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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In re MAXIM INTEGRATED
PRODUCTS, INC., SECURITIES
LITIGATION

CASE NO. C-08-00832-JW

CLASS ACTION

STIPULATION AND [XXXXXXXXXXXXXXXXXXXXX
PROTECTIVE ORDER REGARDING
CONFIDENTIAL AND PRIVILEGED
INFORMATION

STIPULATION AND [PROPOSED] PROTECTIVE ORDER
REGARDING CONFIDENTIAL AND PRIVILEGED INFORMATION
Case No. C-08-00832-JW

1 **IT IS HEREBY ORDERED:**

2 **PURPOSE**

3 1. The parties to the above-captioned action (the “Action”), by and through their
4 undersigned counsel, have hereby stipulated and agreed that the following stipulation and
5 protective order regarding confidential and privileged information (the “Stipulation and Order”)
6 shall govern the disclosure of documents, deposition testimony, interrogatory responses and
7 other information (collectively, “Discovery Material”) produced in discovery by the Parties and
8 by any non-party to this Action.

9 2. The Parties acknowledge that this Stipulation and Order does not confer blanket
10 protections on all disclosures or responses to discovery and that the protection it affords extends
11 only to the information or items that are entitled under the applicable legal principles to
12 treatment as confidential. The Parties further acknowledge that this Stipulation and Order
13 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth
14 the procedures that must be followed and reflects the standards that will be applied when a party
15 seeks permission from the court to file all or a portion of Discovery Material under seal.

16 3. Any person or entity who produces any Discovery Material, and any person or
17 entity who generated or has rights to any Discovery Material, shall be referred to as a “Producing
18 Party.”

19 4. Each Party or non-party that designates information or items for protection under
20 this Stipulation and Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. A Producing Party must take care to designate for
22 protection only those parts of material, documents, items, or oral or communications that qualify
23 – so that other portions of the material, documents, items, or communications for which
24 protection is not warranted are not swept unjustifiably within the ambit of this Stipulation and
25 Order. Notwithstanding the foregoing, material designated as “Confidential” in prior
26 proceedings shall retain its “Confidential” designation in this Action (and shall be entitled to the
27 protections afforded Confidential Discovery Material (defined below) by this Stipulation and
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1 Order) and such “Confidential” designation need not be re-reviewed prior to production of any
2 such material in this Action.

3 **DESIGNATION OF DISCOVERY MATERIAL AS “CONFIDENTIAL”**

4 5. Subject to Paragraph 4 above, pursuant to Rule 26(c) of the Federal Rules of Civil
5 Procedure and the Civil Local Rules, any Party producing Discovery Material may designate as
6 “Confidential” the following Discovery Material under the terms of this Stipulation and Order
7 after review by an attorney: (1) “trade secrets,” as defined by the California Uniform Trade
8 Secrets Act, Cal. Civil Code §3426; (2) confidential research, or other business information of a
9 proprietary or confidential nature; and (3) sensitive, personal information for which there is a
10 reasonable expectation of privacy (as so designated, “Confidential Discovery Material”).

11 **USE OF “CONFIDENTIAL” DISCOVERY MATERIAL**

12 6. The Parties shall not use Confidential Discovery Material for any purpose other
13 than for the preparation, prosecution or defense of their case in this Action and the claims
14 therein, including, without limitation, pre-trial proceedings, preparation for trial, trial, and any
15 appellate proceedings.

16 7. Documents produced in this Action may be designated “Confidential” for
17 purposes of this Stipulation and Order in the following manner:

18 (a) in the case of documents, exhibits, briefs, memoranda, interrogatories, or
19 other materials (apart from depositions or pretrial testimony): by stamping “Confidential” to each
20 page containing Confidential Discovery Material; and

21 (b) in the case of depositions or other pretrial testimony: (i) by a statement on
22 the record, by counsel for the Producing Party, at the time of or immediately following such
23 disclosure; or (ii) by written notice, sent by such counsel within twenty (20) business days after
24 receiving a copy of the transcript; and in both of the foregoing instances, by directing the court
25 reporter that the appropriate confidential legend be affixed to the first page and all portions of the
26 original and all copies of the transcript containing any Confidential Discovery Material. All
27 depositions shall be treated in their entirety as Confidential for a period of twenty (20) business
28 days after receipt of the transcript.

