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11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 OAKLAND DIVISION

15
 16 NICOLE PIMENTAL and JESSICA
 FRANKLIN, individually and on behalf of
 17 all others similarly situated,

18 Plaintiffs,

19 v.

20 GOOGLE INC., a Delaware corporation,
 and SLIDE, INC., a Delaware corporation,

21 Defendants.
 22

Case No. 11-cv-02585-YGR

**[PROPOSED] STIPULATED
 PROTECTIVE ORDER FOR THE
 TREATMENT OF CONFIDENTIAL
 MATERIAL**

23 This Document Relates to All Actions.
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1 To expedite the production of discovery material, to facilitate the prompt resolution of
2 disputes over confidentiality of discovery material, to adequately protect information the parties
3 are entitled to keep confidential, to ensure that only the materials the parties are entitled to keep
4 confidential are subject to such treatment, and to ensure that the parties are permitted reasonably
5 necessary uses of confidential discovery material in preparation for and in the conduct of this
6 litigation, pursuant to Fed. R. Civ. P. 26(c), it is hereby ORDERED THAT:

7 **I. INFORMATION SUBJECT TO THIS ORDER**

8 **A. Protected Information Generally**

9 1. All documents, tangible things, physical objects, written discovery
10 responses, testimony, or other information produced by the producing party in this litigation is
11 considered "Discovery Material." This Order applies not only to Discovery Material produced in
12 this litigation, but also to any information copied or extracted therefrom or otherwise reflecting
13 Protected Information, in any form. Any Discovery Material containing or including confidential
14 information may be designated as such by the producing party by marking it "CONFIDENTIAL"
15 or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" prior to or at the time copies are
16 furnished to the receiving party, and shall be treated in accordance with the terms of this Order.
17 Each of the identified categories of confidential Discovery Material shall be identified
18 collectively in this Order as "Protected Information."

19 2. All Protected Information not reduced to documentary, tangible or physical
20 form, or which cannot be conveniently designated as set forth in paragraph I.A.1 or pursuant to
21 another confidentiality designation set forth in this Order, shall be designated by the producing
22 party by informing the receiving party of the designation in writing.

23 3. Any Discovery Material (including physical objects and tangible things)
24 made available for inspection by counsel for the receiving party prior to producing copies of
25 items selected by the receiving party shall initially be considered, as a whole, to constitute
26 Protected Information (unless otherwise designated at the time of inspection) and shall be subject
27 to this Order. Thereafter, the producing party shall have a reasonable time to review and
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1 designate the appropriate documents as CONFIDENTIAL or CONFIDENTIAL – OUTSIDE
2 COUNSEL ONLY prior to furnishing copies to the receiving party.

3 4. Any Protected Information that is obtained by any party from any person
4 pursuant to discovery in this litigation shall be used solely for purposes of this litigation.

5 5. Nothing in this Order shall limit any producing party's use or disclosure of
6 its own Protected Information.

7 6. The following Discovery Material is not Protected Information:

8 a. Any Discovery Material that is or, after its disclosure to a receiving
9 party, becomes part of the public domain as a result of publication not involving a violation of
10 this Order or other obligation to maintain the confidentiality of such material;

11 b. Any Discovery Material that the receiving party can show was
12 already publicly known prior to the disclosure; and,

13 c. Any Discovery Material that the receiving party can show by
14 written records was received by it from an alternate source that obtained the material lawfully and
15 under no obligation of confidentiality to the producing party.

16 **B. Protected Information Designated Confidential**

17 1. For purposes of this Order, Protected Information designated
18 CONFIDENTIAL shall mean all Discovery Material produced for or disclosed in connection with
19 this action to a receiving party that constitutes confidential or commercially sensitive technical,
20 sales, marketing, personal, or financial information of the producing party (including any party to
21 this action and any non-party producing information or material voluntarily or pursuant to a
22 subpoena or a court order in connection with this action), or information that the producing party
23 is under a legal obligation to maintain as confidential, whether embodied in documentary,
24 tangible or physical form, or the factual knowledge of persons, and which has been so designated
25 by the producing party.

