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 MICRON TECHNOLOGY, INC. and
 9 MICRON SEMICONDUCTOR PRODUCTS, INC.

10
 11 UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 OAKLAND DIVISION

15 ORACLE AMERICA, INC.,
 16 Plaintiff,
 17 v.
 18 MICRON TECHNOLOGY, INC. and MICRON
 SEMICONDUCTOR PRODUCTS, INC.,
 19 Defendants.

CASE NO. 10-cv-04340 PJH
 Action Filed: September 24, 2010
**STIPULATION AND [PROPOSED]
 PROTECTIVE ORDER**
 Hon. Phyllis J. Hamilton
 Trial Date: None set

1 WHEREAS, the parties may have proprietary information and documents that are not in the
2 public domain and are confidential, the unrestricted disclosure of which may cause undue irreparable
3 damage to the parties and their respective businesses; and

4 WHEREAS, one of the purposes of this Protective Order is to protect the confidentiality of
5 such information and documents;

6 WHEREAS, the Federal Rules of Civil Procedure provide for the issuance of protective
7 orders limiting the disclosure of certain information in appropriate circumstances; and

8 WHEREAS, the parties have agreed to protect the confidentiality of such information in
9 accordance with the following terms and conditions:

10 1. Documents that contain non-public information may be designated as “Confidential”
11 or “Highly Confidential” in the manner described below, so long as the materials concern the
12 producing party’s trade secrets or other confidential research and development or commercial
13 information, or information for which the producing party otherwise has compelling need for
14 confidentiality. This includes, without limitation: (a) documents, exhibits, answers to interrogatories,
15 responses to requests for admissions, deposition transcriptions, and all original written, recorded,
16 graphic or electronic matters (and all identical and non-identical copies thereof); (b) any copies,
17 notes, abstracts or summaries of such information, and the information itself; or (c) any pleading,
18 affidavit, declaration, brief, motion, transcript, or other writing containing such information
19 (subsections (a) to (c) are collectively referred to herein as “Litigation Materials”), all of which may
20 be designated as “Confidential” or “Highly Confidential” under this Protective Order, as appropriate.
21 Further, Litigation Materials previously designated “Confidential” or “Highly Confidential” pursuant
22 to the protective order entered by the court in *In re Dynamic Random Access Memory (DRAM)*
23 *Antitrust Litigation*, , Case No. C-02-1486 PJH (N.D. Cal.), on July 11, 2003; the protective order
24 entered by the court in *Sun Microsystems, Inc. v. Hynix Semiconductor, Inc., et al.*, Case No. C-06-
25 01665 PJH (N.D. Cal.), on August 21, 2006, as amended; the protective order entered by the court in
26 *Honeywell International, Inc. v. Hynix Semiconductor, Inc., et al.*, Case No. C-06-02917 PJH (N.D.
27 Cal.), on November 21, 2006; or any of the protective orders entered by the court in *DRAM*
28 *Liquidation Trust, by its Trustee, Wells Fargo Bank, N.A. v. Hynix Semiconductor, Inc. et al.*, Case

1 No. C-07-01381 (N.D. Cal.), *All American Semiconductor Inc. v. Hynix Semiconductor, Inc., et al.*,
2 Case No. C-07-01200 (N.D. Cal.), *Edge Electronics, Inc. v. Hynix Semiconductor, Inc., et al.*, Case
3 No. C-07-01207 (N.D. Cal.), *Jaco Electronics, Inc. v. Hynix Semiconductor Inc., et al.*, Case No. C-
4 07-01212-PJH (N.D. Cal.), and *Unisys Corporation v. Hynix Semiconductor Inc., et al.*, Case No. C-
5 06-02915-PJH (N.D. Cal.); shall receive all the protections afforded herein to “Confidential” or
6 “Highly Confidential” Litigation Materials, as if those materials had been marked with those
7 designations under this Protective Order.

