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11 Attorneys for Plaintiff FORMFACTOR, INC.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

16 **FORMFACTOR, INC.**, a Delaware
corporation,

17 Plaintiff,

18 v.

19 **MICRO-PROBE INCORPORATED**, a
20 California corporation; and **DAVID**
BROWNE, an individual

21 Defendants.
22

Case No: 4:10-cv-03095-PJH

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

1 1. PURPOSES AND LIMITATIONS

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

15 2. DEFINITIONS

16 2.1. Challenging Party: a Party or Non-Party that challenges the designation of
17 information or items under this Order.

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

21 2.3. Counsel (without qualifier): Outside Counsel of Record and House
22 Counsel (as well as their support staff).

23 2.4. Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 2.5. Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including, among other
28 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures

1 or responses to discovery in this matter.

2 2.6. Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
4 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a
5 Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of
6 a Party or of a Party's competitor.

7 2.7. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
8 Information or Items: extremely sensitive "Confidential Information or Items," disclosure of
9 which to another Party or Non-Party would create a substantial risk of serious harm that could
10 not be avoided by less restrictive means.

11 2.8. House Counsel: attorneys who are employees of a party to this action.
12 House Counsel does not include Outside Counsel of Record or any other outside counsel.

13 2.9. Non-Party: any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this action.

15 2.10. Outside Counsel of Record: attorneys who are not employees of a party to
16 this action but are retained to represent or advise a party to this action and have appeared in this
17 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
18 that party.

19 2.11. Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their support
21 staffs).

22 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this action.

24 2.13. Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
26 organizing, storing, or retrieving data in any form or medium) and their employees and
27 subcontractors.

28 2.14. Protected Material: any Disclosure or Discovery Material that is

1 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY.”

3 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 3. SCOPE

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

19 4. DURATION

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

27 5. DESIGNATING PROTECTED MATERIAL

28 5.1. Exercise of Restraint and Care in Designating Material for Protection.

1 Each Party or Non-Party that designates information or items for protection under
2 this Order must take care to limit any such designation to specific material that qualifies under
3 the appropriate standards. To the extent it is practical to do so, the Designating Party must
4 designate for protection only those parts of material, documents, items, or oral or written
5 communications that qualify – so that other portions of the material, documents, items, or
6 communications for which protection is not warranted are not swept unjustifiably within the
7 ambit of this Order.

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

12 If it comes to a Designating Party’s attention that information or items that it
13 designated for protection do not qualify for protection at all or do not qualify for the level of
14 protection initially asserted, that Designating Party must promptly notify all other parties that it
15 is withdrawing the mistaken designation.

16 5.2. Manner and Timing of Designations. Except as otherwise provided in this
17 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
18 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
19 designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

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

28 A Party or Non-Party that makes original documents or materials available for

1 inspection need not designate them for protection until after the inspecting Party has indicated
2 which material it would like copied and produced. During the inspection and before the
3 designation, all of the material made available for inspection shall be deemed “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified
5 the documents it wants copied and produced, the Producing Party must determine which
6 documents, or portions thereof, qualify for protection under this Order. Then, before producing
7 the specified documents, the Producing Party must affix the appropriate legend
8 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each
9 page that contains Protected Material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
11 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
12 level of protection being asserted.

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

26 Parties shall give the other parties notice if they reasonably expect a deposition,
27 hearing or other proceeding to include Protected Material so that the other parties can ensure that
28 only individuals authorized under this Protective Order are present at those proceedings. The use

1 of a document as an exhibit at a deposition shall not in any way affect its designation as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

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

18 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive the
20 Designating Party’s right to secure protection under this Order for such material. Upon timely
21 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
22 material is treated in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
26 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
27 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
28 right to challenge a confidentiality designation by electing not to mount a challenge promptly

1 after the original designation is disclosed.

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

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

1 complied with the meet and confer requirements imposed by the preceding paragraph.