26 2. Protected Information designated CONFIDENTIAL and the contents
27 therein shall be available only to:
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1 a. Outside litigation counsel of record and supporting personnel employed in
2 the law firm(s) of outside litigation counsel of record, such as attorneys, paralegals, legal
3 translators, legal secretaries, law clerks, project managers and litigation support personnel;

4 b. Up to two in-house counsel of any party with responsibility for managing
5 this litigation, who are members of at least one state bar in good standing, and supporting
6 personnel employed by the legal department of any party to this litigation;

7 c. Technical advisers and their necessary support personnel engaged by
8 counsel of record for the parties, subject to the provisions of section III herein, and provided that
9 such individuals have first been given a copy of this Order and have executed the Confidentiality
10 Agreement attached hereto as Attachment A. The term “technical adviser” shall mean
11 independent outside technical expert witnesses, consulting experts, or technical consultants (i.e.,
12 not employees of a party) retained by counsel of record for the parties who are deemed
13 reasonably necessary to assist such counsel in connection with this litigation;

14 d. Independent contractors engaged by counsel of record for the parties, to the
15 extent reasonably necessary to assist such counsel in connection with this litigation, including but
16 not limited to (i) legal translators retained to translate in connection with this action; (ii)
17 independent stenographic reporters and videographers retained to record and transcribe testimony
18 in connection with this action; (iii) graphics or design services retained by counsel for purposes of
19 preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the
20 actions; (iv) non-technical jury or trial consulting services, including mock jurors; (v) electronic
21 discovery vendors retained to assist with the organization and management of electronic
22 discovery; and (vi) private investigators, provided that such persons or entities have first been
23 given a copy of this Order and have executed the Confidentiality Agreement attached hereto as
24 Attachment A, and a signed copy has been provided to the producing party;

25 e. Any fact witness during the course of a deposition subject to the provisions
26 of section V herein; and

27 f. The Court, its personnel, and any other person (such as a master or
28 mediator) who serves in a judicial or quasi-judicial function, professional stenographic reporters

1 engaged to transcribe testimony (under seal or with other suitable precautions determined by the
2 Court), and jurors.

3 **C. Information Designated Confidential – Outside Counsel Only**

4 1. For purposes of this Order, Protected Information designated
5 CONFIDENTIAL – OUTSIDE COUNSEL ONLY shall mean Protected Information that
6 contains extremely sensitive information, the disclosure of which to another party would create a
7 risk of competitive injury that could not be avoided by less restrictive means. Protected
8 Information designated CONFIDENTIAL – OUTSIDE COUNSEL ONLY includes, but is not
9 limited to: (i) marketing, financial, sales, web traffic, research and development, or technical, data
10 or information; (ii) commercially sensitive competitive information, including, without limitation,
11 information obtained from a nonparty pursuant to a current Nondisclosure Agreement (“NDA”);
12 (iii) information or data relating to future products not yet commercially released and/or strategic
13 plans; (iv) trade secret, or other confidential research and development information; and, (v)
14 commercial agreements, settlement agreements or settlement communications, the disclosure of
15 which is likely to cause harm to the competitive position of the producing party.

16 2. Protected Information alternatively designated “CONFIDENTIAL
17 OUTSIDE ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL” or “RESTRICTED
18 CONFIDENTIAL” shall be treated as if designated CONFIDENTIAL – OUTSIDE COUNSEL
19 ONLY. In determining whether Protected Information should be designated as CONFIDENTIAL
20 – OUTSIDE COUNSEL ONLY, each party agrees to use such designation only in good faith.

21 3. Protected Information designated CONFIDENTIAL – OUTSIDE
22 COUNSEL ONLY and the contents therein shall be available only to the persons or entities listed
23 in paragraphs I.B.2.a, c, d, e and f, subject to any terms set forth or incorporated therein, and not
24 to any person or entity listed in paragraph I.B.2.b.

25 **II. USE OF PROTECTED INFORMATION AT HEARING OR TRIAL**

26 In the event that a party intends to use any Protected Information during any hearing or
27 trial, that party shall provide a minimum of two (2) business days’ notice to the producing party.
28 Subject to challenges under section IV, the parties will not oppose any reasonable request by the

1 producing party that courtroom be sealed, if allowed by the Court, during the presentation of any
2 testimony, evidence, or argument relating to or involving the use of any Protected Information.

3 **III. DISCLOSURE TO TECHNICAL ADVISERS**

4 **A. Purpose**

5 Protected Information designated by the producing party and such copies of Protected
6 Information as are reasonably necessary for maintaining, defending, or evaluating this litigation
7 may be furnished and disclosed to the receiving party's technical advisers and their necessary
8 support personnel.