8 2. Only non-public documents produced in discovery may be designated as
9 “Confidential” or “Highly Confidential.” Accordingly, “Confidential” or “Highly Confidential”
10 materials shall not include any documents concerning information that at any time has been: (a)
11 produced, disclosed, or made available to the public; or (b) disclosed in connection with any
12 governmental public filing or securities offering and could not reasonably be assumed to be or have
13 been intended to be kept confidential. Documents containing trade secrets or other confidential
14 research and development or proprietary business information, the disclosure of which to other
15 parties might competitively disadvantage the producing party, may be designated as “Highly
16 Confidential.” Any document concerning information that has not been preserved or maintained in a
17 manner calculated to preserve its confidentiality shall not be designated as “Confidential” or “Highly
18 Confidential.” Notwithstanding the foregoing, a producing party may designate as “Confidential” or
19 “Highly Confidential” any documents transmitted or disclosed to any governmental entity pursuant to
20 a written confidentiality agreement or which is protected as confidential by statute, rule or regulation.

21 3. All “Highly Confidential” or “Confidential” Litigation Materials shall be used by the
22 parties and their counsel solely for the purpose of the prosecution or defense of this litigation, Case
23 No. 10-cv-04340-PJH, including preparing for and conducting pre-trial proceedings in this action.
24 Litigation Materials designated as “Confidential” or “Highly Confidential” shall not be disclosed to
25 anyone except as provided herein and the contents thereof shall not be used for any business,
26 commercial, or competitive purpose, or used in any manner in any other case, litigation, or
27 proceedings whether or not factually related to this action.

28

1 4. Designation of Documents

2 (a) Parties shall designate documents in good faith, and shall not indiscriminately
3 designate documents, so that produced documents are not over-designated as “Confidential” or
4 “Highly Confidential.” Any party may object in good faith to the designation of Litigation Materials.
5 The process for resolving disputes as set forth below presumes this good faith in the initial
6 designations, objections, and meet and confer process. The following process will apply to resolution
7 of disputes hereunder: (1) any party who objects to a designation by a producing party shall state
8 concisely the basis for those objections in a letter to the producing party that shall not exceed 5 pages;
9 (2) the letter need only be served by fax or email on the producing party to start this process; (3) the
10 objecting party and producing party shall have two weeks from the date the letter is faxed or emailed
11 to meet and confer to resolve the objections or narrow the issues to be briefed; (4) any objections not
12 so resolved shall be the subject of a regularly noticed motion filed by the objecting party, but the
13 producing party shall have the burden to support the contested designations; (5) the motion shall
14 comply with the Court’s procedures regarding discovery disputes as explained in the December 15,
15 2010 Notice of Reference and Order re Discovery Procedures (Docket No. 32).

16 (b) In addition to the procedures described above, the following shall apply to the
17 process: (1) a party shall not be obligated to challenge the propriety of a confidential designation at
18 the time that designation is made, and failure to so challenge does not preclude a subsequent
19 challenge; (2) with the permission of the Court, either the producing or objecting party may request a
20 short informal discovery conference to be held telephonically with the Court in order to avoid the
21 need for any motion; (3) said conference shall be held during the ten-day meet and confer period, or
22 the thirty-day period for bringing the motion in accordance with the convenience of the Court; (4) if
23 the producing party does not oppose the motion, then designations which are the subject of the
24 objections are declassified; and (5) the parties will attempt in good faith to combine as many issues
25 under this Protective Order as possible so that these matters can be handled efficiently and
26 effectively, and the parties further reserve the right to request, for good cause shown, additional time
27 to file any motion.

1 (c) Any Litigation Materials the designation of which is subject to such dispute
2 shall be treated as “Confidential” or “Highly Confidential” as designated by the producing party
3 pending resolution of the dispute by this Court.

4 5. If any party or non-party uses Litigation Materials designated as “Confidential” or
5 “Highly Confidential” pursuant to this Protective Order during the course of a deposition herein, that
6 portion of the deposition record reflecting such “Confidential” or “Highly Confidential” information
7 shall be stamped as “Confidential” or “Highly Confidential” and access thereto shall be limited
8 pursuant to the other terms of this Protective Order. Counsel may invoke the provisions of this
9 Protective Order by stating on the record during the deposition that testimony given at the deposition
10 is designated “Confidential” or “Highly Confidential,” or by designating the deposition transcript or
11 portions thereof as “Confidential” or “Highly Confidential” before the time expires within which the
12 witness may sign the deposition transcript. No person shall be present during portions of the
13 depositions designated “Confidential” or “Highly Confidential,” unless such person is authorized
14 under the terms of this Protective Order to receive Litigation Materials containing such confidential
15 information or unless the producing party consents to such person being present. All information
16 disclosed during a deposition shall be deemed to have been designated “Highly Confidential” until
17 the time within which the witness may sign the transcript expires, whether or not any portion of the
18 transcript has been so designated previously.

