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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**MAY MOUA, individually and on behalf of
all others similarly situated, and for the
interest of the general public**

Plaintiff,

v.

**INTERNATIONAL BUSINESS
MACHINES CORPORATION, a
California Business Entity, form unknown,
JOSEPH KOENIG, an Individual and
DOES 1-200,**

Defendants.

Case No. C 10-1070 JW (PSG)

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment

1 under the applicable legal principles. The parties further acknowledge, as set forth in Section
2 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
3 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
4 the standards that will be applied when a party seeks permission from the court to file material
5 under seal.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
10 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
11 Rule of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House
13 Counsel (as well as their support staff).

14 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

16 2.5 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless of
20 the medium or manner in which it is generated, stored, or maintained (including, among other
21 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
22 or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
25 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a
26 Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a
27 Party or of a Party’s competitor.

1 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

2 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of
3 which to another Party or Non-Party would create a substantial risk of serious harm that could not
4 be avoided by less restrictive means.

5 2.9 House Counsel: attorneys who are employees of a party to this action.
6 House Counsel does not include Outside Counsel of Record or any other outside counsel.

7 2.10 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
10 this action but are retained to represent or advise a party to this action and have appeared in this
11 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
12 that party.

13 2.12 Party: any party to this action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their support
15 staffs).

16 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this action.

18 2.14 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
20 organizing, storing, or retrieving data in any form or medium) and their employees and
21 subcontractors.

22 2.15 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY.”

25 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from Protected
4 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
5 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
6 Material. However, the protections conferred by this Stipulation and Order do not cover the
7 following information: (a) any information that is in the public domain at the time of disclosure
8 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
9 as a result of publication not involving a violation of this Order, including becoming part of the
10 public record through trial or otherwise; and (b) any information known to the Receiving Party
11 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
12 obtained the information lawfully and under no obligation of confidentiality to the Designating
13 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations
16 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing
17 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
18 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
19 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
20 reviews of this action, including the time limits for filing any motions or applications for
21 extension of time pursuant to applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection under this Order must
25 take care to limit any such designation to specific material that qualifies under the appropriate
26 standards. To the extent it is practical to do so, the Designating Party must designate for
27 protection only those parts of material, documents, items, or oral or written communications that
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1 qualify – so that other portions of the material, documents, items, or communications for which
2 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

7 If it comes to a Designating Party’s attention that information or items that it
8 designated for protection do not qualify for protection at all or do not qualify for the level of
9 protection initially asserted, that Designating Party must promptly notify all other parties that it is
10 withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents,
17 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
18 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY” to each page that contains protected material. If only a portion or portions of the
20 material on a page qualifies for protection, the Producing Party also must clearly identify the
21 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
22 each portion, the level of protection being asserted.

23 A Party or Non-Party that makes original documents or materials available for
24 inspection need not designate them for protection until after the inspecting Party has indicated
25 which material it would like copied and produced. During the inspection and before the
26 designation, all of the material made available for inspection shall be deemed “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine which documents,

1 or portions thereof, qualify for protection under this Order. Then, before producing the specified
2 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
4 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
5 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins) and must specify, for each portion, the level of protection
7 being asserted.

8 (b) for testimony given in deposition or in other pretrial or trial proceedings,
9 that the Designating Party identify on the record, before the close of the deposition, hearing, or
10 other proceeding, all protected testimony and specify the level of protection being asserted.
11 When it is impractical to identify separately each portion of testimony that is entitled to protection
12 and it appears that substantial portions of the testimony may qualify for protection, the
13 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
14 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
15 which protection is sought and to specify the level of protection being asserted. Only those
16 portions of the testimony that are appropriately designated for protection within the 21 days shall
17 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
18 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked,
19 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
20 – ATTORNEYS’ EYES ONLY.”

21 Parties shall give the other parties notice if they reasonably expect a deposition,
22 hearing or other proceeding to include Protected Material so that the other parties can ensure that
23 only authorized individuals who have signed the “Acknowledgment and Agreement to Be
24 Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a
25 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

27 Transcripts containing Protected Material shall have an obvious legend on the title
28 page that the transcript contains Protected Material, and the title page shall be followed by a list

1 of all pages (including line numbers as appropriate) that have been designated as Protected
2 Material and the level of protection being asserted by the Designating Party. The Designating
3 Party shall inform the court reporter of these requirements. Any transcript that is prepared before
4 the expiration of a 21-day period for designation shall be treated during that period as if it had
5 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety
6 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as
7 actually designated.