9 **B. No Disclosure Without Protective Order Subscription**

10 No disclosure of Protected Information to a technical adviser or their necessary support
11 personnel shall occur until that person has signed the form attached hereto as Attachment A, and a
12 signed copy has been provided to the producing party; and to the extent there has been an
13 objection under paragraph III.C, that objection is resolved according to the procedures set forth
14 below.

15 **C. Prior Notice of Intent to Disclose Protected Information to an Advisor**

16 A party desiring to disclose Protected Information to a technical adviser shall also give
17 prior written notice of the intended disclosure by email to all counsel of record in the litigation,
18 and the producing party shall have ten (10) business days after such notice is given to object in
19 writing to the disclosure. The party desiring to disclose Protected Information to a technical
20 adviser must provide the following information for each technical adviser: name, address,
21 curriculum vitae, and current employer. The party desiring to disclose Protected Information to a
22 technical adviser must also provide written certification that each technical adviser does not
23 currently have, has not previously had, and is not reasonably likely in the future to develop, a
24 relationship with a competitor of the producing party that would create a reasonable risk of
25 disclosure, whether intentional or not, of the Protected Information or any part of it to that
26 competitor. No Protected Information shall be disclosed to such expert(s) or consultant(s) until
27 after the expiration of the foregoing notice period and resolution of any objection.
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1 **D. Objections to Technical Advisors**

2 A party objecting to disclosure of Protected Information to a technical adviser shall state
3 with particularity the ground(s) of the objection. The objecting party’s consent to the disclosure
4 of Protected Information to a technical adviser shall not be unreasonably withheld, and its
5 objection must be based on that party’s good faith belief that disclosure of its Protected
6 Information to the technical adviser will result in specific business or economic harm to that
7 party.

8 **E. Resolution of Objections to Technical Advisors**

9 If after consideration of the objection, the party desiring to disclose the Protected
10 Information to a technical adviser refuses to withdraw the technical adviser, that party shall
11 provide notice to the objecting party. Thereafter, the objecting party shall move the Court, within
12 ten (10) business days of receiving such notice, for a ruling on its objection. A failure to file a
13 motion within the ten (10) business day period, absent an agreement of the parties to the contrary
14 or for an extension of such ten (10) business day period, shall operate as an approval of disclosure
15 of Protected Information to the technical adviser. The parties agree to cooperate in good faith to
16 shorten the time frames set forth in this paragraph if necessary to abide by any discovery or
17 briefing schedules.

18 **F. Burden for Objections to Technical Advisors**

19 1. The objecting party shall have the burden of showing to the Court “good
20 cause” for preventing the disclosure of its Protected Information to the technical adviser. For
21 purposes of this paragraph, “good cause” includes, but is not limited to, a particularized showing
22 that the challenged technical advisor currently has, previously had, or is reasonably likely in the
23 future to develop, a relationship with a competitor of the producing party that would create a
24 reasonable risk of disclosure, whether intentional or not, of the Protected Information or any part
25 of it to that competitor.

26 2. A party who has not previously objected to disclosure of Protected
27 Information to a technical adviser or whose objection has been resolved with respect to
28 previously produced Protected Information shall not be precluded from raising an objection to a

1 technical adviser at a later time with respect to Protected Information that is produced after the
2 time for objecting to such a technical adviser has expired. Any such objection shall be handled in
3 accordance with the provisions set forth above in section III.

4 **IV. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

5 **A. Use of Reasonable Care and No Waiver**

6 The parties shall use reasonable care when designating Protected Information. Nothing in
7 this Order shall prevent a receiving party from contending that any Protected Information has
8 been improperly designated. A receiving party may at any time request that the producing party
9 cancel or modify the Protected Information designation with respect to any document or any
10 information contained therein.

11 **B. Objections to Confidentiality Designations**

12 A party shall not be obligated to challenge the propriety of a designation of any category
13 of Protected Information at the time of production, and a failure to do so shall not preclude a
14 subsequent challenge thereto. In the event that a party objects to the designation of Protected
15 Information, such a challenge shall be written, shall be served on counsel for the producing party,
16 and shall particularly identify the Protected Information that the receiving party contends should
17 be designated differently. The parties shall use their best efforts to resolve promptly and
18 informally such disputes and shall advise one another of both the factual and legal basis for their
19 respective positions. If an agreement cannot be reached, the receiving party shall request that the
20 Court cancel or modify a designation. The burden of demonstrating the confidential nature of
21 Protected Information shall at all times be and remain on the designating party.

