seek a
7 determination by the Court as to the appropriateness of a designation; and/or

8 e. prevent the Parties from agreeing to alter or waive the protections
9 or remedies provided in this Protective Order with respect to any particular Designated
10 Materials or Discovery Materials, provided that such agreement, alteration, or waiver is in
11 writing and signed by all Parties.

12 19. This Stipulated Protective Order is without prejudice to the right of any
13 Party to seek relief from the Court, upon good cause shown, from any of the provisions
14 contained in the Stipulated Protective Order.

15 20. This Stipulated Protective Order shall not be construed as waiving any
16 right to assert a claim of privilege, relevance, overbreadth, trade secret, burdensomeness
17 or other grounds for not producing material called for, and access to such material shall be
18 only as otherwise provided by the discovery rules and other applicable law both foreign
19 and domestic.

20 21. Nothing contained herein shall preclude a producing entity from using
21 his, her, or its own confidential information, documents, or materials in any manner he, she,
22 or it sees fit, or from revealing such confidential information, documents, or materials to
23 whomever he, she, or it chooses.

24 22. After termination of this action, the restrictions on the communication
25 and disclosure provided for herein shall continue to be binding upon the Parties and all
26 other persons to whom Designated Materials or information contained therein have been
27 communicated or disclosed pursuant to the provisions of this Order or any other Order of
28 this Court. The Court shall retain continuing jurisdiction to enforce the terms of this

1 Protective Order.

2 23. All Designated Material subject to this Protective Order shall be
3 returned to the Designating Parties or destroyed upon termination of this action.
4 Termination of this action shall be taken and construed as the date forty-five (45) days
5 following (a) the filing of a stipulated dismissal or the entry of a voluntary dismissal; (b) a
6 final non-appealable order disposing of this case; or (c) the expiration of the time for any
7 appeal. Upon such termination, counsel of record for the Receiving Party shall notify
8 counsel for the Designating Party of compliance. Counsel for the Receiving Party shall
9 make a reasonable effort to retrieve any documents or information subject to this Protective
10 Order from any person to whom such information has been given, and shall notify counsel
11 for the Designating Party of the failure to retrieve any such information.

12 24. Such information shall include descriptive detail of any document not
13 returned or destroyed. Nothing in this paragraph shall preclude outside counsel from
14 retaining after termination of this action one copy of (a) pleadings, motions, and memoranda
15 filed with the Court; (b) correspondence, attorney notes, settlement related documents; and (c)
16 deposition, hearing and trial transcripts and exhibits, provided, however, that such counsel
17 may not disclose retained materials that contain Designated Materials to any other person
18 and shall keep such retained materials in a manner reflecting their confidential nature.

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22 (Signature Page To Follow)

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IT IS SO STIPULATED.

Dated: February 11, 2011

J. Andrew Coombs, A Professional Corp.

By: /s/ Annie S. Wang
J. Andrew Coombs
Annie S. Wang
Attorneys for Plaintiff and Counter-Defendant Adobe
Systems Incorporated

Dated: February 11, 2011

McCurdy & Leibl, LLP

By: /s/ Reagan E. Boyce
John D. McCurdy, Esq.
Reagan E. Boyce, Esq.
Attorney for Defendants and Counter-Plaintiffs Hoops
Enterprise, LLC and Tony Kornrumpf

EXHIBIT 1

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2 I, _____ [print or type full name], of _____ [print or
3 type full address], declare under penalty of perjury that I have read in its entirety and
4 understand the Stipulated Protective Order that was issued by the United States District
5 Court for the Northern District of California on _____ in the case of **ADOBE SYSTEMS**
6 **INCORPORATED v. KORNRUMPF, et. al., Case No.: 10-CV-02769 CW (DMRx)**. I
7 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and
8 I understand and acknowledge that failure to so comply could expose me to sanctions and
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
10 manner any information or item that is subject to this Stipulated Protective Order to any
11 person or entity except in strict compliance with the provisions of this Order.

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

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

20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____
24 [printed name]

25 Signature: _____

ORDER

FOR GOOD CAUSE SHOWN, the Stipulated Protective Order, filed concurrently herewith, is hereby entered.

Documents subject to this order may be filed under seal only by specific order of the Court. If a Party desires to file a document subject to this order under seal, the Party shall submit a stipulation signed by all Parties explaining specifically what documents are at issue and why they deserve heightened protection from disclosure. If the Parties are unable to reach a stipulation, the Party desiring the file under seal may submit an *ex parte* application, explaining both why the Court should allow the filing to be under seal and also why the Parties were unable to reach a stipulation. Only in exceptional circumstances will the Court allow briefs to be filed under seal.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 2/14/2011


Honorable Judge Claudia Wilken
United States District Judge