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E-Filed 6/12/09

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 APPLE INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

DAVID WALSH, an individual, DAVID
 KALUA, an individual, on behalf of
 themselves, and on behalf of all persons
 similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

CASE NO. C 08-04918 JF

**STIPULATION AND ~~PROPOSED~~
 PROTECTIVE ORDER REGARDING
 CONFIDENTIAL INFORMATION**

AS MODIFIED BY THE COURT

1 WHEREAS, in the course of discovery in this case it may be necessary for the parties or
2 third parties to disclose personal, confidential information, trade secrets, proprietary or other
3 confidential commercial information; and

4 WHEREAS, the parties do not wish unreasonably to impede or burden the discovery
5 process, but also wish to assure the reasonable protection of such personal, confidential
6 information, trade secrets, proprietary or other confidential commercial information;

7 IT IS THEREFORE STIPULATED that:

8 1. This confidentiality stipulation and protective order (“Protective Order”) shall
9 govern the production and disclosure of information by or on behalf of any party or nonparty
10 through the discovery and all pretrial processes. This Protective Order is not intended to govern
11 at trial. The parties will cooperate in establishing procedures acceptable to the Court with respect
12 to the protection of information designated as “CONFIDENTIAL” and “CONFIDENTIAL –
13 ATTORNEYS EYES ONLY” pursuant to this Protective Order at any trial and upon any appeal
14 of this case.

15 2. For purposes of this Protective Order, “Discovery Materials” shall include
16 documents and information produced pursuant to Rule 34 of the Federal Rules of Civil Procedure,
17 interrogatory responses, deposition testimony, subpoenas, private mediation or other alternative
18 dispute resolution, and all other documents and information that may be disclosed in the course of
19 discovery in this action, as well as compilations or excerpts of such materials. Discovery
20 Materials shall be used for the prosecution and defense of this action only.

21 3. This Protective Order shall not abrogate or diminish any privilege or any
22 contractual, statutory or other legal obligation or right of any party with respect to Discovery
23 Materials.

24 4. Any party or nonparty may identify any Discovery Materials it deems to be
25 entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure, by designating
26 such Discovery Materials as “CONFIDENTIAL.” Any such designation shall be made in good
27 faith. Discovery Materials so designated shall be marked “CONFIDENTIAL.”

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1 5. If any party or nonparty believes that disclosure of Discovery Materials would
2 affect its competitive position or security interests in an adverse manner, that party or nonparty
3 may designate the Discovery Materials as “CONFIDENTIAL – ATTORNEYS EYES ONLY.”
4 The designation of “CONFIDENTIAL – ATTORNEYS EYES ONLY” shall be limited to
5 Discovery Materials that the disclosing party believes in good faith contain extremely sensitive
6 CONFIDENTIAL information whose disclosure to another party or nonparty would create a
7 substantial risk of serious injury that could not be avoided by less restrictive means. Any such
8 designation shall be made in good faith. If a party or nonparty produces Discovery Materials that
9 it does not designate as “CONFIDENTIAL – ATTORNEYS EYES ONLY,” but later wishes to
10 so designate such Discovery Materials, it shall be entitled to do so; but the provisions of this
11 Protective Order applicable to CONFIDENTIAL – ATTORNEYS EYES ONLY Discovery
12 Materials shall not apply until and unless such designation is made. Unless otherwise ordered by
13 this Court or agreed to in writing by the party producing such information, information designated
14 CONFIDENTIAL – ATTORNEYS EYES ONLY shall not be revealed to any person except as
15 provided in this Protective Order.

16 6. In the event that a party or nonparty makes documents available for inspection,
17 rather than delivering copies to another party, no marking need be made in advance of the initial
18 inspection. For purposes of the initial inspection, all documents produced shall be considered as
19 marked “CONFIDENTIAL.” Thereafter, upon the inspecting party’s selection of documents for
20 copying, the party producing the documents may mark the copies “CONFIDENTIAL” or
21 “CONFIDENTIAL – ATTORNEYS EYES ONLY” pursuant to paragraphs 4 and 5, above.
22 Deposition transcript pages may be designated “CONFIDENTIAL” or “CONFIDENTIAL –
23 ATTORNEYS EYES ONLY” within two weeks of receipt of the transcript, and shall be deemed
24 to have been designated “CONFIDENTIAL” in their entirety until those two weeks have elapsed.
25 Testimony may also be designated on the record of any deposition as “CONFIDENTIAL” or
26 “CONFIDENTIAL – ATTORNEYS EYES ONLY.”

