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ORDER E-FILED 6/18/2009

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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 SECURITIES AND EXCHANGE
 COMMISSION,

No. C 07 3798 JW

18 *Plaintiff,*

**STIPULATION AND ~~PROPOSED~~
 PROTECTIVE ORDER CONCERNING
 DOCUMENTS PRODUCED BY NON-PARTY
 FEDERAL BUREAU OF INVESTIGATION**

19 v.

20 KENNETH L. SCHROEDER,

21 *Defendant.*

28 SEC v. Schroeder
 Case No. C 07-3798-JW

STIPULATION AND ~~PROPOSED~~ PROTECTIVE
 ORDER CONCERNING DOCUMENTS PRODUCED BY
 NON-PARTY FEDERAL BUREAU OF INVESTIGATION

1 **STIPULATION**

2 WHEREAS Defendant Kenneth L. Schroeder has subpoenaed the production of
3 documents from non-party the Federal Bureau of Investigation (“FBI”), identified and described
4 as follows: (i) “All Federal Bureau of Investigation (“FBI”) Form FD-302s, and any other reports
5 of investigation, memoranda and DOCUMENTS reflecting witness interviews, from any
6 investigation of the stock option granting practices of KLA-Tencor Corporation or any director,
7 officer, employee, or agent thereof”; and (ii) “All DOCUMENTS and other materials provided to
8 [the FBI] by the SEC CONCERNING any investigation of KLA-Tencor Corporation or any
9 director, officer, employee, or agent thereof” (*see* Subpoena for Records to the FBI dated June 16,
10 2009 (attached hereto as Exhibit 1));

11 WHEREAS after preliminary review of this matter, the FBI has concluded that all
12 responsive records are subject to the restrictions of the Privacy Act, 5 U.S.C. § 552a(b); and

13 WHEREAS the parties agree to entry of this Stipulation and [Proposed] Protective Order
14 (the “Protective Order”) pursuant to 5 U.S.C. § 552a(b)(11) (permitting disclosure of otherwise
15 protected records if done pursuant to the order of a court of competent jurisdiction);

16 Mr. Schroeder, the SEC and the FBI therefore stipulate and agree as follows:

17 1. The FBI may produce non-privileged documents which are responsive to
18 Mr. Schroeder’s subpoena upon approval of this Protective Order. Under the authority of the
19 Court conferred by Federal Rule of Civil Procedure 26(c) and 5 U.S.C. § 552(a)(b)(11), such
20 production will not be contrary to the Privacy Act.

21 2. Documents produced by the FBI shall be held in confidence by counsel.
22 Specifically, FBI records produced pursuant to authority of this Protective Order shall be made
23 available only to counsel, consultants and advisors of counsel, the parties represented by counsel,
24 and to witnesses during the course of oral depositions in this case, as further described in
25 paragraph 4 of this Protective Order. Unless otherwise agreed by counsel or ordered by the
26 Court, such documents may be used only for the purpose of this litigation, and all copies will be
27 destroyed by the parties at the termination of this case.

1 3. All persons having access to the documents produced under this Protective Order
2 will first agree not to further disclose the documents, or the information they contain, other than
3 in conformance with this Protective Order (or such further order as the Court may enter), and/or
4 the provisions of the Privacy Act, 5 U.S.C. § 552a. Each person who has been granted access to
5 the documents will evidence such agreement by executing an Acknowledgment of Protective
6 Order and serving all counsel. A sample Acknowledgment has been attached hereto as Exhibit 2.

7 4. Unless the Court shall have first entered an order modifying the limitations of this
8 Protective Order on further disclosure of documents and the information they contain, if a
9 document or information contained therein, subject to this Protective Order, is used as evidence in
10 a deposition or other discovery proceeding in this case, that portion of the deposition or other
11 discovery proceeding shall be subject to this Protective Order and may only be entered into the
12 record in this case under seal.

13
14 Dated: June 17, 2009

DLA PIPER LLP (US)

15
16 By: /s/ Jeffrey B. Coopersmith

JEFFREY B. COOPERSMITH

17 Attorneys for Defendant
18 KENNETH L. SCHROEDER

19 Dated: June 17, 2009

SECURITIES AND EXCHANGE COMMISSION

20
21 By: /s/ Susan F. LaMarca

MARK FICKES
SUSAN F. LAMARCA

22 Attorneys for Plaintiff
23 SECURITIES AND EXCHANGE COMMISSION
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Dated: June 17, 2009


By: /s/ Brenda Atkinson
BRENDA ATKINSON
Associate Division Counsel
Federal Bureau of Investigation

Attorneys for Non-Party
FEDERAL BUREAU OF INVESTIGATION

~~PROPOSED~~ ORDER

Pursuant to stipulation, **IT IS SO ORDERED.**

Dated: June 18, 2009


HOWARD R. LLOYD
United States Magistrate Judge

WEST21735543.3

EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Northern District of California

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

KENNETH L. SCHROEDER

Defendant

Civil Action No. C 07-3798 JW

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: Federal Bureau of Investigation, c/o Brenda Atkinson, Associate Division Counsel, San Francisco Division, 450 Golden Gate Avenue, San Francisco, CA 94102

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: All documents responsive to the requests set forth in Attachment A hereto.

