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

14 GearSource Holdings, LLC, a Florida
 company,
 15
 Plaintiff,
 16
 v.
 17
 18 Google LLC, a Delaware company, and Does 1
 - 20,
 19
 Defendants.

Case No. 4:18-cv-03812-HSG
STIPULATED PROTECTIVE ORDER

20 **1. PURPOSES AND LIMITATIONS**

21 Disclosure and discovery activity in this action are likely to involve production of confidential,
 22 proprietary, or private information for which special protection from public disclosure and from use
 23 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties
 24 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The
 25 Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses
 26 to discovery and that the protection it affords from public disclosure and use extends only to the limited
 27 information or items that are entitled to confidential treatment under the applicable legal principles.
 28

1 The Parties further acknowledge, as set forth in Section 13.5, below, that this Stipulated Protective
2 Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
3 the procedures that must be followed and the standards that will be applied when a Party seeks
4 permission from the Court to file material under seal.

5 **2. DEFINITIONS**

6 **2.1 Challenging Party:** a Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 **2.2 “CONFIDENTIAL” Information or Items:** information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
10 Civil Procedure 26(c)).

11 **2.3 Counsel (without qualifier):** Outside Counsel of Record and House Counsel (as well
12 as their support staff).

13 **2.4 Designated House Counsel:** House Counsel who seek access to “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

15 **2.5 Designating Party:** a Party or Non-Party that designates information or items that it
16 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
18 COUNSEL ONLY”.

19 **2.6 Disclosure or Discovery Material:** all items or information, regardless of the medium
20 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
21 transcripts, and tangible things), that are produced or generated in disclosures or responses to
22 discovery in this matter.

23 **2.7 Expert:** a person with specialized knowledge or experience in a matter pertinent to the
24 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
25 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,
26 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s
27 competitor.

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1 **2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or**
2 **Items:** extremely sensitive “Confidential Information or Items,” disclosure of which to another Party
3 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
4 restrictive means.

5 **2.9 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” Information or**
6 **Items:** extremely sensitive “Highly Confidential Information or Items” whose disclosure, even to
7 Designated House Counsel, may create a substantial risk of serious harm that could not be avoided by
8 less restrictive means.

9 **2.10 House Counsel:** attorneys who are members in good standing of at least one state bar,
10 who are employees of a Party, and who have responsibility for managing this action. House Counsel
11 does not include Outside Counsel of Record or any other outside counsel.

12 **2.11 Non-Party:** any natural person, partnership, corporation, association, or other legal
13 entity not named as a Party to this action.

14 **2.12 Outside Counsel of Record:** attorneys who are not employees of a party to this action
15 but are retained to represent or advise a Party and have appeared in this action on behalf of that Party
16 or are affiliated with a law firm which has appeared on behalf of that Party. The current Outside
17 Counsel of Record are Christenson Law Firm, LLP on behalf of Plaintiff and Counter-Defendant
18 GearSource Holdings, LLC (“GearSource”) and Cooley LLP on behalf of Defendant and Counter-
19 Plaintiff Google LLC (“Google”).

20 **2.13 Party:** any party to this action.

21 **2.14 Producing Party:** a Party or Non-Party that produces Disclosure or Discovery Material
22 in this action.

23 **2.15 Professional Vendors:** persons or entities that provide litigation support services (e.g.,
24 photocopying, videotaping, translating, transcribing, preparing exhibits or demonstrations, and
25 organizing, storing, or retrieving data in any form or medium, and professional jury or trial consultants)
26 and their employees and subcontractors, who (1) have been retained by a Party or its counsel to provide
27 litigation support services with respect to this action, (2) are (including any employees and
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1 subcontractors) not a past or current employee of a Party or of a Party’s competitor, and (3) at the time
2 of retention, are not anticipated to become an employee of a Party or of a Party’s competitor.

3 **2.16 Protected Material:** any Disclosure or Discovery Material that is designated as
4 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
5 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY.”

6 **2.17 Receiving Party:** a Party that receives Disclosure or Discovery Material from a
7 Producing Party.