2 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

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

24 (d) the court and its personnel;

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

28 (f) during their depositions, witnesses in the action to whom disclosure is

1 reasonably necessary unless otherwise agreed by the Designating Party or ordered by the court.
2 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
3 Material must be separately bound by the court reporter and may not be disclosed to anyone
4 except as permitted under this Stipulated Protective Order.

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

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

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

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

18 (c) the court and its personnel;

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

22 (e) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary unless otherwise agreed by the Designating Party or ordered by the court.
24 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
25 Material must be separately bound by the court reporter and may not be disclosed to anyone
26 except as permitted under this Stipulated Protective Order; and

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

1 7.4. Procedures for Approving or Objecting to Disclosure of CONFIDENTIAL
2 and HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY Information or Items to
3 Experts.

4 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
5 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or
6 item that has been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.2 (c) or 7.3(b) first must make a written
8 request to the Designating Party that (1) identifies the general categories of “CONFIDENTIAL”
9 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving
10 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the
11 city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume,
12 (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom
13 the Expert has received compensation or funding for work in his or her areas of expertise or to
14 whom the expert has provided professional services, including in connection with a litigation, at
15 any time during the preceding five years, and (6) identifies (by name and number of the case,
16 filing date, and location of court) any litigation in connection with which the Expert has offered
17 expert testimony, including through a declaration, report, or testimony at a deposition or trial,
18 during the preceding five years.

19 (b) A Party that makes a request and provides the information specified in the
20 preceding respective paragraph may disclose the subject Protected Material to the identified
21 Expert unless, within seven calendar days of delivering the request, the Party receives a written
22 objection from the Designating Party. Any such objection must set forth in detail the grounds on
23 which it is based.

24 (c) A Party that receives a timely written objection must meet and confer with the
25 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
26 agreement within seven days of the written objection. If no agreement is reached, the Party
27 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
28 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court

1 to do so. Any such motion must describe the circumstances with specificity, set forth in detail
2 the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that
3 the disclosure would entail, and suggest any additional means that could be used to reduce that
4 risk. In addition, any such motion must be accompanied by a competent declaration describing
5 the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet
6 and confer discussions) and setting forth the reasons advanced by the Designating Party for its
7 refusal to approve the disclosure.

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

11 8. PROSECUTION BAR

12 Absent written consent from the Producing Party, any individual who receives access to
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall not be involved in the
14 prosecution of patents or patent applications relating to probe cards, or blades, probe tips, cables or space
15 transformers for probe cards for the testing of integrated circuits, including without limitation the patents
16 asserted in this action and any patent or application claiming priority to or in the family of the patents
17 asserted in this action, before any foreign or domestic agency, including the United States Patent and
18 Trademark Office ("the Patent Office"). For the purposes of this paragraph, prosecution includes directly
19 drafting, amending, supervising, or directing the scope or maintenance of patent claims. To avoid any
20 doubt, "prosecution" as used in this paragraph does not include representing a party challenging a patent
21 before a domestic or foreign agency (including, but not limited to, a reissue protest, ex parte
22 reexamination or inter partes reexamination). This Prosecution Bar shall begin when access to
23 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information is first received by the
24 affected individual and shall end two (2) years after final termination of this action.

25 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
26 OTHER LITIGATION

27 If a Party is served with a subpoena or a court order issued in other litigation that
28

1 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”
2 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

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

19 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
20 IN THIS LITIGATION

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

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

1 Party shall:

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

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

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

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

17 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 Inspection or production of disclosure or Discovery Material shall not constitute a
28 waiver of the attorney-client privilege or work product immunity or any other applicable