19 6. Nothing in this Order affects the right of the party or non-party that produced
20 “Confidential” or “Highly Confidential” Litigation Materials to use or disclose such information in
21 any way. Such disclosure shall not waive the protections of this Protective Order and shall not entitle
22 other parties, non-parties, or their attorneys to use or disclose such information in violation of the
23 Protective Order, except that if the producing party uses such materials in a manner inconsistent with
24 their confidential status, then that shall serve as a basis to object to the designation and said
25 objections shall be resolved as set forth in paragraph 4 above.

26 7. In the event that documents or Litigation Materials are produced by another person
27 that are actual copies of documents or other Litigation Materials that a party has produced and
28 designated as “Confidential” or “Highly Confidential,” that party may designate such materials under

1 this Protective Order even if they have not been so designated by the person producing them. To the
2 extent that a person produces documents that are not actual copies of documents previously produced
3 and designated by a party but which contain a party's "Confidential" or "Highly Confidential"
4 information, a party may designate those documents, or portions thereof as may be appropriate, as
5 "Confidential" or "Highly Confidential," subject to the dispute resolution process set forth in
6 paragraph 4 above. Said designations shall be made as soon as reasonably possible, and shall contain
7 the production number(s) of the portions of the documents designated, the nature of the designations,
8 and if an entire document is designated, which portions of the document contain the information
9 supporting the designation so that an objecting party may determine specifically what information is
10 at issue.

11 8. Litigation Materials marked or treated as "Confidential," or copies or extracts
12 therefrom and the information therein, may be given, shown, made available to, or communicated to
13 only the following:

14 (a) the Court, all Court personnel, any discovery referee, or any settlement
15 mediator (provided that any Party seeking to file or lodge with the Court any Litigation Materials
16 marked or treated as "Confidential" shall comply with paragraph 14 herein);

17 (b) court reporters and videographers who record depositions or other testimony in
18 this action;

19 (c) named parties including an officer, director, or in-house counsel of a named
20 party or its affiliated companies;

21 (d) other employees of a named party or its affiliated companies, but only for the
22 specific purpose of working directly on the litigation at the request or at the direction of counsel;

23 (e) attorneys at the law firms representing the parties to this litigation and
24 employees of such law firms to whom it is necessary that the Litigation Materials be shown for
25 purposes of this litigation;

26 (f) pursuant to the provisions of paragraph 11, consultants and experts to whom it
27 is necessary that the Litigation Materials be shown for the purpose of assisting counsel in this
28 litigation;

- 1 (g) deposition witnesses;
- 2 (h) employees of copying, imaging, and computer services for the purpose of
- 3 copying, imaging, or organizing documents, provided that all documents designated as
- 4 “Confidential” are retrieved by the party furnishing those documents upon completion of the services;
- 5 (i) any other person upon the written agreement of the party or non-party who
- 6 designated the Litigation Materials as “Confidential” (which agreement may be recorded in a
- 7 deposition or other transcript), or pursuant to court order; and
- 8 (j) the author, addressees, and recipients of the documents, or any person who
- 9 received or accessed the document by virtue of his/her employment.

10 9. Litigation Materials marked or treated as “Highly Confidential” or copies or extracts

11 therefrom and the information therein, may be given, shown, made available to, or communicated to

12 only the following:

- 13 (a) the Court, all Court personnel, any discovery referee, or any settlement
- 14 mediator (provided that any Party seeking to file or lodge with the Court any Litigation Materials
- 15 marked or treated as “Highly Confidential” shall comply with paragraph 14 herein);
- 16 (b) Court reporters and videographers who record depositions or other testimony
- 17 in this action;
- 18 (c) employees of copying, imaging, and computer services for the purpose of
- 19 copying, imaging, or organizing documents provided that all documents designated as “Highly
- 20 Confidential” are retrieved by the party furnishing those documents upon completion of the services;
- 21 (d) attorneys at the law firms representing the parties to this litigation or
- 22 employees of such law firms to whom it is necessary that the Litigation Materials be shown for
- 23 purposes of this litigation;
- 24 (e) in-house attorneys for a named party or its affiliated companies, so long as this
- 25 in-house attorney has executed the Agreement attached hereto as Exhibit A;
- 26 (f) pursuant to the provisions of paragraph 11, consultants and experts to whom it
- 27 is necessary that the Litigation Materials be shown for purposes of assisting counsel in this litigation;
- 28 and

1 (g) the author, addressees, and recipients of the documents, or any person who
2 received or accessed the document by virtue of his/her employment.

3 10. If a party in this litigation other than the producing party desires to give, show, make
4 available, or communicate any Litigation Materials marked or treated as “Confidential” or “Highly
5 Confidential” to any person who is not specifically authorized pursuant to the terms of this Protective
6 Order to have access to such Litigation Materials, the party intending to disclose the materials shall
7 notify the producing party of such intent no less than five business days before the intended
8 disclosure. This notification shall be sufficiently specific to inform the producing party of the
9 intended scope of the disclosure, including the name and/or job description of the person to whom
10 such disclosure is intended. The parties will then attempt to negotiate the terms of disclosure within
11 two business days of the notification. If no agreement can be reached during this shortened meet and
12 confer period, then this dispute shall be the subject of a regularly noticed motion filed by the
13 objecting party with the producing party bearing the burden to support nondisclosure, pursuant to the
14 dispute resolution procedure in paragraph 4 above, except that any party may move on an *ex parte* or
15 expedited basis for an order shortening time if a scheduled deposition or Court date could be delayed
16 or cancelled. This paragraph does not apply to “Highly Confidential” documents which are used at
17 deposition or trial in good faith for impeachment purposes only; provided, however, that the party
18 desiring to use, pursuant to this exception, a “Highly Confidential” document for impeachment
19 purposes at a deposition shall alert the producing party at least 48 hours in advance of its intent to use
20 the “Highly Confidential” document under this exception, and then the requesting party and the
21 producing party shall meet and confer in good faith to address confidentiality concerns and
22 appropriate redactions, with any dispute being brought to the Court’s attention for resolution on an
23 expedited basis (by telephone conference or other means directed by the Court), so that the deposition
24 is not delayed. A producing party who is notified of a request to use a “Highly Confidential”
25 document for impeachment purposes, pursuant to this paragraph, shall not disclose the fact of that
26 request or the document or its contents to the deposition witness, the attorney for the deposition
27 witness, or any other party to this action.

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1 11. Expert Witnesses. If any party wishes to disclose Litigation Materials produced by
2 any other party and designated “Confidential” or “Highly Confidential” to any expert or consultant,
3 the expert or consultant must sign the agreement attached hereto as Exhibit A. Nothing in this
4 Protective Order shall require that non-testifying experts or consultants be deposed or otherwise be
5 the subject of discovery.

6 12. Each person (except for the Court, Court personnel, attorneys or other employees of
7 the law firms representing the parties to this litigation, any discovery referee, any settlement
8 mediator, court reporters and videographers, and copying, imaging, and computer service employees)
9 provided access to Litigation Materials marked “Confidential” or “Highly Confidential” pursuant to
10 the terms of the Protective Order shall, before gaining such access, receive a copy of this Protective
11 Order and, as to those persons described in paragraphs 8 and 9 shall sign an agreement in the form
12 attached hereto as “Exhibit A” or shall agree to be bound by the terms of this Protective Order on the
13 record at a deposition or hearing in this litigation. A file shall be maintained by each law firm of
14 record for a party of all written agreements signed by persons who have received such Litigation
15 Materials from that party or persons affiliated with that party.

16 13. Each witness in a deposition shall be provided with a copy of this Order at the start of
17 the examination and shall be advised on the record that he or she is bound by the terms of this Order
18 and applicable remedies under law for violating the terms of this Order.

19 14. Any party seeking to file or lodge with pleadings or as evidence any Litigation
20 Materials designated by another party or non-party as “Confidential” or “Highly Confidential” shall
21 submit such Litigation Materials under seal in conformance with Local Rule 79-5(d).