8 **3. SCOPE**

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

21 **4. DURATION**

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

1 **5. DESIGNATING PROTECTED MATERIAL**

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

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

13 If it comes to a Designating Party’s attention that information or items that it designated for
14 protection do not qualify for protection at all or do not qualify for the level of protection initially
15 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
16 mistaken designation.

17 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order
18 (*see*, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
19 or Discovery Material that qualifies for protection under this Order must be clearly so designated
20 before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
23 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
24 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
25 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” to each page that contains
26 protected material. If only a portion or portions of the material on a page qualifies for protection and
27 if practicable to do so, the Producing Party also must clearly identify the protected portion(s) (e.g., by
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1 making appropriate markings in the margins) and must specify, for each portion, the level of protection
2 being asserted.

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

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

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1 Parties shall give the other Parties reasonable notice (a minimum of two business days) if they
2 reasonably expect a deposition, hearing, or other proceeding to include Protected Material so that the
3 other Parties can ensure that only authorized individuals who have signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A) are present at the deposition, hearing, or proceeding. The use of
5 a document as an exhibit at a deposition shall not in any way affect its designation as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
7 CONFIDENTIAL – OUTSIDE COUNSEL ONLY.”

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

16 (c) for information produced in some form other than documents and for any other
17 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
18 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
20 COUNSEL ONLY.” If only a portion or portions of the information or item warrant protection, the
21 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level
22 of protection being asserted.

23 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
24 designate qualified information or items does not, standing alone, waive the Designating Party’s right
25 to secure protection under this Order for such material. Upon timely correction of a designation, the
26 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
27 the provisions of this Order.

28

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges.** Any Party may challenge a designation of confidentiality at
3 any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary
4 to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption
5 or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by
6 electing not to mount a challenge promptly after the original designation is disclosed.

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

20 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without Court
21 intervention, the Challenging Party shall file and serve a motion to re-designate or de-designate under
22 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
23 initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer process
24 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
25 competent declaration affirming that the movant has complied with the meet and confer requirements
26 imposed in the preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
28 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary

1 expenses and burdens on other Parties) may expose the Challenging Party to sanctions. All Parties
2 shall continue to afford the material in question the level of protection to which it is entitled under the
3 Designating Party’s designation until the Court rules on the challenge.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
7 defending, or attempting to settle this litigation, and not for any business purpose, in connection with
8 any other legal proceeding, or directly or indirectly for any other purpose whatsoever. Such Protected
9 Material may be disclosed only to the categories of persons and under the conditions described in this
10 Order. When the litigation has been terminated, a Receiving Party must comply with the provisions
11 of section 15 below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location and in a
13 secure manner that ensures that access is limited to the persons authorized under this Order. Protected
14 Material shall not be copied or otherwise reproduced by a Receiving Party, except for transmission to
15 qualified recipients, without the written permission of the Producing Party or by further order of the
16 Court.

17 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered
18 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
19 information or item designated “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
21 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
22 information for this litigation;

23 (b) House Counsel of the Receiving Party to whom disclosure is reasonably
24 necessary for this litigation;

25 (c) the officers, directors, and employees of the Receiving Party to whom disclosure is
26 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
27 Bound” (Exhibit A);
28

1 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to
3 Be Bound” (Exhibit A);

4 (e) the Court and its personnel;

5 (f) stenographic reporters, videographers and/or their staff, and Professional
6 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (g) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
10 (Exhibit A), unless the Designating Party objects to such disclosure or except as otherwise ordered by
11 the Court. Before making such a disclosure, Receiving Party must provide notice sufficient to allow
12 the Designating Party to object. Pages of transcribed deposition testimony or exhibits to depositions
13 that reveal Protected Material may not be disclosed to anyone except as permitted under this Stipulated
14 Protective Order.

15 (h) the author or recipient of a document containing the information or a custodian
16 or other person who otherwise possessed or personally knows the information.

17 (i) jury consulting personnel, including but not limited to mock jurors, who have
18 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A).