22 **C. Treatment of Protected Information During Challenge to a Designation**

23 Unless otherwise resolved by agreement between the parties, until a determination by the
24 Court, the Protected Information at issue shall be treated as having been properly designated and
25 subject to the terms of this Order.

1 **V. LIMITATIONS ON THE USE OF PROTECTED INFORMATION**

2 **A. Restrictions on Use of Protected Information**

3 All Protected Information shall be held in confidence by each person to whom it is
4 disclosed, shall be used only for purposes of this litigation, shall not be used for any business
5 purpose or in connection with any other legal proceeding, and shall not be disclosed to any person
6 who is not entitled to receive such Protected Information as herein provided. All produced
7 Protected Information shall be carefully maintained so as to preclude access by persons who are
8 not entitled to receive such Protected Information.

9 **B. Examinations and Court Filings Concerning Protected Information**

10 Except as may be otherwise ordered by the Court, any person may be examined as a
11 witness at depositions and trial and may testify concerning all Protected Information of which
12 such person has prior knowledge. Without in any way limiting the generality of the foregoing:

13 1. A present director, officer, and/or employee of a producing party may be
14 examined and may testify concerning all Protected Information which has been produced by that
15 party and of which the witness has personal knowledge;

16 2. A former director, officer, agent and/or employee of a producing party may
17 be interviewed, examined and may testify concerning all Protected Information of which he or
18 she has personal knowledge, including any Protected Information that refers to matters of which
19 the witness has personal knowledge, which has been produced by that party and which pertains to
20 the period or periods of his or her employment; and

21 3. Non-parties may be examined or testify concerning any Protected
22 Information of a producing party, which appears on its face or from other documents or testimony
23 to have been received from or communicated to the non-party as a result of any contact or
24 relationship with the producing party or a representative of the producing party. Any person
25 other than the witness, his or her attorney(s), or any person qualified to receive Protected
26 Information under this Order shall be excluded from the portion of the examination concerning
27 such Protected Information, unless the producing party consents to persons other than qualified
28 recipients being present at the examination. If the witness is represented by an attorney who is

1 not qualified under this Order to receive such Protected Information, then prior to the
2 examination, the attorney must provide a signed statement, in the form of Attachment A hereto,
3 that he or she will comply with the terms of this Order and maintain the confidentiality of
4 Protected Information disclosed during the course of the examination. In the event that such
5 attorney declines to sign such a statement prior to the examination, the parties, by their attorneys,
6 shall jointly seek a protective order from the Court prohibiting the attorney from disclosing
7 Protected Information.

8 4. Every fact witness shall be informed at the start of a deposition that he or
9 she may be shown documents designated as Protected Information in this litigation, and that such
10 Protected Information and the contents therein are being furnished to the witness solely for use in
11 this litigation. Every fact witness shall be shown a copy of this Order. No fact witness may
12 retain any documents designated as Protected Information.

13 5. All transcripts of depositions, exhibits, answers to interrogatories,
14 pleadings, briefs, and other documents submitted to the Court that have been designated as
15 Protected Information, or which contain information so designated, shall be filed under seal in a
16 manner prescribed by the Court for such filings unless the Court orders otherwise. To avoid
17 unnecessary sealing of Court records and motion practice relating to sealed filings, any party
18 preparing a filing with the Court that may contain Protected Information may identify to the
19 producing party or non-party the specific Protected Information at issue and request a waiver of
20 the confidentiality protections for that specific Protected Information. Upon receipt of such a
21 request to waive confidentiality protections, the producing party or non-party shall respond in
22 good faith within twenty-four (24) hours.

23 6. Outside attorneys of record for the parties are hereby authorized to be the
24 persons who may retrieve confidential exhibits and/or other confidential matters filed with the
25 Court upon termination of this litigation without further order of this Court, and are the persons to
26 whom such confidential exhibits or other confidential matters may be returned by the Clerk of the
27 Court, if they are not so retrieved. No material or copies thereof so filed shall be released, except
28 by order of the Court, to outside counsel of record, or as otherwise provided for hereunder.