22 15. “Confidential” and “Highly Confidential” Litigation Materials shall maintain such
23 protections and designations in connection with any trial in this matter. Before the trial begins, the
24 parties will meet and confer in good faith as part of the pre-trial conference statement process to put
25 into place a procedure for identification of and use of “Confidential” and “Highly Confidential”
26 documents at trial. Any documents that remain “Confidential” or “Highly Confidential” before trial
27 shall maintain their status through the time of the pre-trial conference or resolution of the procedures
28 described above.

1 16. The provisions of this Protective Order may be modified at any time by stipulation of
2 the parties approved by order of the Court. In addition, a party may at any time apply to the Court for
3 modification of this Protective Order pursuant to a motion brought in accordance with the rules of the
4 Court. Nothing in this Stipulation and Protective Order shall constitute: (i) an agreement by any
5 party to produce any documents or other materials in discovery not otherwise agreed upon or required
6 by court order or the Federal Rules of Civil Procedure; (ii) a waiver by any person or party of any
7 right to object to or seek a further protective order with respect to any discovery in this or any other
8 action; or (iii) a waiver of any claim of immunity or privilege with respect to any testimony,
9 document or information.

10 17. In the event that Litigation Materials designated as “Confidential” or “Highly
11 Confidential” are disclosed to someone not authorized under the terms of this Protective Order to
12 receive such information, counsel of record for the party involved shall immediately give notice to
13 counsel of record for the party who designated the Litigation Materials as “Confidential” or “Highly
14 Confidential,” and shall also describe the circumstances surrounding the unauthorized disclosure. If a
15 party fails to treat documents designated as “Confidential” or “Highly Confidential” in the manner
16 provided herein, the party should immediately take such steps as are necessary to have such items
17 placed under seal and/or restored to their confidential status.

18 18. In the event that Litigation Materials claimed to be “Confidential” or “Highly
19 Confidential” are inadvertently produced without the appropriate designation, such documents and
20 copies thereof shall be returned to the producing party within five days of any written notice
21 requesting their return in order to affix the appropriate designation or immediately stamped
22 “Confidential” or “Highly Confidential” as requested by the producing party. The receiving party
23 may challenge the confidential nature of the documents, but the inadvertent production of documents
24 or the giving of testimony claimed to be “Confidential” or “Highly Confidential” shall not constitute
25 a waiver of the confidentiality designation.

26 19. If, in connection with the pending litigation, a producing party inadvertently discloses
27 information subject to a claim of attorney-client privilege or attorney work product protection
28 (“Inadvertently Disclosed Information”), pursuant to Rule 502(d) of the Federal Rules of Evidence,

1 the disclosure of the Inadvertently Disclosed Information shall not constitute or be deemed a waiver
2 or forfeiture of any claim of privilege or work product protection that the producing party would
3 otherwise be entitled to assert with respect to the Inadvertently Disclosed Information and its subject
4 matter. A party or non-party may request the return of any information that it inadvertently produced
5 by identifying the Inadvertently Disclosed Information, stating the basis for withholding such
6 Inadvertently Disclosed Information, and providing any other information that would be listed on a
7 supplemental privilege log disclosing the Inadvertently Disclosed Information. If a claim of
8 inadvertent disclosure is made by a producing party with respect to Inadvertently Disclosed
9 Information then in the custody of one or more parties, the receiving party shall, within three business
10 days, return or destroy all copies of the Inadvertently Disclosed Information, shall expunge from any
11 other document or material the information solely derived from the Inadvertently Disclosed
12 Information, and shall provide a certification of counsel that all such Inadvertently Disclosed
13 Information has been returned or destroyed. After Inadvertently Disclosed Information is returned
14 pursuant to this paragraph, the receiving party may move the Court for an Order compelling
15 production of the Inadvertently Disclosed Information. The producing party retains the burden of
16 establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing
17 in this paragraph shall limit the right, if any, of any party to petition the Court for an in camera
18 review of the Inadvertently Disclosed Information.