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

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
25 information for this litigation;

26 (b) House Counsel of the Receiving Party to whom disclosure is reasonably
27 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
28 (Exhibit A);

1 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
2 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
3 A), and (3) as to whom the procedures set forth in paragraph 7.5(a), below, have been followed;

4 (d) the Court and its personnel;

5 (e) stenographic reporters, videographers and their respective staff, professional
6 jury or trial consultants including but not limited to mock jurors, and Professional Vendors to whom
7 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A); and

9 (f) the author or recipient of a document containing the information or a custodian
10 or other person who otherwise possessed or personally knows the information.

11 **7.4 Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”**
12 **Information or Items.** Unless otherwise ordered by the Court or permitted in writing by the
13 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
14 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” only to:

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

19 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
20 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
21 A), and (3) as to whom the procedures set forth in paragraph 7.5(a), below and specifically identified
22 as eligible to access “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” Information or
23 Items, have been followed;

24 (c) the Court and its personnel;

25 (d) stenographic reporters, videographers and their respective staff who have
26 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) and are transcribing or
27 videotaping a deposition wherein “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”
28 Information or Items are being discussed.

1 (e) while testifying at deposition or trial in this action only: (i) any current or former
2 officer, director or employee of the Producing Party or original source of the information; (ii) any
3 person designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal
4 Rules of Civil Procedure; and/or (iii) any person who authored or previously received (other than
5 through a violation of this Order) the “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”
6 Information or Items, as evident from its face or reasonably certain in view of other testimony or
7 evidence. Persons authorized to view “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”
8 Information or Items pursuant to this sub-paragraph shall not retain or be given copies of the
9 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” Information or Items except while so
10 testifying.

11 **7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY**
12 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –**
13 **OUTSIDE COUNSEL ONLY” Information or Items to Experts.**

14 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
15 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that
16 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
17 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” pursuant to paragraphs 7.3(c) or 7.4(b) first must
18 make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
20 COUNSEL ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
21 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
22 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
23 identifies each person or entity from whom the Expert has received compensation or funding for work
24 in his or her areas of expertise or to whom the expert has provided professional services, including in
25 connection with a litigation, at any time during the preceding five years, and (6) identifies (by name
26 and number of the case, filing date, and location of court) any litigation in connection with which the
27 Expert has offered expert testimony, including through a declaration, report, or testimony at a
28 deposition or trial, during the preceding five years. The requirements set forth in this Paragraph 7.5(a)

1 do not apply if the identified Expert is retained solely for purposes of opining on a Party's or the
2 Parties' respective potential for economic injury, harm, or gain in connection with the instant
3 allegations and claims. For the avoidance of doubt, if a Party objects to the disclosure of "HIGHLY
4 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – OUTSIDE
5 COUNSEL ONLY" information to an expert retained to opine about the potential for economic injury,
6 harm, or gain in connection with the instant allegations and claims, the Parties shall abide by the meet
7 & confer and motion procedures set forth in 7.5(c) & (d).

8 (b) A Party that makes a request and provides the information specified in the
9 preceding respective paragraphs may disclose the subject Protected Material to the identified Expert
10 unless, within three business days of delivering the request, the Party receives a written objection from
11 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

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

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

26 (e) A party who has not previously objected to disclosure of Protected Material to
27 an Expert or whose objection has been resolved with respect to previously produced Protected Material
28 shall not be precluded from raising an objection to an Expert at a later time with respect to Protected

1 Material that is produced after the time for objecting to such Expert has expired or if new information
2 about that Expert is disclosed or discovered. Any such objection shall be handled in accordance with
3 the provisions set forth above.

4 **8. SOURCE CODE**

5 To the extent production of source code becomes necessary in this case, the Parties will
6 negotiate a separate Protective Order applicable to Source Code.