8 (c) for information produced in some form other than documentary and for any
9 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
10 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
11 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions
12 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
13 identify the protected portion(s) and specify the level of protection being asserted.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive the Designating
16 Party’s right to secure protection under this Order for such material. Upon timely correction of a
17 designation, the Receiving Party 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. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
22 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
23 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
24 right to challenge a confidentiality designation by electing not to mount a challenge promptly
25 after the original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process by providing written notice of each designation it is challenging and describing
28 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the

1 written notice must recite that the challenge to confidentiality is being made in accordance with
2 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
3 challenge in good faith and must begin the process by conferring directly (in voice to voice
4 dialogue; other forms of communication are not sufficient) within 14 days of the date of service
5 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
6 confidentiality designation was not proper and must give the Designating Party an opportunity to
7 review the designated material, to reconsider the circumstances, and, if no change in designation
8 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
9 the next stage of the challenge process only if it has engaged in this meet and confer process first
10 or establishes that the Designating Party is unwilling to participate in the meet and confer process
11 in a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
13 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
14 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
15 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
16 confer process will not resolve their dispute, whichever is earlier.¹ Each such motion must be
17 accompanied by a competent declaration affirming that the movant has complied with the meet
18 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
19 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
20 shall automatically waive the confidentiality designation for each challenged designation. In
21 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
22 time if there is good cause for doing so, including a challenge to the designation of a deposition
23 transcript or any portions thereof. Any motion brought pursuant to this provision must be
24 accompanied by a competent declaration affirming that the movant has complied with the meet
25 and confer requirements imposed by the preceding paragraph.

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28 ¹ It may be appropriate in certain circumstances for the parties to agree to shift the burden to
move on the Challenging Party after a certain number of challenges are made to avoid an abuse of
the process. The burden of persuasion would remain on the Designating Party.

1 The burden of persuasion in any such challenge proceeding shall be on the
2 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass
3 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
4 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing
5 to file a motion to retain confidentiality as described above, all parties shall continue to afford the
6 material in question the level of protection to which it is entitled under the Producing Party’s
7 designation until the court rules on the challenge.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order.
13 When the litigation has been terminated, a Receiving Party must comply with the provisions of
14 section 13 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner² that ensures that access is limited to the persons authorized
17 under this Order.

18 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
20 disclose any information or item designated “CONFIDENTIAL” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
23 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
24 Bound” that is attached hereto as Exhibit A;

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28 ² It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

1 (b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
6 and Agreement to Be Bound” (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, and
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
15 separately bound by the court reporter and may not be disclosed to anyone except as permitted
16 under this Stipulated Protective Order.

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
21 the Designating Party, a Receiving Party may disclose any information or item designated
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
25 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
26 Bound” that is attached hereto as Exhibit A;

1 (b) Designated House Counsel of the Receiving Party³ (1) who has no
2 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for
3 this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
4 A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been
5 followed;

6 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
7 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
8 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
9 have been followed;

10 (d) the court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants, and
12 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
13 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

14 (f) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House
18 Counsel or Experts.

19 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
20 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
21 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
22 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
23 sets forth the full name of the Designated House Counsel and the city and state of his or her
24 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable
25 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is
26 involved, or may become involved, in any competitive decision-making.

27 ³ It may be appropriate under certain circumstances to limit the number of Designated House
28 Counsel who may access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
information under this provision.

1 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
2 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
3 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
4 EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating
5 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
7 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
8 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
9 identifies each person or entity from whom the Expert has received compensation or funding for
10 work in his or her areas of expertise or to whom the expert has provided professional services,
11 including in connection with a litigation, at any time during the preceding five years,⁴ and (6)
12 identifies (by name and number of the case, filing date, and location of court) any litigation in
13 connection with which the Expert has offered expert testimony, including through a declaration,
14 report, or testimony at a deposition or trial, during the preceding five years.⁵

15 (b) A Party that makes a request and provides the information specified in the
16 preceding respective paragraphs may disclose the subject Protected Material to the identified
17 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
18 receives a written objection from the Designating Party. Any such objection must set forth in
19 detail the grounds on which it is based.