19 20. Within sixty days following termination of this litigation (including the final
20 resolution of any appeals), the original and all copies — whether exact copies or compilations,
21 digests, or non-exact copies in any form — of Litigation Materials designated as “Confidential” or
22 “Highly Confidential” shall be returned to the party who produced such documents or may be
23 disposed of in some other manner that is mutually agreeable among the parties. Notwithstanding this,
24 however, counsel of record may retain their file copies of all court filings, deposition or hearing
25 transcripts and exhibits, and correspondence, provided that counsel of record continues to treat all
26 “Confidential” or “Highly Confidential” Litigation Materials in the manner provided for in this
27 Protective Order.

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1 21. The termination of proceedings in this action shall not thereafter relieve the parties
2 from the obligation of maintaining the confidentiality of all Litigation Materials designated as
3 “Confidential” or “Highly Confidential” which are received pursuant to this Protective Order and are
4 not used at trial or are used at trial under restriction designed to exclude from the public record those
5 portions of the Litigation Materials that were designated as “Confidential” or “Highly Confidential.”
6 This provision shall not apply to any Litigation Materials that are the subject of a superseding ruling
7 of the Court as to the scope of their disclosure. The Court shall retain jurisdiction to enforce and/or
8 modify this Protective Order.

9 22. The terms of this Protective Order shall apply to discovery directed to non-parties to
10 this Litigation, and such non-parties may specifically invoke or waive the terms and protections of
11 this Protective Order. To the extent that any discovery is served on a non-party, the party serving the
12 discovery shall provide the non-party with a copy of this Protective Order and specifically mention
13 the non-party’s right to invoke or waive the terms of this Protective Order.

14 23. The parties acknowledge that, by entering into this Stipulation, the parties do not
15 waive any claims or defenses, including defenses regarding the service of plaintiff’s complaint or
16 jurisdiction.
17

18 DATED: January 26, 2011

19 GIBSON, DUNN & CRUTCHER LLP
20 JOEL S. SANDERS
21 G. CHARLES NIERLICH
22 MICHAEL CECCHINI
23 JENNA MUSSELMAN YOTT

24 By: _____ /s/ *Joel S. Sanders*
25 Joel S. Sanders

26 Attorneys for Defendants
27 MICRON TECHNOLOGY, INC. and
28 MICRON SEMICONDUCTOR PRODUCTS, INC.

1 CROWELL & MORING LLP
2 JEROME A. MURPHY
3 KENT A. GARDINER
4 MATTHEW MCBURNEY
5 SUZANNE E. RODE

6 By: /s/ Jerome A. Murphy
7 Jerome A. Murphy

8 Attorneys for Plaintiff
9 ORACLE AMERICA, INC.

10
11 **ECF Attestation**

12 I, Michael Cecchini, am the ECF User whose ID and Password are being used to file this
13 **STIPULATION AND [PROPOSED] PROTECTIVE ORDER.**

14 In compliance with General Order 45 X.B., I hereby attest that Joel S. Sanders and Jerome A.
15 Murphy concurred in this filing.

16 Dated: January 26, 2011

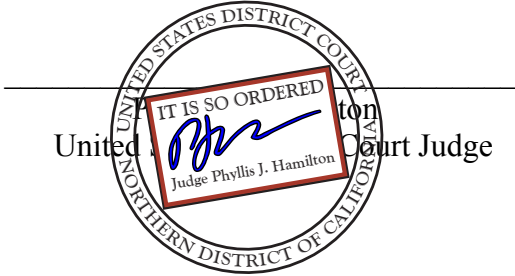
17 /s/ Michael Cecchini

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[PROPOSED] ORDER

Based upon the stipulation of the parties and for good cause shown, the foregoing is hereby SO ORDERED:

DATED: January 28, 2011



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EXHIBIT A

AGREEMENT CONCERNING MATERIAL COVERED BY AN ORDER ENTERED IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

The undersigned hereby acknowledges that he or she has read the attached STIPULATION AND PROTECTIVE ORDER entered in the United States District Court for the Northern District of California, in the litigation known as ORACLE AMERICA, INC. v. MICRON TECHNOLOGY, INC., ET AL, Case No. 10-cv-04340 PJH, and understands the terms thereof and agrees to be bound by such terms. The undersigned further acknowledges and understands that a violation of the Protective Order could be punishable as a contempt of court.

Dated: _____

[Type or Print Name]