ACCESS TO PROTECTED MATERIAL

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2 8. Discovery Material designated “Confidential” may be disclosed, summarized,
3 described, characterized, or otherwise communicated or made available in whole or in part only
4 to the following persons:

5 (a) counsel of record and other counsel for the Parties in this Action and such
6 counsels’ employees, contractors and agents;

7 (b) clerical or ministerial service providers, such as outside copying or
8 litigation support personnel, retained by the Parties or their counsel in connection with this
9 Action;

10 (c) outside experts or consultants and their employees and clerical assistants
11 working with counsel, as counsel in good faith requires to provide assistance in the conduct of
12 this Action;

13 (d) such officers, directors or employees of the Parties to this Action, as
14 counsel in good faith requires to provide assistance in the conduct of this Action;

15 (e) the Court and its employees, staff and supporting personnel, including, but
16 not limited to, law clerks, jurors, alternative jurors, court reporters, stenographic reporters, and
17 videographers;

18 (f) Witnesses or deponents and their counsel during the course of, or to the
19 extent necessary, in preparation for depositions or testimony in the Action;

20 (g) Any other person only upon order of the Court or upon written stipulation
21 of the Producing Party.

22 9. Before making disclosure of Confidential Discovery Material to any of the
23 persons described above, except those persons described in Paragraphs 8(a), (d) and (e) above,
24 the Party must obtain an agreement in writing, in the form attached as Exhibit A hereto, from
25 such persons reciting that he or she has read a copy of this Stipulation and Order and agrees to be
26 bound by its provisions. If a person declines to sign the agreement to maintain the
27 confidentiality of the Confidential Discovery Material, the Producing Party agrees not to object
28 to the non-Producing Party obtaining an order requiring the person to maintain the

1 confidentiality of the Confidential Discovery Material or to a continuance or resumption of a
2 deposition to obtain such an order.

3 10. This Stipulation and Order has no effect upon, and shall not apply to, the Parties'
4 own use of their own Confidential Discovery Material for any purpose.

5 11. Failure to designate any information as Confidential Discovery Material pursuant
6 to this Stipulation and Order shall not constitute a waiver of any otherwise valid claim for
7 protection, so long as such claim is asserted in writing to opposing counsel after discovery of the
8 inadvertent failure. At such time, arrangements shall be made for the return to the Producing
9 Party of all copies of documents inadvertently not designated as Confidential Discovery Material
10 and the substitution, where appropriate, of properly-labeled copies. Disclosure of such
11 Discovery Material by any receiving Party before such later designation shall not be deemed a
12 violation of the provisions of this Stipulation and Order.

13 **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 12. Any Party may object to the designation of Discovery Material as Confidential by
15 giving written notice (including by e-mail) at any time to counsel for the Party or non-party that
16 has designated the information as Confidential that specifically identifies (by Bates or similar
17 identifying numbers, if available, or by page number, if referring to a deposition transcript) what
18 document, thing, response, or transcript or portion(s) thereof should not be granted status as
19 Confidential Discovery Material. If the Parties, and to the extent a non-party made the
20 designation, non-party, are unable to resolve the objection(s) to the designation(s) within fifteen
21 (15) days of the notification, the Party or non-party that has designated the information
22 Confidential Discovery Material under the terms of this Stipulation and Order may move the
23 Court, within forty-five (45) days of the written notice setting forth the objection, for an order
24 confirming the "Confidential" designation. In the event Court resolution is sought, the
25 Discovery Material shall be treated according to its "Confidential" designation and subject to this
26 Stipulation and Order until the matter has been resolved by agreement of counsel of record or by
27 order of the Court. The burden of proving that any information designated as "Confidential" is
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1 appropriately subject to the protection of this Stipulation and Order shall be borne by the Party or
2 non-party seeking the designation.