1 7. Protected Information shall not be copied or otherwise produced by a
2 receiving party, except for transmission to qualified recipients, without the written permission of
3 the producing party, or, in the alternative, by further order of the Court. Nothing herein shall,
4 however, restrict a qualified recipient from making working copies, abstracts, digests and
5 analyses of Protected Information designated CONFIDENTIAL or CONFIDENTIAL –
6 OUTSIDE COUNSEL ONLY for use in connection with this litigation, and such working copies,
7 abstracts, digests and analyses shall be deemed Protected Information under the terms of this
8 Order. Further, nothing herein shall restrict a qualified recipient from converting or translating
9 Protected Information designated CONFIDENTIAL or CONFIDENTIAL – OUTSIDE
10 COUNSEL ONLY into machine-readable form for incorporation into a data retrieval system used
11 in connection with this action, provided that access to that Protected Information, in whatever
12 form stored or reproduced, shall be limited to qualified recipients.

13 8. Testimony given at deposition may be designated as Protected Information
14 by outside litigation counsel of record by making a statement orally to that effect on the record at
15 any time during the deposition. Within fifteen (15) business days of receipt of the final certified
16 transcript of any deposition, the producing party may request that the original and all copies of the
17 deposition transcript, in whole or in part, be marked CONFIDENTIAL or CONFIDENTIAL –
18 OUTSIDE COUNSEL ONLY. Confidential designations shall be made by notifying all parties in
19 writing of the specific pages and lines of the transcript that should be treated as Protected
20 Information. Deposition transcripts shall be treated by default as CONFIDENTIAL – OUTSIDE
21 COUNSEL ONLY until the expiration of the time to make a confidentiality designation unless
22 otherwise agreed to by the parties. Any portions so designated shall thereafter be treated in
23 accordance with the terms of this Order. Objections to confidentiality designations under this
24 paragraph shall be governed by the procedure set forth in section IV above.

25 **C. Unauthorized Disclosure of Protected Information**

26 If a receiving party is reasonably certain that it has disclosed, by inadvertence or
27 otherwise, Protected Information to any person or in any circumstance not authorized under this
28 Order, the receiving party must immediately: (i) notify in writing the producing party of the

1 unauthorized disclosure(s); (ii) use its best efforts to retrieve all copies of the Protected
2 Information; (c) inform the person or persons to whom unauthorized disclosures were made of all
3 the terms of this Order; and (d) request that such person or persons execute the confidentiality
4 agreement attached hereto as Attachment A. Compliance with this paragraph V.C upon the
5 discovery of an unauthorized disclosure of Protected Information is mandatory and shall not
6 excuse a violation of this Order by a receiving party or exempt a violating receiving party from
7 sanctions pursuant to paragraph V.D below.

8 **D. Violations**

9 If any party violates the limitations on the use of Protected Information as described in
10 this section V, the party violating this Order shall be subject to sanctions as ordered by the Court.
11 In the event motion practice is required to enforce the limitations on the use of Protected
12 Information described in Section V, the prevailing party on such a motion shall be awarded costs,
13 expenses, and fees, including attorney or other professional fees, incurred in connection with the
14 discovery of the violation and the preparation, filing, and arguing of the motion or any other
15 proceedings resulting from the violation.

16 **VI. NON-PARTY USE OF THIS PROTECTIVE ORDER**

17 **A. Purpose**

18 A non-party producing Discovery Material voluntarily or pursuant to a subpoena or a
19 court order may designate such Discovery Material as Protected Information pursuant to the terms
20 of this Protective Order.

21 **B. Non-Party Access**

22 A non-party's use of this Protective Order to protect its Protected Information does not
23 entitle that non-party access to the Protected Information produced by any party or non-party in
24 this case.

25 **VII. NO WAIVER OF PRIVILEGE**

26 Nothing in this Protective Order shall require production of Discovery Material that a
27 party contends is protected from disclosure by the attorney-client privilege, the work product
28 immunity, common interest doctrine, or other privilege, doctrine, right, or immunity (collectively

