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 ORRICK, HERRINGTON & SUTCLIFFE LLP



9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

13 M.A. MOBILE LTD., a limited liability
 14 company chartered in Dominica; and
 MANDANA D. FARHANG,
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 Plaintiff,
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 v.
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 18 INDIAN INSTITUTE OF TECHNOLOGY
 KHARAGPUR, an Indian Institute of
 19 Technology incorporated under the "Institutes
 of Technology Act, 1961"; TECHNOLOGY
 20 ENTREPRENEURSHIP AND TRAINING
 SOCIETY, an Indian society; PARTHA P.
 21 CHAKRABARTI; RAKESH GUPTA;
 PRAVANJAN CHOUDHRY; and DOES 1
 22 through 100, inclusive,
 23
 Defendant.

Case No. C-08-02658-RMW (HRL)

[CORRECTED VERSION]

**STIPULATION AND []
ORDER REGARDING NON
DISQUALIFICATION OF ORRICK,
HERRINGTON & SUTCLIFFE LLP**

Date: September 30, 2011
 Time: 9:00 am
 Judge: Honorable Ronald M. Whyte

1 **WHEREAS**, Orrick, Herrington & Sutcliffe (“Orrick”), who represents Defendant Indian
2 Institute of Technology Kharagpur (“IITK”) and certain other Defendants in the above-captioned
3 litigation (“Current Action”), seeks to hire lateral associate Mr. Jeffrey McKenna to work in
4 Orrick’s e-discovery practice group in its San Francisco office;

5 **WHEREAS**, Orrick is seeking Ms. Farhang’s consent to hire Mr. McKenna based on the
6 fact that Mr. McKenna represented Ms. Farhang on another complex civil litigation matter that is
7 still pending in Alameda County (*Farhang v. HT Oil, et. al*, Case No. RG05-245998 (Alameda
8 County Superior Court), hereinafter the “HT Oil Matter”) while an associate at Skadden, Arps,
9 Slate, Meagher & Flom LLP (“Skadden”);

10 **WHEREAS**, Orrick and Ms. Farhang’s counsel previously engaged in discussions
11 regarding Ms. Farhang’s consent to hire Mr. McKenna, but, through no fault of either party, were
12 unable to reach agreement at that time;

13 **WHEREAS**, following these unsuccessful discussions, on August 24, 2011, Orrick
14 brought a Motion for Order Determining Non disqualification in the Current Action in the event it
15 were to hire Mr. McKenna;

16 **WHEREAS**, on September 7, 2011, Plaintiffs opposed that Motion on numerous grounds,
17 but indicated, among other things, that they would not to seek to disqualify Orrick based upon
18 Mr. McKenna’s employment provided that Orrick agrees to maintain an appropriate ethical wall
19 and that such wall is implemented per stipulation approved by this Court;

20 **WHEREAS**, the parties have met and conferred to determine the appropriate provisions
21 of the ethical wall to ensure that no potential confidential client information regarding the HT Oil
22 Matter (or any related case), or potential confidential information regarding Ms. Farhang shared
23 with Mr. McKenna during Plaintiff Farhang’s engagement of Skadden, including, but not limited
24 to Plaintiff Farhang’s litigation strategies, settlement strategies, financial positions, and
25 information in connection with Plaintiff Technology, is disclosed to Orrick attorneys or staff
26 working on the Current Action;

27 **NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and
28 between undersigned counsel, subject to approval of the Court, that:

1 1. Prior to Mr. McKenna commencing work at Orrick, Orrick will implement
2 a formal ethical screen including the following provisions:

3 (a) Mr. McKenna will not work on the Current Action or any related
4 matters;