7 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
8 **LITIGATION**

9 If a Party is served with a subpoena issued by a court, arbitral, administrative, or legislative
10 body, or with a court order issued in other litigation that compels disclosure of any information or
11 items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY,”
13 that Party must:

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

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

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

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

1 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
2 **LITIGATION**

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

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

12 (i) promptly notify in writing the Requesting Party and the Non-Party that
13 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

14 (ii) promptly provide the Non-Party with a copy of the Stipulated Protective
15 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the
16 information requested; and

17 (iii) make the information requested available for inspection by the Non-
18 Party.

19 (c) If the Non-Party fails to object or seek a protective order from this Court within
20 14 days of receiving the notice and accompanying information, the Receiving Party may produce the
21 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
22 objects or seeks a protective order, the Receiving Party shall not produce any information in its
23 possession or control that is subject to the confidentiality agreement with the Non-Party before a
24 determination by the Court. Absent a Court order to the contrary, the Non-Party shall bear the burden
25 and expense of seeking protection in this court of its Protected Material.

26 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
28 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,

1 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
2 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
3 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
4 Order, and (d) request such person or persons execute the “Acknowledgment and Agreement to Be
5 Bound” that is attached hereto as Exhibit A.

6 **12. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain produced material is
8 subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those
9 set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
10 whatever procedure may be established in an e-discovery order that provides for production without
11 prior privilege review. If information is produced in discovery that is subject to a claim of privilege
12 or of protection as trial-preparation material, the party making the claim may notify any party that
13 received the information of the claim and the basis for it. After being notified, a party must promptly
14 return or destroy the specified information and any copies it has and may not sequester, use or disclose
15 the information until the claim is resolved. This includes a restriction against presenting the
16 information to the court for a determination of the claim. Pursuant to Federal Rule of Evidence 502(d)
17 and (e), the production of a privileged or work-product-protected document is not a waiver of privilege
18 or protection from discovery in this case or in any other federal or state proceeding. For example, the
19 mere production of privileged or work-product-protected documents in this case as part of a mass
20 production is not itself a waiver in this case or any other federal or state proceeding.

21 **13. MISCELLANEOUS**

22 **13.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to seek
23 its modification by agreement with other Parties or by applying to the Court if such agreement cannot
24 be reached. Furthermore, without application to the Court, any party that is a beneficiary of the
25 protections of this Order may enter a written agreement releasing any other party hereto from one or
26 more requirements of this Order even if the conduct subject to the release would otherwise violate the
27 terms herein.
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1 **13.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective Order
2 no Party waives any right it otherwise would have to object to disclosing or producing any information
3 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives
4 any right to object on any ground to use in evidence of any of the material covered by this Protective
5 Order.

6 **13.3 No Agreement Concerning Discoverability.** The identification or agreed upon
7 treatment of certain types of Disclosure and Discovery Material does not reflect agreement by the
8 Parties that the disclosure of such categories of Disclosure and Discovery Material is required or
9 appropriate in this action. The Parties reserve the right to argue that any particular category of
10 Disclosure and Discovery Material should not be produced.

11 **13.4 Export Control.** Disclosure of Protected Material shall be subject to all applicable
12 laws and regulations relating to the export of technical data contained in such Protected Material,
13 including the release of such technical data to foreign persons or nationals in the United States or
14 elsewhere. Each party receiving Protected Material shall comply with all applicable export control
15 statutes and regulations. See, e.g., 15 CFR 734.2(b).

16 **13.5 Filing Protected Material.** Without written permission from the Designating Party or
17 a Court order, a Party may not file in the public record in this action any Protected Material. A Party
18 that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
19 Material may only be filed under seal pursuant to a Court order authorizing the sealing of the specific
20 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
21 request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
22 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material
23 under seal pursuant to Civil Local Rule 79-5 is denied by the Court, then the Receiving Party may file
24 the Protected Material in the public record pursuant to Civil Local Rule 79-5(f)(2) unless otherwise
25 instructed by the Court. If a Designating Party fails to file the required declaration described in Local
26 Rule 79-5, then the Receiving Party may file the Protected Material in the Public Record pursuant to
27 Civil Local Rule 79-5(e)(2).