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1 7. Access to Discovery Materials designated “CONFIDENTIAL” or
2 “CONFIDENTIAL – ATTORNEYS EYES ONLY” shall be restricted in accordance with the
3 following provisions:

4 (a) “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
5 ONLY” Discovery Materials and all information extracted from them shall be used solely
6 for the purposes of prosecuting or defending this action, and for no other purposes.
7 Discovery Materials designated “CONFIDENTIAL” may be disclosed to the parties to
8 this litigation.

9 (b) Counsel for each party shall restrict access to “CONFIDENTIAL –
10 ATTORNEYS EYES ONLY” Discovery Materials produced by any other party or
11 nonparty by limiting the dissemination of such material to attorneys representing the
12 parties in this lawsuit, including in-house counsel for a party (“Counsel of Record”). Any
13 and all further disclosure of “CONFIDENTIAL – ATTORNEYS EYES ONLY”
14 Discovery Materials shall be governed by the provisions of subparagraphs (c) - (g) and
15 paragraphs 8 and 10, below.

16 (c) No copies, extracts or summaries of any “CONFIDENTIAL” or
17 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials shall be made
18 except by or on behalf of Counsel of Record; and such copies, extracts or summaries shall
19 also be designated and treated as “CONFIDENTIAL” or “CONFIDENTIAL –
20 ATTORNEYS EYES ONLY” Discovery Materials and shall not be delivered or exhibited
21 to any persons except as provided by this Protective Order.

22 (d) Counsel of Record may allow access to “CONFIDENTIAL” and
23 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials produced by
24 another party to consultants, including consultants designated to testify as expert
25 witnesses, provided:

26 (1) such experts and consultants are not (i) current directors, officers or
27 employees of any competitor of the producing party or (ii) experts or consultants for any
28 competitor of the producing party in a matter involving competitive decisionmaking. As

1 used in this Protective Order, “competitive decisionmaking” shall mean activities,
2 association and relationship with a competitor that are such to involve advice and
3 participation in any or all of the competitor’s decisions (pricing, product design, etc.)
4 made in light of similar or corresponding information about a competitor;

5 (2) such experts and consultants shall not be permitted to provide
6 advice, analysis, or recommendations to a competitor of the producing party on a matter
7 involving competitive decisionmaking while the above-entitled litigation is pending,
8 absent consent of the producing party, until at least twelve (12) months after the
9 conclusion of this litigation. Consent of the producing party shall not be withheld absent
10 compelling grounds;

11 (3) that any such expert or consultant shall first be provided with a
12 copy of this Protective Order and shall execute an undertaking in the form annexed hereto
13 as Exhibit A. Consultants and experts are hereby specifically advised that their written
14 work product which contains or discloses the substance of “CONFIDENTIAL” and
15 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials is subject to all
16 the provisions of this Protective Order. Counsel of Record disclosing
17 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery
18 Materials to consultants shall be responsible for obtaining the executed undertaking in
19 advance of such disclosure and also shall retain the original executed copy of said
20 undertaking;

21 (4) that before receiving or having access to Discovery Materials
22 designated “CONFIDENTIAL – ATTORNEYS EYES ONLY,” such experts and
23 consultants shall execute a Declaration in the form attached as Exhibit B. Counsel of
24 Record disclosing “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery
25 Materials to consultants shall be responsible for obtaining the executed undertaking in
26 advance of such disclosure and also shall retain the original executed copy of said
27 undertaking;

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1 (5) if at any time a person designated to receive “CONFIDENTIAL –
2 ATTORNEYS EYES ONLY” Discovery Materials intends to take on responsibility for
3 competitive decisionmaking, he or she may seek leave of this Court to be released from
4 the terms of this Protective Order.

