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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

)	Case No.: C 09-01911 JW (PVT)
)	
)	ORDER RE STIPULATION AND PROPOSED
)	PROTECTIVE ORDER
IN RE MAGSAFE APPLE POWER)	
ADAPTER LITIGATION)	
)	[DOCKET NO. 52]
)	
)	
)	

On February 10, 2010, the parties filed a stipulation and proposed protective order governing their respective disclosures of certain confidential material in the above-captioned action. Having reviewed the proposed stipulated protective order, the court finds the following deficiencies:

- (1) The parties shall submit a revised form of order that rewords paragraph 10 to read as follows:
 - “Each party shall make efforts that are ‘reasonably designed’ to protect its privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001). What constitutes efforts that are reasonably designed to protect privileged materials depends on the circumstances; the law does not require ‘strenuous or Herculean efforts,’ just ‘reasonable efforts.’ *See, e.g., Hynix Semiconductor, Inc. v. Rambus, Inc.* 2008 WL 350641, *1–*2 (ND Cal., Feb. 2, 2008); *see also*, FED.R.CIV.PRO. 26(f)(3) advisory committee’s notes to 2006 amendments (discussing the substantial costs and delays that can result from attempts to avoid waiving privilege, particularly when discovery of electronic information is involved). When a particular Rule 34 request requires a production or inspection that is too voluminous, expedited or complex (such as certain electronic productions) to allow for an adequate pre-production review, the parties may enter into non-waiver agreements for that particular production. If the requesting party is unwilling to enter into such an

1 agreement, the Producing Party may move the court for a non-waiver order.

2 “In the event that, despite reasonable efforts, a Producing Party discovers it
3 has inadvertently produced privileged materials, then within 30 calendar days the
4 Producing party shall notify the Receiving Party that the document(s) or materials
5 should have been withheld on grounds of privilege. After the Receiving Party
6 receives this notice from the Producing Party under this paragraph, the Receiving
7 Party shall not disclose or release the inadvertently produced material to any person
8 or entity pending resolution of the Producing Party’s claim of privilege. The parties
9 shall hold a meet and confer, as defined in Civil Local Rule 1-5(n), as soon as
10 reasonably possible after a notice of inadvertent production. If the Producing Party
11 and Receiving Party agree that the inadvertently produced material is privileged, and
12 was disclosed despite efforts by the Producing Party that were ‘reasonably designed’
13 to protect the materials, then the Receiving Party shall return or certify the
14 destruction of all copies (including summaries) of such material. If no agreement is
15 reached, then within 10 court days after the meet and confer, the Producing Party
16 must seek a ruling from this court to establish that the material is privileged and that
17 the Producing Party did not waive the privilege by inadvertently producing the
18 material. If the Producing Party seeks such a ruling, the Receiving Party shall not
19 disclose or release the inadvertently produced material to any person or entity
20 pending the court’s ruling on the Producing Party’s motion.”

12 (2) Based on the above, paragraph 5.4 shall be edited to conform with the standard set forth
13 above.


14 (3) Paragraph 6.3 shall include the following language:

15 “The burden of persuasion in any such challenge shall be on the Designating
16 Party. Until the court rules on the challenge, all the parties shall continue to afford
17 the material in question the level of protection to which it is entitled under the
18 Producing Party’s designation.”

19 Pending entry of the final form of protective order, the provisions of the parties’ proposed
20 form of protective order, as modified herein, shall govern the handling of confidential information
21 exchanged or disclosed during discovery in this case.

21 IT IS SO ORDERED.

22 Dated: February 11, 2010

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24 PATRICIA V. TRUMBULL
25 United States Magistrate Judge
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