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E-FILED JANUARY 18, 2012

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHAIM KOWALKSY, on Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY and DOES
1 through 100 inclusive,

Defendants.

HRL
CASE NO. 10-CV-02176 LHK (~~PVT~~)
**JOINT STIPULATION AND
~~PROPOSED~~ PROTECTIVE ORDER**

MODIFIED BY THE COURT

WHEREAS, the Parties to the above-referenced action pending before this Court have agreed to enter into a protective order to be applied to this matter;

NOW, THEREFORE, the Parties, by and through their respective counsel, having stipulated and agreed that an order pursuant to Federal Rule of Civil Procedure 26(c) is necessary to protect the confidentiality of documents and other information obtained in the course of discovery in this Action, it is hereby ORDERED THAT:

1. SCOPE OF ORDER. This Stipulation and Protective Order includes in its scope any documents, things, and information (including all documents and tangible things as defined in

1 Rule 34(a) of the Federal Rules of Civil Procedure or any applicable Local Rule) that are produced,
2 disclosed or filed in the above-captioned action entitled *Kowalsky v. Hewlett-Packard Co.*, No. 10-
3 CV-02176 LHK (PVT) (the “Action”), by or on behalf of any party or non-party, voluntarily or
4 involuntarily, whether pursuant to formal or informal discovery requests, subpoena, deposition
5 notice, or motion practice, and whether revealed in a document, a deposition, a response to any type
6 of written discovery, a submission to the Court, or otherwise (“Litigation Material”). Nothing in this
7 Order shall obligate any Party or non-party to produce any Litigation Material to any other party that
8 it is not otherwise required to produce under the Federal Rules of Civil Procedure or any applicable
9 local rule.

10 **2. USE OF LITIGATION MATERIAL GENERALLY.** All Litigation Material,
11 including all Litigation Material designated as or reflecting RESTRICTED INFORMATION or
12 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, as defined below, shall be used
13 solely for the purposes of preparation, trial, and appeal of this Action, and for no other purpose,
14 absent further order of the Court. However, nothing herein shall prevent or in any way limit
15 disclosure, use or dissemination of any documents, things, or information that are in the public
16 domain.

17 **3. DEFINITIONS.**

18 (a) “Party” or “Parties” shall mean any or all parties to this Action.

19 (b) “Producing Party” shall mean a Party or non-party on behalf of which
20 documents, things, or information is produced, furnished, or disclosed, during the course of this
21 Action, in response to requests for production of documents, interrogatories, requests for admission,
22 depositions, or any other requests for discovery pursuant to the Federal Rules of Civil Procedure, or
23 in the form of pleadings, briefs, motions, memoranda, testimony adduced at trial, materials
24 introduced into evidence, or other form of information produced, furnished, or disclosed by or on
25 behalf of such a Party or non-party.

26 (c) “Receiving Party” shall mean any party to which documents, things, or
27 information is produced, furnished, or disclosed, whether voluntarily or in response to a formal or
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1 informal discovery request, subpoena, deposition notice, or court order, by any Producing Party in
2 this Action.

3 (d) "RESTRICTED INFORMATION" shall mean Litigation Material which
4 qualifies for protection under standards developed under Fed. R. Civ. Proc. 26(c), including:
5 (i) confidential or proprietary technical or scientific information; (ii) confidential know-how;
6 (iii) confidential, proprietary, or sensitive business, personal, or financial information; (iv) product
7 research and development information; (v) customer and supplier information; (vi) marketing
8 strategies and information; (vii) strategic business information, including without limitation business
9 plans, manufacturing information, cost information, or logistical information; (viii) any information
10 which is not generally known and which the Producing Party would not normally reveal to third
11 parties or would cause third parties to maintain in confidence; or (ix) confidential information of a
12 non-party that the Producing Party is bound by a separate confidentiality agreement or court order to
13 maintain in confidence. RESTRICTED INFORMATION shall not include information that is
14 available for public access.

15 (e) "RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION" shall mean
16 Litigation Material which reflects or contains any of the following: (i) technical specifications;
17 (ii) trade secrets; (iii) confidential pricing, marketing, and sales information; or (iv) any information
18 which affords the Producing Party an actual or potential economic advantage over others.

19 **4. DESIGNATION OF DOCUMENTS OR OTHER LITIGATION MATERIAL.**

20 (a) Any Party or non-party may designate, at or prior to the time of production,
21 any non-public Litigation Material (and copies thereof) produced or disclosed by or on behalf of such
22 Party or non-party, or any portion of such material, as either:

23 (i) RESTRICTED INFORMATION, by placing on each page and each
24 thing to which the designation applies a legend substantially as follows: "RESTRICTED
25 INFORMATION SUBJECT TO PROTECTIVE ORDER," "RESTRICTED INFORMATION," or
26 other similar designation; or

27 (ii) RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, by
28 placing on each page and each thing to which the designation applies a legend substantially as

1 follows: “RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION SUBJECT TO
2 PROTECTIVE ORDER,” “RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION,”
3 “OUTSIDE COUNSEL ONLY,” or other similar designation plainly indicating “Outside Counsel
4 Only” Litigation Material.

