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Attorneys for Defendant
HIGHER ONE, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CSWL, INC., a California corporation and
DAN G. PETERSON, a California resident,

Plaintiffs,

vs.

HIGHER ONE, INC., a Delaware corporation,

Defendant.

Case No. C 10-3177 PJH

**STIPULATED PROTECTIVE ORDER
FOR STANDARD LITIGATION**

WIGGIN AND DANA LLP
265 CHURCH STREET
NEW HAVEN, CONNECTICUT 06508-1832
(203) 498-4400

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 12.3, below, that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
12 followed and the standards that will be applied when a party seeks permission from the court to
13 file material under seal.
14

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

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
20 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
21 Rule of Civil Procedure 26(c) or state or federal privacy laws.
22

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House
24 Counsel (as well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or
26 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”
27

28 2.5 Disclosure or Discovery Material: all items or information, regardless of

1 the medium or manner in which it is generated, stored, or maintained (including, among other
2 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
3 or responses to discovery in this matter.

4 2.6 Expert: a person with specialized knowledge or experience in a matter
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
6 witness or as a consultant in this action.

7 2.7 House Counsel: attorneys who are employees of a party to this action.
8 House Counsel does not include Outside Counsel of Record or any other outside counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
12 this action but are retained to represent or advise a party to this action and have appeared in this
13 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
14 that party.

15 2.10 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their support
17 staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
22 organizing, storing, or retrieving data in any form or medium) and their employees and
23 subcontractors.
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1 2.13 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.14 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 Material
7 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
8 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
10 However, the protections conferred by this Stipulation and Order do not cover the following
11 information: (a) any information that is in the public domain at the time of disclosure to a
12 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
13 a result of publication not involving a violation of this Order, including becoming part of the
14 public record through trial or otherwise; and (b) any information known to the Receiving Party
15 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
16 obtained the information lawfully and under no obligation of confidentiality to the Designating
17 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

18 4. DURATION

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

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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 documents, but
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
28

1 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only
2 a portion or portions of the material on a page qualifies for protection, the Producing Party also
3 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
4 margins).

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

17
18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
19 the Designating Party identify on the record, before the close of the deposition, hearing, or other
20 proceeding, all protected testimony.

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

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive the
3 Designating Party’s right to secure protection under this Order for such material. Upon timely
4 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
5 material is treated in accordance with the provisions of this Order.
6

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
10 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
11 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
12 right to challenge a confidentiality designation by electing not to mount a challenge promptly
13 after the original designation is disclosed.
14

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

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Challenging Party may file a motion challenging a confidentiality
5 designation at any time if there is good cause for doing so, including a challenge to the
6 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
7 this provision must be accompanied by a competent declaration affirming that the movant has
8 complied with the meet and confer requirements imposed by the preceding paragraph.
9

10 The burden of persuasion in any such challenge proceeding shall be on the
11 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
12 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
13 to sanctions. All parties shall continue to afford the material in question the level of protection to
14 which it is entitled under the Producing Party's designation until the court rules on the challenge.
15

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this case only for
19 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
20 disclosed only to the categories of persons and under the conditions described in this Order.
21 When the litigation has been terminated, a Receiving Party must comply with the provisions of
22 section 13 below (FINAL DISPOSITION).
23

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons authorized
26 under this Order.
27

1 Whenever Protected Material is to be discussed by a Party or disclosed in a
2 deposition or other hearing or proceeding, the Designating Party may exclude from the room any
3 person, other than persons listed in this paragraph, as appropriate, for that portion of the
4 deposition, hearing, or proceeding.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
6 OTHER LITIGATION

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

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

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

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

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
21 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
22 shall bear the burden and expense of seeking protection in that court of its confidential material –
23 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
24 Party in this action to disobey a lawful directive from another court.
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1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
5 Parties in connection with this litigation is protected by the remedies and relief provided by this
6 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
7 additional protections.
8

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

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

16 2. promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
18 description of the information requested; and
19

20 3. make the information requested available for inspection by the
21 Non-Party.
22

23 (c) If the Non-Party fails to object or seek a protective order from this court
24 within 21 days of receiving the notice and accompanying information, the Receiving Party may
25 produce the Non-Party’s confidential information responsive to the discovery request. If the
26 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
27 in its possession or control that is subject to the confidentiality agreement with the Non-Party
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1 before a determination by the court. Absent a court order to the contrary, the Non-Party shall
2 bear the burden and expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently
15 produced material is subject to a claim of privilege or other protection, the obligations of the
16 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
17 provision is not intended to modify whatever procedure may be established in an e-discovery
18 order that provides for production without prior privilege review. Pursuant to Federal Rule of
19 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
20 communication or information covered by the attorney-client privilege or work product
21 protection, the parties may incorporate their agreement in the stipulated protective order
22 submitted to the court.
23

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the court in the future.
27

1 12.2 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

7 12.3 Filing Protected Material. Without written permission from the
8 Designating Party or a court order secured after appropriate notice to all interested persons, a
9 Party may not file in the public record in this action any Protected Material. A Party that seeks to
10 file under seal any Protected Material (“Submitting Party”) must comply with Civil Local Rule
11 79-5. As provided in Civil Local Rule 79-5(d), within 7 days after the Submitting Party has filed
12 and served an Administrative Motion to File Under Seal, the Designating Party must file with the
13 Court and serve a declaration establishing that the designated information is sealable, and must
14 lodge and serve a narrowly tailored proposed sealing order, or acquiesce in the Submitting
15 Party’s proposed order filed under Civil Local Rule 79-5(b) or (c), or must withdraw the
16 designation of confidentiality. If the Designating Party does not file its responsive declaration as
17 required by this subsection, the document or proposed filing will be made part of the public
18 record.
19

20 Protected Material may only be filed under seal pursuant to a court order
21 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule
22 79-5, a sealing order will issue only upon a request establishing that the Protected Material at
23 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.
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25 If a Receiving Party’s request to file Protected Material under seal pursuant to
26 Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
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information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13. FINAL DISPOSITION. If the Producing Party makes a request citing this section within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party in sealed envelopes or boxes marked “CONFIDENTIAL” or destroy such material, within 30 days after receiving such request. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 30 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected

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Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: January 18, 2011

WIGGIN AND DANA LLP

By: /s/ James I. Glasser
James I. Glasser (*pro hac vice*)

BUCHALTER NEMER
A PROFESSIONAL CORPORATION

By: /s/ Richard C. Darwin
Richard C. Darwin

Attorneys for Defendant
HIGHER ONE, INC.

Dated: January 18, 2011

HOGAN LOVELLS US LLP

By: /s/ Robert B. Hawk
Robert B. Hawk

Attorneys for Plaintiffs
CSWL, INC. and DAN G. PETERSON

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: January 21, 2011



The Honorable 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 *CSWL, Inc. v. Higher One*, Case No. C 10-3177 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: _____