5 (e) During depositions, Counsel of Record may question any witness about
6 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery
7 Materials. Any “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
8 ONLY” document so referred to may be marked as, an exhibit but no such
9 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” document,
10 or any portion thereof, shall be attached to any publicly-available deposition or other
11 transcript without the written consent of the party that designated the document as
12 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY.” Portions of
13 deposition transcripts designated “CONFIDENTIAL” and “CONFIDENTIAL –
14 ATTORNEYS EYES ONLY” shall be so marked and “CONFIDENTIAL” and
15 “CONFIDENTIAL – ATTORNEYS EYES ONLY” portions, including exhibits
16 consisting of “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
17 ONLY” documents, shall be bound under seal separately from the non-confidential
18 portions of the transcript.

19 (f) In the event that any “CONFIDENTIAL” or “CONFIDENTIAL –
20 ATTORNEYS EYES ONLY” Discovery Materials are attached to, or quoted or
21 summarized in, any pleadings, motion papers or other papers filed with this Court or any
22 other court and said “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
23 ONLY” Discovery Materials would be disclosed in any way therein, such Discovery
24 Materials, pleadings or papers shall be submitted to the Court with a request to file under
25 seal in accordance with this Court’s Civil Local Rule 79-5. Copies of such documents
26 containing information subject to this Protective Order that are served on counsel for the
27 parties shall be similarly identified and shall be maintained as “CONFIDENTIAL” and
28 “CONFIDENTIAL – ATTORNEYS EYES ONLY” as described herein.

1 (g) Any pleadings, motion papers or other papers not filed under seal shall
2 have deleted therefrom all “CONFIDENTIAL” Discovery Materials and all portions of
3 such pleadings or papers that would disclose the substance of “CONFIDENTIAL”
4 Discovery Materials, provided, however, that any “CONFIDENTIAL” Discovery
5 Materials served upon Counsel of Record need not have said materials deleted therefrom.

6 8. Should Counsel of Record for any party wish to disclose any “CONFIDENTIAL”
7 or “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials produced by another
8 party to a person not authorized by this Protective Order to review such “CONFIDENTIAL” and
9 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials, said counsel shall first
10 provide counsel for the producing party with a short statement of the reason for the proposed
11 disclosure and the name, address and business or professional affiliation and title (e. g., officer,
12 director, etc.) of such person, by written notice, delivered by hand or by fax, at least ten days prior
13 to the proposed disclosure. If counsel for the producing party objects to the disclosure within said
14 ten-day period, then the party requesting consent shall not proceed with the proposed disclosures,
15 the parties shall engage in good faith efforts to resolve the matter informally and, if those efforts
16 should fail, the party requesting consent may file with this Court an application or motion seeking
17 authorization to make the proposed disclosure pursuant to paragraph 10 below.

18 9. The disclosure of any Discovery Materials pursuant to the terms of this Protective
19 Order is not intended to be and shall not be construed as a waiver of any right or a relinquishment
20 of any confidentiality claim as to said Discovery Materials or as a waiver of any claim that the
21 information disclosed is a trade secret or is proprietary.

22 10. If any dispute arises concerning whether information designated as
23 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY” should in fact be
24 considered “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY” for
25 purposes of this Protective Order, then the parties shall try first to resolve such dispute in good
26 faith on an informal basis. If the dispute cannot be so resolved, the party who has objected to the
27 designation of the information as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS
28 EYES ONLY” shall give written notice that such informal attempts have failed. After the party’s

1 receipt of such notice, the objecting party may file a motion asking the Court to resolve the issue.

2 On such motion, the party asserting confidentiality shall have the burden of proving that the

3 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” information:

4 (a) constitutes a trade secret or other confidential research, development, or commercial

5 information within the meaning of Rule 26(c)(7) of the Federal Rules of Civil Procedure or (b) is

6 otherwise entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure. Prior to

7 the determination of such motion, the disputed information shall be treated by the parties as

8 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY.” If such motion is

9 granted and five days have passed after entry of an order granting the motion, then the party may

10 proceed with the proposed disclosure.

