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**** E-filed May 11, 2010 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KATHERINE E. DECKER, individually and
on behalf of all other similarly situated,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

No. C09-00295 JW (HRL)

**ORDER (1) DENYING PLAINTIFF'S
MOTION FOR ENTRY OF
PROTECTIVE ORDER AND (2)
ENTERING HP'S PROPOSED
PROTECTIVE ORDER AS AMENDED
BY THE COURT**

[Re: Docket No. 40]

_____ /
Katherine Decker sued Hewlett-Packard Company ("HP") on behalf of herself and a putative class of consumers, alleging that HP sold laptop computers with defective wireless devices. The parties wish to enter a Stipulated Protective Order, but have been unable to agree on its provisions after several meet-and-confer efforts. Decker now moves for entry of her proposed version, while HP seeks entry of its version. Upon consideration of the motion papers and the arguments presented at the hearing, the court DENIES plaintiffs' motion.

Although the parties' motion papers discuss their earlier proposals and disputes to the same, none of those issues are before the court today. Instead, the only issue is whether the court should enter a protective order that prohibits plaintiff from disclosing HP's "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" information to a consultant or expert witness who, within the past five years, was an employee of HP, was an employee of a competitor of HP, or worked as a consultant or expert witness for any HP competitor. This provision appears in HP's version of the

1 protective order, but does not appear in plaintiff’s version. In addition, HP proposes a list of nine
2 competitors to which this provision applies, along with a “catch-all” definition: “Any other entity
3 engaged in the design, creation, manufacturing, or marketing of computers and its subsidiaries,
4 affiliates, and/or divisions.” (HP’s Proposed Order Ex. B.)

5 HP alleges that this provision is necessary to protect its proprietary technical and financial
6 information. It argues that its proposal is reasonable because, it says, this court entered the same
7 provision in a similar case. *See Nygren v. Hewlett-Packard Co.*, No. 07-05793 (N.D. Cal. July 1,
8 2008) (order on HP’s motion for a notice requirement). Decker counters that in *Nygren*, this court
9 merely adopted the plaintiffs’ proposal, and that she should not be held to any agreement made by
10 the *Nygren* plaintiffs in any case. Moreover, she argues that HP’s “catch-all” definition
11 impermissibly broadens the scope of this court’s order in *Nygren*, which did not define HP’s
12 competitors at all.

13 As in *Nygren*, the court finds good cause to provide HP with some additional protection for
14 its legitimate trade secrets. But it also finds that HP’s “catch-all” definition goes too far and is
15 unnecessary in a consumer case where the plaintiff is not HP’s competitor. Accordingly, the court
16 DENIES plaintiff’s motion for entry of her version of the protective order. Instead, within five days
17 of this order, the parties shall submit to the court HP’s version with Exhibit B amended to include
18 the following nine competitors (including their subsidiaries, affiliates, and/or divisions): Dell, Inc.;
19 Acer Group; Alienware Computers; Gateway; Toshiba Worldwide, Inc.; Sony Electronics, Inc.;
20 Samsung; Apple, Inc.; and ASUSTeK Computer, Inc. In addition, Exhibit B shall include “any
21 other entity engaged in the design, creation, manufacturing, or marketing of computers and its
22 subsidiaries, affiliates, and/or divisions that represents itself or is acknowledged in the industry as a
23 competitor of HP.”

24 **IT IS SO ORDERED.**

25 Dated: May 11, 2010

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28 HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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