3 13. If the designating Party or non-party does not move the Court with the forty-five
4 (45) days of notification of the dispute, the information to which the objection applies will no
5 longer be treated as Confidential Discovery Material, notwithstanding the confidentiality stamp
6 that has been placed upon it.

7 **FILING PROTECTED MATERIAL**

8 14. Any Party that seeks to file Discovery Material with the Court under seal that has
9 been designated as “Confidential” shall follow the procedures for filing documents under seal as
10 set forth in Rule 79-5 of the Local Rules of the Northern District of California.

11 **FINAL DISPOSITION**

12 15. Within sixty (60) days of receiving written notice of the termination of this
13 Action, including any appeals, all Confidential Discovery Material, including copies, summaries
14 and excerpts, shall be returned to the Producing Party. In the alternative, the Parties and their
15 attorneys of record may provide affidavits stating under oath that all Confidential Discovery
16 Material, including any and all copies thereof, have been destroyed. Attorney work-product and
17 briefs, pleadings, written discovery responses, transcripts of testimony, and other Court papers
18 need not be returned or destroyed, but shall be kept as Confidential Discovery Material by
19 counsel for the Parties and remain subject to the terms of this Order.

20 **MISCELLANEOUS PROVISIONS**

21 16. Nothing herein shall be construed as an admission that any particular document or
22 information is entitled to protection of any sort under the Federal Rules of Civil Procedure.

23 17. Nothing contained in this Stipulation shall be deemed a waiver of any privilege or
24 immunity, or affect in any way the admissibility of any document, testimony or other evidence.
25 The provisions of this Stipulation are without prejudice to the right of any Party or other person
26 to seek other or additional protection(s) from the Court for any documents or information that
27 such Party or person believes may not be adequately protected by the provisions of this
28 Stipulation.

1 18. Nothing in this Stipulation shall be construed to limit the Parties' use of
2 Confidential Discovery Material in this Action in any manner consistent with the above, or to
3 preclude the Parties from raising valid objections, other than confidentiality, with respect to the
4 production and/or disclosure of any Discovery Material.

5 19. Nothing herein shall require disclosure of any documents or information that a
6 Party contends are protected from disclosure by the attorney-client privilege, work-product
7 doctrine, or any other legally recognized privilege.

8 20. Each party shall make efforts that are "reasonably designed" to protect its
9 privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001). What
10 constitutes efforts that are reasonably designed to protect privileged materials depends on the
11 circumstances; the law does not require "strenuous or Herculean efforts," just "reasonable
12 efforts." *See, e.g., Hynix Semiconductor, Inc. v. Rambus, Inc.*, 2008 WL 350641, at *1-2 (N.D.
13 Cal. Feb. 2, 2008); *see also*, FED.R.CIV.PRO. 26(f)(3) advisory committee's notes to 2006
14 amendments (discussing the substantial costs and delays that can result from attempts to avoid
15 waiving privilege, particularly when discovery of electronic information is involved). When a
16 particular Rule 34 request requires a production or inspection that is too voluminous, expedited
17 or complex (such as certain electronic productions) to allow for an adequate pre-production
18 review, the parties may enter non-waiver agreements for that particular production. If the
19 requesting Party is unwilling to enter into such an agreement, the Producing Party may move the
20 Court for a non-waiver order.

