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 10 GOOGLE INC. and SLIDE, INC.

11 [Additional Counsel on Signature Page]

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

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

18 Plaintiffs,

19 v.

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

22 Defendants.

Case No. 11-cv-02585-YGR

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

23 This Document Relates to All Actions.

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  
17 Order. 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 items  
25 selected by the receiving party shall initially be considered, as a whole, to constitute Protected  
26 Information (unless otherwise designated at the time of inspection) and shall be subject to this  
27 Order. Thereafter, the producing party shall have a reasonable time to review and designate the  
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1 appropriate documents as CONFIDENTIAL or CONFIDENTIAL – OUTSIDE COUNSEL  
2 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 this  
10 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, tangible  
24 or physical form, or the factual knowledge of persons, and which has been so designated by the  
25 producing party.

26 2. Protected Information designated CONFIDENTIAL and the contents  
27 therein shall be available only to:  
28

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 reasonably  
13 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 contains  
6 extremely sensitive information, the disclosure of which to another party would create a risk of  
7 competitive injury that could not be avoided by less restrictive means. Protected Information  
8 designated CONFIDENTIAL – OUTSIDE COUNSEL ONLY includes, but is not limited to: (i)  
9 marketing, financial, sales, web traffic, research and development, or technical, data or  
10 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 party.

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

8           If after consideration of the objection, the party desiring to disclose the Protected  
9 Information to a technical adviser refuses to withdraw the technical adviser, that party shall  
10 provide notice to the objecting party. Except as specifically set forth in the Court’s “Standing  
11 Order In Civil Cases,” no motions regarding discovery disputes, including disputes over the  
12 disclosure of Protected Information to a technical adviser, may be filed without prior leave of  
13 Court. A Party that receives a timely written objection to the disclosure of Protected Information  
14 to a technical adviser must meet and confer with the objecting party *in person* to try to resolve the  
15 matter by agreement within ten (10) days of the written objection. Thereafter, if no agreement is  
16 reached, the objecting party shall cause to be filed a *joint* letter brief as provided in Paragraph 8 of  
17 the Court’s Standing Order in Civil Cases. The joint letter brief must attest that, prior to filing the  
18 request for relief, counsel met and conferred *in person* and must concisely summarize those  
19 remaining issues counsel were unable to resolve, including the reasons advanced for why the  
20 disclosure of Protected Information to a technical adviser is reasonably necessary, assess the risk  
21 of harm that the disclosure would entail, and suggest any additional means that could be used to  
22 reduce that risk. In addition, any such joint letter brief must summarize the reasons advanced by  
23 the objecting party for its refusal to approve the disclosure. The Court will then advise the parties  
24 if additional briefing, a telephonic conference, or a personal appearance will be necessary. A  
25 failure by the objecting party to cause to be filed a joint letter brief within the ten (10) business  
26 day period, absent an agreement of the parties to the contrary or for an extension of such ten (10)  
27 business day period, shall operate as an approval of disclosure of Protected Information to the  
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1 technical adviser. The parties agree to cooperate in good faith to shorten the time frames set forth  
2 in this paragraph if necessary to abide by any discovery or briefing schedules.

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

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

11 2. A party who has not previously objected to disclosure of Protected  
12 Information to a technical adviser or whose objection has been resolved with respect to previously  
13 produced Protected Information shall not be precluded from raising an objection to a technical  
14 adviser at a later time with respect to Protected Information that is produced after the time for  
15 objecting to such a technical adviser has expired. Any such objection shall be handled in  
16 accordance with the provisions set forth above in section III.

