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6 Attorneys for Plaintiff and Counter-Defendant
 MELIAN LABS INC.

8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 **MELIAN LABS INC.**, a Delaware corporation,
 11 Plaintiff,
 12 v.
 13 **TRIOLOGY, LLC**, a Delaware limited liability
 company, and DOES 1-10,
 14
 15 Defendants.

Case No. 4:13-cv-04791-SBA

STIPULATED PROTECTIVE ORDER FOR
 LITIGATION INVOLVING PATENTS,
 HIGHLY SENSITIVE CONFIDENTIAL
 INFORMATION AND/OR TRADE SECRETS

17 **TRIOLOGY, LLC**, a Delaware limited liability
 company, and DOES 1-10,
 18 Counter-Plaintiffs,
 19 v.
 20 **MELIAN LABS INC.**, a Delaware corporation,
 21 Counter-Defendant.

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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal principles. The
9 parties further acknowledge, as set forth in Section 14.3, below, that this Stipulated Protective Order
10 does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
11 procedures that must be followed and the standards that will be applied when a party seeks permission
12 from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
15 items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
18 Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or items that it
21 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

23 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
24 manner in which it is generated, stored, or maintained (including, among other things, testimony,
25 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
26 in this matter.

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

6 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
7 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-
8 Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

9 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel
10 does not include Outside Counsel of Record or any other outside counsel.

11 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity
12 not named as a Party to this action.

13 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but
14 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
15 party or are affiliated with a law firm which has appeared on behalf of that party.

16 2.12 Party: any party to this action, including all of its officers, directors, employees,
17 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

18 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
19 this action.

20 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
21 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
22 retrieving data in any form or medium) and their employees and subcontractors.

23 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
24 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
26 Party.

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1 3. SCOPE

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

14 4. DURATION

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

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
23 Non-Party that designates information or items for protection under this Order must take care to limit
24 any such designation to specific material that qualifies under the appropriate standards. To the extent it is
25 practical to do so, the Designating Party must designate for protection only those parts of material,
26 documents, items, or oral or written communications that qualify – so that other portions of the material,
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1 documents, items, or communications for which protection is not warranted are not swept unjustifiably
2 within the ambit of this Order.

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

7 If it comes to a Designating Party's attention that information or items that it designated for
8 protection do not qualify for protection at all or do not qualify for the level of protection initially
9 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken
10 designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
12 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
13 Discovery

14 Material that qualifies for protection under this Order must be clearly so designated before the
15 material is disclosed or produced.

16 Designation in conformity with this Order requires:

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

24 A Party or Non-Party that makes original documents or materials available for inspection need
25 not designate them for protection until after the inspecting Party has indicated which material it would
26 like copied and produced. During the inspection and before the designation, all of the material made
27 available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

1 After the inspecting Party has identified the documents it wants copied and produced, the Producing
2 Party must determine which documents, or portions thereof, qualify for protection under this Order.
3 Then, before producing the specified documents, the Producing Party must affix the appropriate legend
4 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
5 contains Protected Material. If only a portion or portions of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins) and must specify, for each portion, the level of protection being
8 asserted.

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

21 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
22 other proceeding to include Protected Material so that the other parties can ensure that only
23 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
24 A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in
25 any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY.”

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

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

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
16 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
17 protection under this Order for such material. Upon timely correction of a designation, the Receiving
18 Party must make reasonable efforts to assure that the material is treated in accordance with the
19 provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
22 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
24 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
25 confidentiality designation by electing not to mount a challenge promptly after the original designation is
26 disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
2 providing written notice of each designation it is challenging and describing the basis for each challenge.
3 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
4 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
5 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
6 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within
7 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for
8 its belief that the confidentiality designation was not proper and must give the Designating Party an
9 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
10 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
11 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
12 establishes that the Designating Party is unwilling to participate in the meet and confer process in a
13 timely manner.

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

3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
4 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
5 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
6 Designating Party has waived the confidentiality designation by failing to file a motion to retain
7 confidentiality as described above, all parties shall continue to afford the material in question the level of
8 protection to which it is entitled under the Producing Party’s designation until the court rules on the
9 challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
13 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
14 categories of persons and under the conditions described in this Order. When the litigation has been
15 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
16 DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a location and in a
18 secure manner¹ that ensures that access is limited to the persons authorized under this Order.

19 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
20 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
21 or item designated “CONFIDENTIAL” only to:

- 22 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside
23 Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and
24 who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
25 A;

26 _____
27 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected
28 Material in password-protected form.

1 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);
4 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary
5 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
6 (d) the court and its personnel;
7 (e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to
8 whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
9 and Agreement to Be Bound” (Exhibit A);
10 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who
11 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
12 by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
13 to depositions that reveal Protected Material must be separately bound by the court reporter and may not
14 be disclosed to anyone except as permitted under this Stipulated Protective Order.
15 (g) the author or recipient of a document containing the information or a custodian or other person who
16 otherwise possessed or knew the information.

