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7 Attorneys for Plaintiff
 8 TMX FUNDING INC., A Delaware Corporation

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

13 TMX FUNDING INC., A Delaware Corporation
 14 Plaintiff,

15 v.

16 IMPERO TECHNOLOGIES, INC., A California
 Corporation, CLARENCE NICHOLAS
 17 STEIGELMAN, An Individual, RONALD J.
 18 LESNIAK, An Individual, DAVID LESNIAK,
 An Individual, MITCHELL A. HEINLEIN, An
 19 Individual, JOSEPH ZHANG, a.k.a.
 20 XIANGCHOU ZHANG, An Individual,
 MICHELLE DOVER, An Individual,

21 Defendants.
 22

No. C10-00202 JF

STIPULATED PROTECTIVE ORDER

23 1. PURPOSES AND LIMITATIONS

24 Disclosure and discovery activity in this action are likely to involve production of
 25 confidential, proprietary, or private information for which special protection from public disclosure
 26 and from use for any purpose other than prosecuting this litigation would be warranted.

27 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 28 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all

1 disclosures or responses to discovery and that the protection it affords extends only to the limited
2 information or items that are entitled under the applicable legal principles to treatment as
3 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
4 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
5 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
6 when a party seeks permission from the court to file material under seal.

7
8 2. DEFINITIONS

9 2.1 Party: any party to this action, including all of its officers, directors,
10 employees, consultants, retained experts, and outside counsel (and their support staff).

11 2.2 Disclosure or Discovery Material: all items or information, regardless of the
12 medium or manner generated, stored, or maintained (including, among other things, testimony,
13 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
14 in this matter.

15 2.3 "Confidential" Information or Items: information (regardless of how generated,
16 stored or maintained) or tangible things that qualify for protection under standards developed under
17 F.R.Civ.P. 26(c).

18 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:
19 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or non-
20 party would create a substantial risk of serious injury that could not be avoided by less restrictive
21 means.

22 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
25 Material in this action.

26 2.7. Designating Party: a Party or non-party that designates information or items
27 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential
28 — Attorneys' Eyes Only."

1 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
2 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

3 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
4 retained to represent or advise a Party in this action.

5 2.10 House Counsel: attorneys who are employees of a Party.

6 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
7 their support staffs).

8 2.12 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness
10 or as a consultant in this action and who is not a past or a current employee of a Party or of a
11 competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of
12 a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant
13 retained in connection with this litigation.

14 2.13 Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
16 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
17 subcontractors.

18
19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected Material (as
21 defined above), but also any information copied or extracted therefrom, as well as all copies,
22 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
23 parties or counsel to or in court or in other settings that might reveal Protected Material.

24 4. DURATION

25 Even after the termination of this litigation, the confidentiality obligations imposed by this
26 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
27 otherwise directs.
28

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
3 Party or non-party that designates information or items for protection under this Order must take
4 care to limit any such designation to specific material that qualifies under the appropriate standards.
5 A Designating Party must take care to designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify - so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
11 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses
12 and burdens on other parties), expose the Designating Party to sanctions.

13 If it comes to a Party's or a non-party's attention that information or items that it
14 designated for protection do not qualify for protection at all, or do not qualify for the level of
15 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
16 withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this
18 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
19 material that qualifies for protection under this Order must be clearly so designated before the
20 material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (apart from transcripts of
23 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of
25 each page that contains protected material. If only a portion or portions of the material on a page
26 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
27 by making appropriate markings in the margins) and must specify, for each portion, the level of
28

1 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
2 ATTORNEYS' EYES ONLY").

3 A Party or non-party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting Party has indicated which
5 material it would like copied and produced. During the inspection and before the designation, all of
6 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
7 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or portions thereof,
9 qualify for protection under this Order, then, before producing the specified documents, the
10 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that contains Protected
12 Material. If only a portion or portions of the material on a page qualifies for protection, the
13 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins) and must specify, for each portion, the level of protection being asserted
15 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").
16

17 (b) for testimony given in deposition or in other pretrial or trial
18 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,
19 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further
20 specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS'
21 EYES ONLY." When it is impractical to identify separately each portion of testimony that is
22 entitled to protection, and when it appears that substantial portions of the testimony may qualify for
23 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
24 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify
25 the specific portions of the testimony as to which protection is sought and to specify the level of
26 protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
27 EYES ONLY"). Only those portions of the testimony that are appropriately designated for
28 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

1 Transcript pages containing Protected Material must be separately bound by
2 the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
3 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or non-
4 party offering or sponsoring the witness or presenting the testimony.

5 (c) for information produced in some form other than documentary, and
6 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
7 the container or containers in which the information or item is stored the legend
8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only
9 portions of the information or item warrant protection, the Producing Party, to the extent
10 practicable, shall identify the protected portions, specifying whether they qualify as "Confidential"
11 or as "Highly Confidential – Attorneys' Eyes Only."