1 “Privileged Information”). In accordance with Rule 502 of the Federal Rules of Evidence, the
2 parties hereby stipulate, and the Court orders that no inadvertent or unintentional production of
3 Privileged Information shall prejudice the producing party or otherwise constitute a waiver or
4 estoppel as to any such privilege, doctrine, right or immunity. Disclosures among defendants’
5 attorneys of work product or other communications relating to issues of common interest shall not
6 effect or be deemed a waiver of any applicable privilege or protection from disclosure. Any party
7 that inadvertently produces Privileged Information may obtain the return of those materials by
8 promptly notifying the recipient(s) and expressly articulating the basis for the asserted privilege
9 or immunity. The recipient(s) shall gather and return all copies of the inadvertently produced
10 Privileged Information to the producing party, or certify to the producing party that they have
11 been destroyed and/or deleted. Notwithstanding this provision, outside litigation counsel of
12 record are not required to delete inadvertently produced Privileged Information that may reside on
13 their respective firm’s electronic back-up systems that are over-written in the normal course of
14 business, provided such inadvertently produced Privileged Information is not used for any other
15 purpose following counsel’s receipt of the producing party’s notice that the Privileged
16 Information should not have been produced. Disputes regarding whether Discovery Material is
17 discoverable or not discoverable shall be resolved in the same manner as disputes regarding
18 whether Discovery Material that has been produced qualifies as Protected Information, subject to
19 the terms of this section VII.

20 **VIII. MISCELLANEOUS PROVISIONS**

21 **A. Waiver**

22 Any of the notice requirements herein may be waived, in whole or in part, but only in
23 writing signed by the attorney-in-charge for the party against whom such waiver will be effective.

24 **B. Inadvertent or Unintentional Production**

25 Inadvertent or unintentional production of documents or things containing Protected
26 Information that are not designated as one of the categories of Protected Information at the time
27 of production shall not be deemed a waiver in whole or in part of a claim for confidential
28 treatment. With respect to documents, the producing party shall immediately upon discovery

1 notify the other parties of the error in writing and provide replacement pages bearing the
2 appropriate confidentiality legend. In the event of any disclosure of Protected Information other
3 than in a manner authorized by this Protective Order, including any unintentional or inadvertent
4 disclosure, counsel for the party responsible for the disclosure shall immediately notify opposing
5 counsel of all of the pertinent facts, and make every effort to prevent further unauthorized
6 disclosure including, retrieving all copies of the Protected Information from the recipient(s)
7 thereof, and securing the agreement of the recipients not to further disseminate the Protected
8 Information in any form. Compliance with the foregoing shall not prevent the producing party
9 from seeking further relief from the Court. Compliance with this paragraph VIII.B shall not
10 excuse a violation of this Order or exempt a violating party from sanctions pursuant to paragraph
11 V.D above.

12 **C. Conclusion of Litigation**

13 Within sixty (60) business days after the entry of a final non-appealable judgment or
14 order, or the expiration of the deadline for any party to appeal any final judgment or order, or the
15 complete settlement of all claims asserted against all parties in this action, each party shall, at the
16 option of the producing party, either return or destroy all physical objects and documents which
17 embody Protected Information it has received, and shall destroy in whatever form stored or
18 reproduced, all physical objects and documents, including but not limited to, correspondence,
19 memoranda, notes and other work product materials, which contain or refer to any category of
20 Protected Information. All Protected Information not embodied in physical objects and
21 documents shall remain subject to this Order. In the event that a party is dismissed before the
22 entry of a final non-appealable judgment or order, this same procedure shall apply to any
23 Protected Information received from or produced to the dismissed party. Notwithstanding this
24 provision, outside litigation counsel of record are not required to delete Protected Information that
25 may reside on their respective firm's electronic back-up systems that are over-written in the
26 normal course of business. Notwithstanding the foregoing, outside counsel shall be entitled to
27 maintain two (2) copies of all pleadings, motions and trial briefs (including all supporting and
28 opposing papers and exhibits thereto), written discovery requests and responses (and exhibits

1 thereto), deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or
2 introduced into evidence at any hearing or trial, and their attorney work product which refers or is
3 related to any Protected Information designated CONFIDENTIAL or CONFIDENTIAL –
4 OUTSIDE COUNSEL ONLY for archival purposes only. If a party opts to destroy Protected
5 Information designated CONFIDENTIAL or CONFIDENTIAL – OUTSIDE COUNSEL ONLY,
6 the party must provide a Certificate of Destruction to the producing party.

7 **D. Subpoenas**

8 If at any time documents containing Protected Information are subpoenaed by any court,
9 arbitral, administrative or legislative body, or are otherwise requested in discovery, the person to
10 whom the subpoena or other request is directed shall immediately give written notice thereof to
11 every party or non-party who has produced such documents and to its counsel, and shall provide
12 each such party with an opportunity to object to the production of such documents. If a
13 producing party does not take steps to prevent disclosure of such documents within ten (10)
14 business days of the date written notice is given, the party to whom the referenced subpoena is
15 directed may produce such documents in response thereto, but shall take all reasonable measures
16 to have such documents treated in accordance with terms of this Protective Order.