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
18 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
19 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside
22 Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and
23 who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
24 A;
25 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2)
26 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom
27 the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

1 (d) the court and its personnel;

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

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

7 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

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

22 (b) A Party that makes a request and provides the information specified in the preceding respective
23 paragraphs may disclose the subject Protected Material to the identified Expert unless, within 14 days of

24 _____
25 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert
26 should provide whatever information the Expert believes can be disclosed without violating any confidentiality
27 agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating
28 Party regarding any such engagement.

³ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the
termination of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY
CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

1 delivering the request, the Party receives a written objection from the Designating Party. Any such
2 objection must set forth in detail the grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and confer with the Designating Party
4 (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of
5 the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert
6 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
7 applicable) seeking permission from the court to do so. Any such motion must describe the
8 circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is
9 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional
10 means that could be used to reduce that risk. In addition, any such motion must be accompanied by a
11 competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent
12 and the content of the meet and confer discussions) and setting forth the reasons advanced by the
13 Designating Party for its refusal to approve the disclosure.

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

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
18 LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of
20 any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
21 CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

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

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

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

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

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

- 20 1. promptly notify in writing the Requesting Party and the Non-Party that some or
21 all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 22 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
23 this litigation, the relevant discovery request(s), and a reasonably specific description of the information
24 requested; and
- 25 3. make the information requested available for inspection by the Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
27 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s
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1 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
2 order, the Receiving Party shall not produce any information in its possession or control that is subject to
3 the confidentiality agreement with the Non-Party before a determination by the court.⁴ Absent a court
4 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court
5 of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is
17 subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set
18 forth in Federal Rule of Civil Procedure 26(b)(5)(B). If information is produced in discovery that is
19 subject to a claim of privilege or of protection as trial-preparation material, the party making the claim
20 may notify any party that received the information of the claim and the basis for it. After being notified,
21 a party must promptly return or destroy the specified information and any copies it has and may not
22 sequester, use or disclose the information until the claim is resolved. This includes a restriction against
23 presenting the information to the court for a determination of the claim. This provision is not intended to
24 modify whatever procedure may be established in an e-discovery order that provides for production
25 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the

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27 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and
28 to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 parties reach an agreement on the effect of disclosure of a communication or information covered by the
2 attorney-client privilege or work product protection, the parties may incorporate their agreement in the
3 stipulated protective order submitted to the court.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
6 modification by the court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
8 Party waives any right it otherwise would have to object to disclosing or producing any information or
9 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
10 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating Party or a
12 court order secured after appropriate notice to all interested persons, a Party may not file in the public
13 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
14 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
15 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
16 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue
17 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
18 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is
19 denied by the court, then the Receiving Party may file the Protected Material in the public record
20 pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

21 13. FINAL DISPOSITION

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
23 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
24 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,
25 and any other format reproducing or capturing any of the Protected Material. Whether the Protected
26 Material is returned or destroyed, the Receiving Party must submit a written certification to the
27 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline
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1 that (1) identifies (by category, where appropriate) all the Protected Material that was returned or
2 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,
3 summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding
4 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
6 expert reports, attorney work product, and consultant and expert work product, even if such materials
7 contain Protected Material. Any such archival copies that contain or constitute Protected Material remain
8 subject to this Protective Order as set forth in Section 4 (DURATION).

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10
11 Dated: March 11, 2014

Respectfully submitted:

12 **THE TAILLIEU LAW FIRM LLP**

13 OLIVIER A. TAILLIEU

14 RAFFI V. ZEROUNIAN

15 By: /s/ Raffi V. Zerounian/

16 Attorneys for Plaintiff and Counter-Defendant
MELIAN LABS INC.

17 Dated: March 11, 2014

Respectfully submitted:

18 **DLA PIPER LLP (US)**

19 GINA DURHAM

20 AMANDA MORGAN


21 SHANNON MO

22 By: /s/ Shannon Mo

23 Attorneys for Defendant and
24 Counter-Plaintiff TRIOLOGY, LLC
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1 PURSUANT TO THIS STIPULATION, IT IS SO ORDERED.

2
3 DATED: 3/12/2014


The Honorable Sandra Brown Armstrong
United States District Judge

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8 **ATTESTATION OF CONCURRENCE IN FILING**

9 Pursuant to Local Rule 5-1(i)(3), the filer hereby attests that concurrence in the filing of this
10 document has been obtained from Shannon Mo which shall serve in lieu of her signature on the
11 document.

12
13 Dated: March 11, 2014

THE TAILLIEU LAW FIRM LLP
OLIVIER A. TAILLIEU
RAFFI V. ZEROUNIAN

14
15
16 By: /s Raffi V. Zerounian/

17
18 Attorneys for Plaintiff and Counter-
19 Defendant MELIAN LABS INC.
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or type
4 full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern District
6 of California on [date] in the case of *Melian Labs Inc. v. Triology LLC*, Case No. 4:13-cv-04791-SBA. I
7 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
8 understand and acknowledge that failure to so comply could expose me to sanctions and punishment in
9 the nature of contempt. I solemnly promise that I will not disclose in any manner any information or
10 item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
11 with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern District of
13 California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
14 enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____
[printed name]

24 Signature: _____
25 [signature]