11 11. Upon final resolution of this litigation, including any appellate proceedings or
12 expiration of the time allowed therefore:

13 (a) Unless otherwise agreed, counsel for each party shall return all Discovery
14 Materials marked “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
15 ONLY” received hereunder, including all copies thereof, to counsel for the party or
16 nonparty that produced said materials. Counsel for each party shall also destroy all
17 extracts or summaries of “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS
18 EYES ONLY” Discovery Materials or documents containing such material. Certification
19 of such destruction, under penalty of perjury, is to be made in writing to counsel for the
20 party who produced such “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS
21 EYES ONLY” Discovery Materials; and

22 (b) ~~The Clerk of the Court shall maintain under seal any documents that have~~
23 ~~been sealed by the Court, subject to Civil Local Rule 79-5(f) and any further order of the~~
24 ~~Court.~~

25 12. Nothing contained in this Protective Order shall preclude any party or nonparty
26 from seeking or obtaining, upon an appropriate showing, additional protection with respect to any
27 documents, information, or other Discovery Materials or trade secrets. Nothing contained herein
28 relieves any party of its obligation to respond to discovery.

1 13. The Court may modify this Protective Order at any time or consider any dispute
2 which may arise hereunder upon motion of any of the parties.

3 14. This Protective Order shall remain in effect for the duration of the action unless
4 terminated by stipulation or pursuant to Court order. Insofar as they restrict the disclosure,
5 treatment, or use of information subject to this Protective Order, the provisions of this Protective
6 Order shall continue to be binding after the termination of this action, unless the Court orders
7 otherwise.

8 It is hereby STIPULATED:

9 Dated: June 4, 2009

LYNNE C. HERMLE
JOSEPH C. LIBURT
JESSICA R. PERRY
ORRICK, HERRINGTON & SUTCLIFFE LLP

12

/s/

13

Jessica R. Perry
Attorneys for Defendant
APPLE INC.

14 Dated: June 4, 2009

NORMAN B. BLUMENTHAL
KYLE R. NORDREHAUG
APARAJIT BHOWMIK
BLUMENTHAL, NORDREHAUG & BHOWMIK

16

WALTER HAINES
UNITED EMPLOYEES LAW GROUP

18

19

/s/

20

Aparajit Bhowmik
Attorneys for Plaintiffs
DAVID WALSH and DAVID KALUA

21 Pursuant to General Order No. 45, Orrick, Herrington & Sutcliffe attests that concurrence
22 in the filing of the Stipulation has been obtained from the other signatories which shall serve in
23 lieu of their signatures on the document.

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ORDER

The parties having stipulated to the foregoing and good cause appearing, IT IS SO

ORDERED.

Dated: 6/12/09



~~The Honorable Jeremy Fogel
United States District Judge~~

RICHARD SEEBORG
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

**AGREEMENT TO BE BOUND BY THE STIPULATION AND PROTECTIVE ORDER
REGARDING CONFIDENTIAL INFORMATION**

I, _____, hereby acknowledge that I have read the Stipulation and Protective Order Regarding Confidential Information entered into on behalf of the parties to *Walsh et al. v. Apple, Inc.*, Case No. C 08-04918 JF, filed in the United States District Court, Northern District of California. I understand the provisions prohibiting the disclosure of confidential information for any purpose or in any manner not connected with the prosecution or defense of this action and I agree to be bound by all provisions of that stipulation and order.

Date: _____ Signature: _____

Print Full Name and Address: _____

EXHIBIT B

DECLARATION OF UNDERTAKING AND COMPLIANCE

I, _____, declare:

- 1. My address is _____.
- 2. My present employer is _____.
- 3. My present occupation and job title are _____.

4. I have received a copy of the Protective Order Regarding Confidential Information entered into on behalf of the parties to *Walsh et al. v. Apple, Inc.*, Case No. C 08-04918 JF, filed in the United States District Court, Northern District of California. I have carefully read and understand the provisions of it and agree that I will comply with all provisions of it.

5. I am not involved in “competitive decisionmaking” for any party in the above-entitled action, as that term is defined in the Protective Order. I agree that if I intend at any time to take on responsibility for competitive decisionmaking, I will seek leave of Court to be released from this Protective Order.

6. I submit to the jurisdiction of the United States District Court for the Northern District of California for purposes of enforcement of the Protective Order, and fully understand that violation of the Protective Order is punishable by contempt of Court.

7. I will hold in confidence, and will not disclose to anyone not qualified under the Protective Order, any Discovery Materials disclosed to me that are designated “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY” or any words, summaries or abstracts thereof.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ day of _____, _____, at _____.

(Print Name)

(Signature)