20 (c) A Party that receives a timely written objection must meet and confer with
21 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
22 agreement within seven days of the written objection. If no agreement is reached, the Party
23 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as

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25 ⁴ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
26 party, then the Expert should provide whatever information the Expert believes can be disclosed
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

27 ⁵ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain
28 limited work prior to the termination of the litigation that could foreseeably result in an improper
use of the Designating Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
information.

1 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
2 seeking permission from the court to do so. Any such motion must describe the circumstances
3 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or
4 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
5 suggest any additional means that could be used to reduce that risk. In addition, any such motion
6 must be accompanied by a competent declaration describing the parties' efforts to resolve the
7 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
8 setting forth the reasons advanced by the Designating Party for its refusal to approve the
9 disclosure.

10 In any such proceeding, the Party opposing disclosure to Designated House
11 Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure
12 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose
13 the Protected Material to its Designated House Counsel or Expert.

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

16 If a Party is served with a subpoena or a court order issued in other litigation that
17 compels disclosure of any information or items designated in this action as "CONFIDENTIAL"
18 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

19 (a) promptly notify in writing the Designating Party. Such notification shall
20 include a copy of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order to
22 issue in the other litigation that some or all of the material covered by the subpoena or order is
23 subject to this Protective Order. Such notification shall include a copy of this Stipulated
24 Protective Order; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by
26 the Designating Party whose Protected Material may be affected.⁶

27 ⁶ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
its confidentiality interests in the court from which the subpoena or order issued.

1 If the Designating Party timely seeks a protective order, the Party served with the
2 subpoena or court order shall not produce any information designated in this action as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
4 determination by the court from which the subpoena or order issued, unless the Party has obtained
5 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
6 seeking protection in that court of its confidential material – and nothing in these provisions
7 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a
8 lawful directive from another court.

9 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
10 IN THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced by a Non-
12 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
14 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
15 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
18 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
19 Party shall:

20 1. promptly notify in writing the Requesting Party and the Non-Party
21 that some or all of the information requested is subject to a confidentiality agreement with a Non-
22 Party;

23 2. promptly provide the Non-Party with a copy of the Stipulated
24 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
25 description of the information requested; and

26 3. make the information requested available for inspection by the
27 Non-Party.

1 (c) If the Non-Party fails to object or seek a protective order from this court
2 within 14 days of receiving the notice and accompanying information, the Receiving Party may
3 produce the Non-Party's confidential information responsive to the discovery request. If the
4 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
5 in its possession or control that is subject to the confidentiality agreement with the Non-Party
6 before a determination by the court.⁷ Absent a court order to the contrary, the Non-Party shall
7 bear the burden and expense of seeking protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other protection, the
20 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
21 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
22 an e-discovery order that provides for production without prior privilege review. Pursuant to
23 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
24 disclosure of a communication or information covered by the attorney-client privilege or work
25 product protection, the parties may incorporate their agreement in the stipulated protective order
26 submitted to the court.

27 ⁷ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to disclosing or
6 producing any information or item on any ground not addressed in this Stipulated Protective
7 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
8 the material covered by this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the
10 Designating Party or a court order secured after appropriate notice to all interested persons, a
11 Party may not file in the public record in this action any Protected Material. A Party that seeks to
12 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
13 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
15 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
16 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
17 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
18 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
19 Rule 79-5(e) unless otherwise instructed by the court.

20 13. FINAL DISPOSITION

21 Within 60 days after the final disposition of this action, as defined in paragraph 4,
22 each Receiving Party must return all Protected Material to the Producing Party or destroy such
23 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the Protected
25 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
26 submit a written certification to the Producing Party (and, if not the same person or entity, to the
27 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
28 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has

1 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
5 product, and consultant and expert work product, even if such materials contain Protected
6 Material. Any such archival copies that contain or constitute Protected Material remain subject to
7 this Protective Order as set forth in Section 4 (DURATION).

8 I hereby attest that the content of this document is acceptable to all persons whose
9 signatures are indicated by a "conformed" signature (/S/) within this efiled document.

10
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED: December 1, 2010

/S/ Alan B. Bayer

Attorneys for Plaintiff

14 DATED: December 1, 2010

/S/ Catherine S. Nasser

Attorneys for Defendant

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 DATED: 12-3-10



United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on [date] in the case of _____ **[insert
formal name of the case and the number and initials assigned to it by the court]**. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

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

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]