5 (b) During the pendency of the Current Action (and any subsequent
6 litigation involving the current dispute between Ms. Farhang and Defendant IITK
7 or its affiliates, in which Orrick represents IITK and/or its affiliates), Mr.
8 McKenna will not directly report to any Orrick attorney substantially involved on
9 the Current Action, including, but not limited to Neel Chatterjee, Theresa Sutton,
10 Hopkins Guy, and Nitin Gambhir. The parties agree that Mr. McKenna shall not
11 be precluded from working on unrelated matters simply because an Orrick
12 attorney substantially involved on the Current Action is also working on it, but
13 agree that in such instances, Mr. McKenna will be precluded from directly
14 reporting to individuals substantially involved with Current Action during the
15 pendency of the instant litigation;

16 (c) Any Orrick attorney or staff member involved on the Current
17 Action will not discuss with Mr. McKenna, and will not engage in any
18 communication with Mr. McKenna regarding, any aspect of the Current Action,
19 Mr. McKenna's work on the HT Oil Matter, or any confidential client
20 information that Mr. McKenna may have obtained through his prior
21 representation of Ms. Farhang;

22 (d) Mr. McKenna and all Orrick attorneys and staff involved in the
23 Current Action will take care at firm meetings and social events not to discuss
24 the Current Action, the HT Oil Matter, or any confidential client information Mr.
25 McKenna may have obtained through his prior representation of Ms. Farhang
26 with, or in the presence of, each other;

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(e) Mr. McKenna will not be permitted access to, possession of, or review of any file, document, e-mail, voicemail, or other client document or communication related to the Current Action or any related matters;

(f) Mr. McKenna’s intra-firm user profile will be constructed so that he will not be able to access any electronic files for the client number associated with IITK or any related matters;

(g) During the pendency of the Current Action (and any subsequent litigation involving the current dispute between Ms. Farhang and Defendant IITK or its affiliates, in which Orrick represents IITK and/or its affiliates), Mr. McKenna will not reside in the same physical office building as Neel Chatterjee, Theresa Sutton, or whichever attorney is the then current lead attorney for the IITK matter. Plaintiffs understand that Mr. McKenna likely will be required to travel to the office where Mr. Chatterjee, Ms. Sutton, or the then current lead attorney for the Current Action resides for matters unrelated to Current Action. On any such occasion, if Mr. McKenna is provided a visiting office in the facility where the practice group responsible for the IITK litigation resides, it shall not be located within close proximity to any attorney substantially involved on the Current Action. Moreover, during such visits, all of the other ethical wall provisions will remain in effect to ensure that no potentially confidential information is disseminated.

(h) Maintenance of the ethical wall will be monitored by an attorney who (1) does not reside in the same office as the principal headquarters for the lead Orrick attorneys responsible for the IITK representation (currently Orrick’s Silicon Valley office), and (2) is not a member of Orrick’s intellectual property practice group. Before seeking Court intervention, Plaintiffs will direct any reasonable questions regarding the aforementioned ethical wall to said attorney. The parties agree that said attorney is presently James E. Thompson, who is a

1 member of Orrick's securities litigation practice group and resides in Orrick's
2 San Francisco office.

3 2. So long as the stipulated ethical wall set forth above is approved by this
4 Court and implemented and maintained in accordance with the aforementioned provisions
5 and so long as Plaintiffs do not discover new information which provides a reasonable
6 basis to believe that said ethical wall has been breached, Plaintiffs will not move to
7 disqualify Orrick on the basis on Mr. McKenna's employment.

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9 Dated: September 29, 2011

ORRICK, HERRINGTON & SUTCLIFFE LLP

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By: /s/ James E. Thompson
JAMES E. THOMPSON

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Attorneys for Defendants' Counsel
ORRICK, HERRINGTON & SUTCLIFFE LLP

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Dated: September 29, 2011

**SANJIV N. SINGH, A PROFESSIONAL LAW
CORPORATION**

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By: /s/ Sanjiv N. Singh
SANJIV N. SINGH

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Attorneys for Plaintiffs
MANDANA D. FARHANG
AND M.A. MOBILE LTD.

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