17 **IV. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

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

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

24 **B. Objections to Confidentiality Designations**

25 A party shall not be obligated to challenge the propriety of a designation of any category  
26 of Protected Information at the time of production, and a failure to do so shall not preclude a  
27 subsequent challenge thereto. In the event that a party objects to the designation of Protected  
28 Information, such a challenge shall be written, shall be served on counsel for the producing party,



1 and shall particularly identify the Protected Information that the receiving party contends should  
2 be designated differently and explain both the factual and legal basis for the objection to the  
3 designation. Upon receipt of the written objection, counsel for the producing party shall, within  
4 five (5) days, provide a written response to the objecting party explaining both the factual and  
5 legal basis for the designation as Protected Information. The parties shall use their best efforts to  
6 resolve promptly and informally such disputes. Except as specifically set forth in the Court's  
7 "Standing Order In Civil Cases," no motions regarding discovery disputes, including disputes  
8 over the designation of Protected Information, may be filed without prior leave of Court. If the  
9 parties are unable to resolve an objection without court intervention, any request for discovery  
10 relief must be summarized jointly by the parties in a *joint* letter brief no longer than four (4) pages  
11 as provided in the Court's Standing Order in Civil Cases. The joint letter brief must attest that,  
12 prior to filing the request for relief, counsel met and conferred *in person* and must concisely  
13 summarize those remaining issues that counsel were unable to resolve. The joint letter brief may  
14 cite to limited and specific legal authority only for resolution of dispositive issues. The joint letter  
15 brief may not be accompanied by declarations; however any specific excerpt of disputed  
16 discovery material may be attached. The Court will then advise the parties if additional briefing, a  
17 telephonic conference, or a personal appearance will be necessary.

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

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

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

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

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

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

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

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

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

15 3. Non-parties may be examined or testify concerning any Protected  
16 Information of a producing party, which appears on its face or from other documents or testimony  
17 to have been received from or communicated to the non-party as a result of any contact or  
18 relationship with the producing party or a representative of the producing party. Any person other  
19 than the witness, his or her attorney(s), or any person qualified to receive Protected Information  
20 under this Order shall be excluded from the portion of the examination concerning such Protected  
21 Information, unless the producing party consents to persons other than qualified recipients being  
22 present at the examination. If the witness is represented by an attorney who is not qualified under  
23 this Order to receive such Protected Information, then prior to the examination, the attorney must  
24 provide a signed statement, in the form of Attachment A hereto, that he or she will comply with  
25 the terms of this Order and maintain the confidentiality of Protected Information disclosed during  
26 the course of the examination. In the event that such attorney declines to sign such a statement  
27 prior to the examination, the parties, by their attorneys, shall jointly seek a protective order from  
28 the Court prohibiting the attorney from disclosing Protected Information.

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

6           5.       Without written permission from the designating party or a court order  
7 secured after appropriate notice to all interested persons, a party may not file in the public record  
8 in this action any Protected Information. A party that seeks to file under seal any Protected  
9 Information must comply with Civil Local Rule 79-5 and General Order 62. Protected  
10 Information may only be filed under seal pursuant to a court order authorizing the sealing of the  
11 specific Protected Information at issue. Pursuant to Civil Local Rule 79-5 and General Order 62,  
12 a sealing order will issue only upon a request establishing that the Protected Information at issue  
13 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. To  
14 avoid unnecessary sealing of Court records and motion practice relating to sealed filings, any  
15 party preparing a filing with the Court that may contain Protected Information may identify to the  
16 producing party or non-party the specific Protected Information at issue and request a waiver of  
17 the confidentiality protections for that specific Protected Information. Upon receipt of such a  
18 request to waive confidentiality protections, the producing party or non-party shall respond in  
19 good faith within twenty-four (24) hours. If a receiving party's request to file Protected  
20 Information under seal pursuant to Civil Local Rule 79 5 and General Order 62 is denied by the  
21 court, then the Receiving Party may file the information in the public record pursuant to Civil  
22 Local Rule 79-5(e) unless otherwise instructed by the court.