17 **E. Communications with Testifying Experts**

18 Testifying experts shall not be subject to discovery of any draft of their reports in this case
19 and such draft reports, notes, outlines, or any other writings leading up to an issued report(s) in
20 this litigation are exempt from discovery. In addition, all communications between counsel for a
21 party and that party's testifying expert, and all materials generated by a testifying expert with
22 respect to that person's work, are exempt from discovery unless they relate to the expert's
23 compensation or identify facts, data or assumptions relied upon by the expert in forming any
24 opinions in this litigation and such information is not already disclosed in the expert's report.

25 **F. Post-Filing Communications**

26 No party shall be required to identify on their respective privilege log any document or
27 communication dated on or after the filing of the lawsuit, which absent this provision, the party
28 would have been obligated to so identify on said privilege log. The parties shall exchange their

1 respective privilege document logs at a time to be agreed upon by the parties following the
2 production of documents.

3 **G. Modification of Protections**

4 This Order is entered without prejudice to the right of any party, either by agreement with
5 other parties to this action, or by applying to the Court if agreement cannot be reached among
6 parties, to extend additional protection, or to reduce or rescind the restrictions of this Order, when
7 convenience or necessity requires. Furthermore, without application to the Court, any party that
8 is a beneficiary of the protections of this Order may enter a written agreement releasing any other
9 party hereto from one or more requirements of this Order even if the conduct subject to the
10 release would otherwise violate the terms herein.

11 **H. No Agreement Concerning Discoverability**

12 The identification or agreed upon treatment of certain types of Discovery Material does
13 not reflect agreement by the parties that the disclosure of such categories of Discovery Material is
14 required or appropriate in this action. The parties reserve the right to argue that any particular
15 category of Discovery Material should not be produced.

16 **I. No Limitation on Legal Representation**

17 Nothing in this Protective Order shall preclude or impede outside litigation counsel of
18 record's ability to communicate with or advise their client in connection with this litigation based
19 on such counsel's review and evaluation of Protected Information, provided however, that such
20 communications or advice shall not disclose or reveal the substance or content of any Protected
21 Information other than as permitted under this Protective Order.

22 **J. Agreement Upon Execution**

23 Each of the parties agrees to be bound by the terms of this Protective Order as of the date
24 counsel for such party executes this Protective Order, even if prior to entry of this order by the
25 Court.

26 **K. Section Headings**

27 The section headings used in this Order shall be intended for convenience only and shall
28 not be deemed to supersede or modify any provisions.

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L. Interpretation, Enforcement and Continuing Jurisdiction

The United States District Court for the Northern District of California is responsible for the interpretation and enforcement of this Stipulated Protective Order. After termination of this litigation, the provisions of this Stipulated Protective Order shall continue to be binding except with respect to that Discovery Material that becomes a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Protected Information for enforcement of the provision of this Stipulated Protective Order following termination of this litigation. All disputes concerning Protected Information produced under the protection of this Stipulated Protective Order shall be resolved by the United States District Court for the Northern District of California.

DATED: March 22, 2012

PERKINS COIE LLP

By: /s/ Bobbie J. Wilson
BOBBIE J. WILSON

Attorneys for Defendants
GOOGLE INC. and SLIDE, INC.

DATED: March 22, 2012

EDELSON MCGUIRE, LLP

By: /s/ Rafey S. Balabanian
RAFEY S. BALABANIAN

Attorneys for Plaintiffs NICOLE PIMENTAL
and JESSICA FRANKLIN, individually and
on behalf of all others similarly situated

DATED: March 22, 2012

WEISS & LURIE

By: /s/ Jordan L. Lurie
JORDAN L. LURIE

Attorneys for Plaintiffs NICOLE PIMENTAL
and JESSICA FRANKLIN, individually and
on behalf of all others similarly situated

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

HON. YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

1 By: _____

2 Executed on _____, 20____.

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General Order No. 45.X Attestation

I, Bobbie Wilson, hereby attest, pursuant to N.D. Cal. General Order No. 45, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: March 22, 2012

PERKINS COIE LLP

By: /s/ Bobbie J. Wilson
BOBBIE J. WILSON

Attorneys for Defendants
GOOGLE INC. and SLIDE, INC.