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1 **13.6 Use of Protected Material at Hearing or Trial.** A Party shall provide a minimum of
2 two business days' notice to the Producing Party in the event that a Party intends to use any Protected
3 Information during trial. Subject to any challenges under Section 6, the Parties will not oppose any
4 reasonable request by the Producing Party that the courtroom be sealed, if allowed by the Court, during
5 the presentation of any testimony, evidence, or argument relating to or involving the use of any
6 Protected Material.

7 **13.7 No Limitation on Legal Representation.** Nothing in this Order shall preclude or
8 impede Outside Counsel of Record's ability to communicate with or advise their client in connection
9 with this litigation based on such counsel's review and evaluation of Protected Material, provided
10 however that such communications or advice shall not disclose or reveal the substance or content of
11 any Protected Material other than as permitted under this Order.

12 **13.8 Violations.** If any Party violates the limitations on the use of Protected Material as
13 described above, the Party violating this Order shall be subject to sanctions, or any other remedies as
14 appropriate, as ordered by the Court. In the event motion practice is required to enforce the terms of
15 this Order, the prevailing party on such a motion shall be awarded costs, expenses, and fees, including
16 attorney or other professional fees, incurred in connection with the discovery of the violation and the
17 preparation, filing, and arguing of the motion or any other proceedings resulting from the violation.

18 **13.9 Agreement Upon Execution.** Each of the Parties agrees to be bound by the terms of
19 this Stipulated Protective Order as of the date counsel for such party executes this Stipulated Protective
20 Order, even if prior to entry of this Order by the Court.

21 **14. 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,
25 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
26 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
27 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day
28 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed, and (2) affirms that the Receiving Party has not retained any copies, abstracts,
2 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
3 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
4 motions and trial briefs (including all supporting and opposing papers and exhibits thereto), written
5 discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto),
6 trial transcripts, and exhibits offered or introduced into evidence at any hearing or trial, and their
7 attorney work product, which refers or is related to any Protected Material for archival purposes only,
8 except to the extent such materials contain “HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
9 ONLY” information or items, which may not be disclosed or retained for archival purposes except by
10 outside counsel. Any such archival copies that contain or constitute Protected Material remain subject
11 to this Protective Order as set forth in Section 4 (DURATION).

12 **15. INTERPRETATION, ENFORCEMENT, AND CONTINUING JURISDICTION**

13 The United States District Court for the Northern District of California is responsible for the
14 interpretation and enforcement of this Order. After final disposition of this litigation, the provisions
15 of this Order shall continue to be binding except with respect to that Disclosure or Discovery Material
16 that become a matter of public record. This Court retains and shall have continuing jurisdiction over
17 the Parties and recipients of the Protected Material for enforcement of the provision of this Order
18 following final disposition of this litigation. All disputes concerning Protected Material produced
19 under the protection of this Order shall be resolved by the United States District Court for the Northern
20 District of California.

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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Dated: April 10, 2019

COOLEY LLP
BRENDAN J. HUGHES (Admitted *Pro Hac Vice*)
BRIAN J. FOCARINO (CA Bar No. 305382)

/s/ Brendan J. Hughes
Brendan J. Hughes (497332)
Attorney for Defendant and Counter-Plaintiff
Google LLC

Dated: April 10, 2019

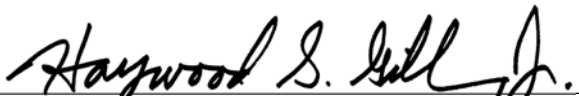
CHRISTENSON LAW FIRM, LLP
VONN R. CHRISTENSON (CA Bar No. 244873)

/s/ Vonn R. Christenson
Vonn R. Christenson (244873)
Attorney for Plaintiff and Counter-Defendant
GearSource Holdings, LLC

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 17, 2019


The Hon. Haywood S. Gilliam Jr.
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [insert date] in the case of *GearSource Holdings, LLC v. Google LLC and Does 1-20*, Case No. 4:18-cv-03812-HSG [insert, if applicable, “as modified on [date] by [insert any amended or modified order]”. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]