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 analyses  
5 of Protected Information designated CONFIDENTIAL or CONFIDENTIAL – OUTSIDE  
6 COUNSEL ONLY for use in connection with this litigation, and such working copies, abstracts,  
7 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 this  
10 section V, the party violating this Order shall be subject to sanctions as ordered by the Court. In  
11 the event motion practice is required to enforce the limitations on the use of Protected Information  
12 described in Section V, the prevailing party on such a motion shall be awarded costs, expenses,  
13 and fees, including attorney or other professional fees, incurred in connection with the discovery  
14 of the violation and the preparation, filing, and arguing of the motion or any other proceedings  
15 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 court  
19 order may designate such Discovery Material as Protected Information pursuant to the terms of  
20 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 or  
9 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 of  
27 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 order,  
14 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 producing  
13 party does not take steps to prevent disclosure of such documents within ten (10) business days of  
14 the date written notice is given, the party to whom the referenced subpoena is directed may  
15 produce such documents in response thereto, but shall take all reasonable measures to have such  
16 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 release  
10 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.

1           **L. Interpretation, Enforcement and Continuing Jurisdiction**

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

11 DATED: March 22, 2012

**PERKINS COIE LLP**

12  
13 By: /s/ Bobbie J. Wilson  
BOBBIE J. WILSON

14 Attorneys for Defendants  
15 GOOGLE INC. and SLIDE, INC.

16 DATED: March 22, 2012

**EDELSON MCGUIRE, LLP**

17  
18 By: /s/ Rafey S. Balabanian  
RAFEY S. BALABANIAN

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

21 DATED: March 22, 2012

**WEISS & LURIE**

22  
23 By: /s/ Jordan L. Lurie  
JORDAN L. LURIE

24 Attorneys for Plaintiffs NICOLE PIMENTAL  
25 and JESSICA FRANKLIN, individually and  
26 on behalf of all others similarly situated  
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1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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4 DATED: March 27, 2012

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6 YVONNE GONZALEZ ROGERS  
7 UNITED STATES DISTRICT COURT JUDGE  
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**ATTACHMENT A TO THE STIPULATED PROTECTIVE ORDER  
FOR THE TREATMENT OF CONFIDENTIAL INFORMATION**

**CONFIDENTIALITY AGREEMENT**

1. My name is \_\_\_\_\_.
2. I reside at \_\_\_\_\_.
3. My present employer is \_\_\_\_\_.
4. My present occupation or job description is \_\_\_\_\_.
5. I have been engaged as \_\_\_\_\_ on behalf of \_\_\_\_\_ in the preparation and conduct of litigation styled *Nicole Pimental and Jessica Franklin, individually and on behalf of all others similarly situated, v. Google Inc. and Slide, Inc.*
6. I have received a copy of the Stipulated Protective Order dated \_\_\_\_\_, 20\_\_\_\_, and I have carefully read and understand its provisions. I agree to comply with and be bound by all the provisions of said Order. I understand that I am to retain all copies of any documents designated as CONFIDENTIAL or CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or any similar designation, in a secure manner and in accordance with the terms of said Order, and that all copies are to remain in my personal custody until I have completed my assigned duties, whereupon the copies and any writings prepared by me containing any information containing any Protected Information or documents designated CONFIDENTIAL or CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or any similar designation, are to be returned to counsel who provided me with such material.
7. I will not divulge Protected Information to persons other than those specifically authorized by said Order, and I will not copy or use except solely for the purpose of this action, any Protected Information obtained pursuant to said Order, except as provided in said Order. I also agree to notify any stenographic or clerical personnel who are required to assist me of the terms of said Order.
8. In accordance with paragraph III.C of the Order (if applicable), I have attached to this Confidentiality Agreement my curriculum vitae and any other required information sufficient to identify my current employer and employment history for the past ten (10) years, and a listing of cases in which I have testified as an expert at trial or by deposition within the preceding five (5) years. Further, I certify that I do not currently have, have not previously had, and am not reasonably likely in the future to develop, a relationship with a competitor of the producing party that would create a reasonable risk of disclosure, whether intentional or not, of the Protected Information or any part of it to that competitor.
9. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

By: \_\_\_\_\_

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.