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
13 to designate qualified information or items as "Confidential" or "Highly Confidential - Attorneys'
14 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection under
15 this Order for such material. If material is appropriately designated as "Confidential" or "Highly
16 Confidential – Attorneys' Eyes Only" after the material was initially produced, the Receiving Party,
17 on timely notification of the designation, must make reasonable efforts to assure that the material is
18 treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
21 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
22 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its
23 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
26 Party's confidentiality designation must do so in good faith and must begin the process by conferring
27 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for
28

1 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that
2 the confidentiality designation was not proper and must give the Designating Party an opportunity to
3 review the designated material, to reconsider the circumstances, and, if no change in designation is
4 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the
5 next stage of the challenge process only if it has engaged in this meet and confer process first.

6 6.3 Judicial Intervention. A Party that elects to press a challenge to a
7 confidentiality designation after considering the justification offered by the Designating Party may
8 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
9 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
10 Each such motion must be accompanied by a competent declaration that affirms that the movant has
11 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
12 forth with specificity the justification for the confidentiality designation that was given by the
13 Designating Party in the meet and confer dialogue.

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

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a non-party in connection with this case only for
20 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
21 disclosed only to the categories of persons and under the conditions described in this Order. When
22 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
23 below (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location
25 and in a secure manner that ensures that access is limited to the persons authorized under this Order.
26
27
28

1 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
3 any information or item designated CONFIDENTIAL only to:

4 (a) the Receiving Party's Outside Counsel of record in this action, as well
5 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
6 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
7 hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House Counsel) of
9 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
10 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

11 (c) experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
13 Bound by Protective Order" (Exhibit A);

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom
16 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
17 Bound by Protective Order" (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
20 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 Protected Material must be separately bound by the court reporters and may not be disclosed to
22 anyone except as permitted under this Stipulated Protective Order.

23 (g) the author of the document or the original source of the information.

24 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
25 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:
28

1 (a) the Receiving Party's Outside Counsel of record in this action, as well
2 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
3 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
4 hereto as Exhibit A;

5 (b) Experts (as defined in this Order) (1) to whom disclosure is
6 reasonably necessary for this litigation, and (2) who have signed the "Agreement to Be Bound by
7 Protective Order" (Exhibit A);

8 (c) the Court and its personnel;

9 (d) court reporters, their staffs, and professional vendors to whom
10 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
11 Bound by Protective Order" (Exhibit A); and

12 (e) the author of the document or the original source of the information.

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
14 OTHER LITIGATION.

15 If a Receiving Party is served with a subpoena or an order issued in other litigation
16 that would compel disclosure of any information or items designated in this action as
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
18 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and
19 in no event more than three court days after receiving the subpoena or order. Such notification must
20 include a copy of the subpoena or court order.

21 The Receiving Party also must immediately inform in writing the Party who caused
22 the subpoena or order to issue in the other litigation that some or all the material covered by the
23 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
24 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
25 caused the subpoena or order to issue.

26 The purpose of imposing these duties is to alert the interested parties to the existence
27 of this Protective Order and to afford the Designating Party in this case an opportunity to try to
28

1 protect its confidentiality interests in the court from which the subpoena or order issued. The
2 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
3 confidential material – and nothing in these provisions should be construed as authorizing or
4 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

5 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
7 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
8 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
9 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
10 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)
11 request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that
12 is attached hereto as Exhibit A.

13 10. FILING PROTECTED MATERIAL. Without written permission from the
14 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
15 may not file in the public record in this action any Protected Material. A Party that seeks to file
16 under seal any Protected Material must comply with Civil Local Rule 79-5.

17 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
18 Producing Party, within sixty days after the final termination of this action, each Receiving Party
19 must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected
20 Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or
21 capturing any of the Protected Material. With permission in writing from the Designating Party, the
22 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether
23 the Protected Material is returned or destroyed, the Receiving Party must submit a written certification
24 to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty
25 day deadline that identifies (by category, where appropriate) all the Protected Material that was
26 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
27 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
28

1 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
2 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
3 even if such materials contain Protected Material. Any such archival copies that contain or
4 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
5 (DURATION), above.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
8 to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
10 Order no Party waives any right it otherwise would have to object to disclosing or producing any
11 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
12 Party waives any right to object on any ground to use in evidence of any of the material covered by
13 this Protective Order.
14

15 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

16
17 DATED:

February 23, 2010

[Signature]
Attorneys for Plaintiff

18
19 DATED:

February 19, 2010

Andrew Jacobson
Attorneys for Defendants

20
21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

22
23 DATED:

February 24, 2010

Patricia V. Trumbull

Judge XXXXXXXXXXXXXXXX Patricia V. Trumbull
United States XXXXXXXXXXXXXXXX
Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, of _____
4 _____, declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of _____
7 _____ . I agree to comply with and to be bound by all
8 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
9 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
10 that I will not disclose in any manner any information or item that is subject to this Stipulated
11 Protective Order to any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ of
16 _____
17 as my California agent for service of process in connection with this action or any proceedings related
18 to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23
24 Signature: _____

25 BN 5411597v1