21 21. In the event that, despite reasonable efforts, a Producing Party discovers it has
22 inadvertently produced privileged materials, then within thirty (30) days of that discovery the
23 Producing Party shall notify the receiving Party that the document(s) or materials should have
24 been withheld on grounds of privilege. After the receiving Party receives this notice from the
25 Producing Party under this Paragraph, the receiving Party shall not disclose or release the
26 inadvertently produced material to any person or entity pending resolution of the Producing
27 Party's claim of privilege. The parties shall hold a meet and confer, as defined in Civil Local
28 Rule 1-5(n), as soon as reasonably possible after a notice of inadvertent production. If the

1 Producing Party and the receiving Party agree that the inadvertently produced material is
2 privileged, and was disclosed despite efforts by the Producing Party that were “reasonably
3 designed” to protect the materials, then the receiving Party shall return or certify the destruction
4 of all copies (including summaries) of such material. If no agreement is reached, then within ten
5 (10) court days after the meet and confer, the Producing Party must seek a ruling from the Court
6 to establish that the material is privileged and that the Producing Party did not waive the
7 privilege by inadvertently producing the material. If the Producing Party seeks such a ruling, the
8 receiving Party shall not disclose or release the inadvertently produced material to any person or
9 entity pending the Court’s ruling on the Producing Party’s motion.

10 22. Nothing in this Stipulation shall prevent any Party from producing any
11 Confidential Discovery Material in its possession to a third party in response to a lawful
12 subpoena or other compulsory process, provided that any Party receiving a subpoena or other
13 compulsory process calling for the production of another Party’s Confidential Discovery
14 Material shall give such other Party at least ten (10) days notice prior to the return date or, if the
15 subpoena or process has a return date within less than ten (10) days, written or telephonic notice
16 shall be given as soon as possible and in any event no later than forty-eight (48) hours prior to
17 the return date.

18 23. Any Party may move this Court to modify this Stipulation and Order, which the
19 Court may grant in its discretion. The fact that the Parties have stipulated to the terms of this
20 Order shall not be used in any way in connection with any motion to modify this Order or in
21 connection with the entry of any subsequent orders governing the use of information at trial.

22 24. Nothing in this Stipulation and Order shall be construed to prevent a Producing
23 Party who has designated material as Confidential Discovery Material from agreeing to release
24 any such material or information from the requirements of this Order.

25 25. Nothing in this Stipulation and Order shall impose any restrictions on the use or
26 disclosure by a Party or witness of material obtained by such Party or witness independent of
27 discovery in this litigation, whether or not such material is also obtained through discovery in
28 this litigation.

1 26. Neither the entry of this Order, nor the designation of any material as
2 Confidential, nor the failure to make such a designation, shall constitute evidence with respect to
3 any issue in this action.

4 27. The Parties shall submit to the jurisdiction of this Court for the purpose of
5 enforcement of the terms and conditions of this Order, as well as any action based upon any
6 breach of this Order by any of the Parties.

7 **SO STIPULATED.**

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1 Dated: October 5, 2009

Respectfully submitted,
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PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

Dated: _____, 2009

THE HONORABLE JAMES WARE

UNITED STATES DISTRICT JUDGE

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PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

Dated: _____, 2009



THE HONORABLE XXXXXXXXXXXXX
Patricia V. Trumbull
UNITED STATES DISTRICT JUDGE

EXHIBIT A

The undersigned, _____, hereby acknowledges that I have read the Stipulation and [Proposed] Protective Order Regarding Confidential and Privileged Information (the "Stipulation and Order") in the action entitled *In re Maxim Integrated Products, Inc. Securities Litigation*, Case No. C-08-00832-JW, and understand the terms thereof. I agree not to use the Confidential Discovery Material defined therein for any purpose other than in connection with the prosecution or defense of this case, will not further disclose the Confidential Discovery Material except in testimony taken in this case or as otherwise permitted by the terms of the Stipulation and Order, and will comply with the terms of the Stipulation and Order. I will return to counsel at the end of my involvement in or at the conclusion of this litigation all Confidential Discovery Material that has been provided to me and all copies thereof, and shall not make any copies of Confidential Discovery Material except as is necessary in connection with my participation in the litigation.

Date

Signature

Print Name

Address