1 privilege if, as soon as reasonably possible after the Producing Party becomes aware of any
2 inadvertent or unintentional disclosure, the Producing Party designates any such disclosure or
3 discovery material as within the attorney-client privilege or work product immunity or any other
4 applicable privilege and requests return of that disclosure or discovery material to the Producing
5 Party. Upon request by the Producing Party, the Receiving Party shall, as applicable, (a) return
6 all paper production copies and all electronic and/or optical media and (b) permanently delete or
7 destroy all electronic copies of inadvertently produced documents within five (5) business days
8 of the request. In no case will the return, deletion or destruction of requested documents be
9 delayed or refused by reason of a Party's objection to said designation or by the filing of a
10 motion to compel, nor may such motion assert as a ground for production the fact of the
11 inadvertent production. Nothing herein shall prevent the Receiving Party from challenging the
12 propriety of the attorney-client privilege or work product immunity or other applicable privilege
13 designation by submitting a written challenge to the Court, after returning all copies of the
14 inadvertently-produced documents.

15 The express intent of this provision is to modify any existing statutory or case law
16 interpreting the inadvertent production of privileged materials or protective order provisions
17 governing same. Specifically, for purposes of this case and this Order, any production of
18 privileged disclosure or discovery material, regardless of quantity or circumstance, during
19 discovery in this case will be considered inadvertent under this provision unless the privileged
20 material was knowingly produced with the specific and express intent to waive privilege with
21 respect to the disclosure or discovery material.

22 If a Receiving Party learns that it has received from a Disclosing Party a
23 document or thing that appears on its face to contain privileged material that has been
24 inadvertently disclosed, the Receiving Party shall immediately notify the Disclosing Party of the
25 identity of the material that appears on its face to be privileged.

26 13. MISCELLANEOUS

27 13.1. Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the court in the future.

1 13.2. Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to disclosing or
3 producing any information or item on any ground not addressed in this Stipulated Protective
4 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
5 the material covered by this Protective Order.

6 13.3. Filing Protected Material. Without written permission from the
7 Designating Party or a court order secured after appropriate notice to all interested persons, a
8 Party may not file in the public record in this action any Protected Material. A Party that seeks to
9 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
10 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
11 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
12 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
13 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
14 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,
15 then the Receiving Party may file the Protected Material in the public record pursuant to Civil
16 Local Rule 79-5(e) unless otherwise instructed by the court.

17 14. FINAL DISPOSITION

18 Within 60 days after the final disposition of this action, as defined in paragraph 4,
19 each Receiving Party must return all Protected Material to the Producing Party or destroy such
20 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
21 compilations, summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
23 submit a written certification to the Producing Party (and, if not the same person or entity, to the
24 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
25 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
26 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
27 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
28 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,

1 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
2 product, and consultant and expert work product, even if such materials contain Protected
3 Material. Any such archival copies that contain or constitute Protected Material remain subject to
4 this Protective Order as set forth in Section 4 (DURATION).

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated: November 18, 2010

7 By: /s/ William J. Robinson
8 William J. Robinson
9 **FOLEY & LARDNER LLP**
10 Attorneys for FORMFACTOR, INC.

11 Dated: November 18, 2010

12 By: /s/ Michael Schwartz
13 Michael Schwartz
14 **DLA PIPER LLP (US)**
15 Attorneys for MICRO-PROBE NCORPORATED

16 Dated: November 18, 2010

17 By: /s/ Deborah F. Sirias
18 Deborah F. Sirias
19 **LEWIS BRISBOIS BISGAARD SMITH LLP**
20 Attorneys for DAVID BROWNE

21 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under
22 penalty of perjury that concurrence in the filing of this document has been obtained from
23 Michael Schwartz and Deborah F. Sirias.

24 Dated: November 18, 2010

25 /s/ William J. Robinson
26 William J. Robinson
27 **FOLEY & LARDNER LLP**
28 Attorney for Plaintiff
FORMFACTOR, INC.

29 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

30 Dated: 11/22/10

31 By: _____
32 Judge
33 United States District Court
34 Southern District of California



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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 _____
[insert formal name of the case and the number and initials assigned to it by the court]. 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: _____

[printed name]

Signature: _____

[signature]