Table with 2 columns: Place (DLA PIPER LLP (US), 555 Mission Street, Suite 2400, San Francisco, CA 94105-2933, Phone: (415) 836-2500) and Date and Time (06/23/2009 10:00)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 06/16/2009

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Handwritten signature of Jeffrey B. Coopersmith

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Kenneth L. Schroeder, who issues or requests this subpoena, are:

Jeffrey B. Coopersmith, DLA Piper LLP (US) 701 Fifth Avenue, Suite 7000, Seattle, WA 98104; jeff.coopersmith@dlapiper.com; (206) 839-4800

Civil Action No. C 07-3798 JW

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because _____ ; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

1 representatives, or other persons acting under the United States Securities and Exchange
2 Commission's direction or control.

3 **INSTRUCTIONS**

4 1. If any DOCUMENTS described in these Demands are not produced as demanded,
5 then with respect to each such DOCUMENT please state:

6 (a) The name, present or last known address, telephone number, present or last
7 known business affiliation and location, job title and job responsibilities of the DOCUMENT's
8 author, drafter or originator, each PERSON who edited, corrected, revised, amended or reviewed
9 the DOCUMENT, each PERSON who entered any initials, comments or notations into the
10 DOCUMENT, and each recipient of the DOCUMENT or a copy thereof;

11 (b) The DOCUMENT date;

12 (c) A description of the DOCUMENT's subject matter or general nature (i.e.,
13 opinion of counsel, report, letter);

14 (d) The basis for not producing the DOCUMENT or a copy thereof; and

15 (e) The present location of the DOCUMENT and every copy thereof, and the
16 name of the PERSON in each location having custody or control of the DOCUMENT or a copy.

17 2. This Demand for production requires that the DOCUMENTS be produced in the
18 same form and in the same order in which they existed prior to production.

19 3. This Demand for production is a continuing demand for all DOCUMENTS which
20 are described herein which may hereafter come into YOUR possession, custody, or control.

21 4. In the event that any DOCUMENTS referred to in YOUR response are not in
22 YOUR possession, custody, or control, please specify what disposition was made of them and by
23 whom the DOCUMENTS are now possessed, held in custody, or controlled.

24 5. Wherever it is necessary to bring within the scope of these Demands
25 DOCUMENTS that might otherwise be construed to be outside its scope:

26 (a) The words "and" and "or" shall be construed both disjunctively and
27 conjunctively;

28 (b) The words "any" and "all" shall be construed to mean "any and all;"

1 (c) The singular shall include the plural, and vice versa; and

2 (d) The words "include(s)" and "including" shall be construed to mean
3 "including without limitation."

4 6. These Demands require that YOU make available for inspection and copying each
5 responsive DOCUMENT or tangible thing that is within YOUR actual or constructive possession,
6 custody, care or control, including DOCUMENTS that YOU have a right to secure from any
7 other source. These sources include, but are not limited to, YOUR agents, attorneys, accountants,
8 consultants, advisors or other persons acting or purporting to act on YOUR behalf.

9 7. Each category of DOCUMENTS in these Demands seeks production of each
10 responsive DOCUMENT in its entirety, without abbreviation or expurgation, including all
11 attachments or other matters affixed thereto.

12 8. If a portion of an otherwise responsive DOCUMENT contains information subject
13 to a claim of privilege, only those portions of the DOCUMENT subject to the claim of privilege
14 shall be deleted or redacted from the DOCUMENT, and the rest of the DOCUMENT shall be
15 produced.

16 9. Any DOCUMENT responsive to any category of these Demands that was, but no
17 longer is, in YOUR possession, custody or control, whether actual or constructive, shall be
18 described as completely as possible, and the following information shall be provided:

19 (a) The manner of disposal, including destruction, loss, discarding, or any
20 other means of disposal;

21 (b) The date of disposal;

22 (c) The reason for disposal;

23 (d) The person authorizing disposal;

24 (e) The person disposing of the DOCUMENT; and

25 (f) The name and address of the most recent custodian of the DOCUMENT.

26 10. TIME PERIOD OF DEMANDS: Unless otherwise specified, the time period
27 covered by these Demands is May 1, 2006 through the present.

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DEMAND FOR PRODUCTION OF DOCUMENTS AND THINGS

PRODUCTION DEMAND NO. 1

All Federal Bureau of Investigation ("FBI") Form FD-302s, and any other reports of investigation, memoranda and DOCUMENTS reflecting witness interviews, from any investigation of the stock option granting practices of KLA-Tencor Corporation or any director, officer, employee, or agent thereof.

PRODUCTION DEMAND NO. 2

All DOCUMENTS and other materials provided to YOU by the SEC CONCERNING any investigation of KLA-Tencor Corporation or any director, officer, employee, or agent thereof.

EXHIBIT 2

1 SHIRLI FABBRI WEISS (Bar No. 079225)
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14 UNITED STATES DISTRICT COURT
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COMMISSION,

18 *Plaintiff,*

19 v.

20 KENNETH L. SCHROEDER,

21 *Defendant.*
22

No. C 07 3798 JW

**ACKNOWLEDGEMENT OF STIPULATION
AND PROTECTIVE ORDER**

1 I, _____, hereby acknowledge, under penalty
2 of perjury, that I have read the Stipulation and Order filed with this Court on June 17, 2009. I am
3 familiar with the specific terms of the Stipulation and Order and agree to be bound by its terms. I
4 further understand that I am subject to the contempt powers of this Court for violation of the
5 Stipulation and Order.

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10 Date: _____

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