5 (b) Each party or non-party that designates information or items for protection
6 under this Order must take care to limit any such designation to specific material that qualifies under
7 the appropriate standards.

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

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

16 **5. PROCEDURE FOR OBJECTION TO DESIGNATION.**

17 (a) The designation of an item as RESTRICTED INFORMATION or
18 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION may be challenged, among other
19 reasons, because (i) the information is or comes to be publicly disclosed in a printed publication,
20 (ii) the information is or comes to be generally publicly known, or (iii) the information is or comes to
21 be otherwise known to the Parties through other means without any breach of the confidentiality
22 obligations hereunder. Any inadvertent disclosure of RESTRICTED INFORMATION or
23 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION under this Protective Order shall not
24 serve as a basis for challenging the RESTRICTED INFORMATION or RESTRICTED OUTSIDE
25 COUNSEL ONLY INFORMATION designation of the information in question.

Unless a prompt challenge is necessary to avoid foreseeable disruption, delay, or unfairness, at

26 (b) ~~At~~ any time prior to the final pretrial conference in this Action, any Party may
27 [^] object in good faith to the designation or redesignation of any Litigation Material as RESTRICTED
28 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION by providing

1 counsel for the Producing Party with written notice of the reasons for its objection. The Producing
2 Party shall, within nine (9) calendar days after receiving such written notice, advise the objecting
3 party, in writing, of the basis for its designation. Within seven (7) calendar days thereafter, the
4 parties shall confer in a good-faith effort to resolve the matter.

parties shall

5 (c) Failing such resolution, the ~~Producing Party may~~, within seven (7) days after
6 **comply with the undersigned's Standing Order re Civil Discovery**
the parties' meet and confer, ~~file and serve a motion under Civil Local Rule 7 (and in compliance~~
7 **Disputes, identifying setting**
~~with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in~~
8 **judicial intervention is not sought**
detail the basis for the confidentiality designation. If ~~no motion is made~~ by the Producing Party, the
9 material shall lose its designation as RESTRICTED INFORMATION or RESTRICTED OUTSIDE
10 COUNSEL ONLY INFORMATION. Any disputed document shall retain its designation until the
11 Court rules otherwise.

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

16 (e) Notwithstanding any objection to the designation of Litigation Material as
17 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION,
18 Litigation Material designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE
19 COUNSEL ONLY INFORMATION shall be treated as such and shall be subject to the provisions
20 hereof unless and until one of the following occurs: (i) the party who designated the Litigation
21 Material as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
22 INFORMATION changes or removes such designation in writing; or (ii) the Court orders the change
23 or removal of such designation. If Litigation Material was properly shown to a person who would
24 not be entitled to see it as reclassified, that person shall be advised that the Litigation Material has
25 been reclassified and should be instructed not to use the Litigation Material for any purpose other
26 than the litigation of this Action.

27 **6. USE OF RESTRICTED INFORMATION OR RESTRICTED OUTSIDE**
28 **Unless otherwise ordered or permitted in writing by the party that designated the information,**
COUNSEL ONLY INFORMATION. RESTRICTED INFORMATION shall not be made

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1 available, nor shall the contents thereof be disclosed, to persons other than QUALIFIED PERSONS,
2 as defined in Paragraph 7 herein, and RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION
3 shall not be made available, nor shall the contents thereof be disclosed, to persons other than
4 SPECIALLY QUALIFIED PERSONS, as defined in Paragraph 8 herein, except that RESTRICTED
5 INFORMATION and RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION may be made
6 available or the contents thereof disclosed in accordance with the provisions of Paragraphs 10 and 11
7 herein. All RESTRICTED INFORMATION and RESTRICTED OUTSIDE COUNSEL ONLY
8 INFORMATION shall be carefully maintained by the Receiving Party in secure facilities and access
9 to such RESTRICTED INFORMATION and RESTRICTED OUTSIDE COUNSEL ONLY
10 INFORMATION shall be permitted only to persons having access thereto under the terms of this
11 Protective Order.

12 **7. QUALIFIED PERSONS.** QUALIFIED PERSONS as used herein shall include only
13 the following:

- 14 (a) a Party (such as the named plaintiff);
- 15 (b) a Receiving Party's outside litigation counsel of record;
- 16 (c) the support personnel (such as paralegals, administrative assistants, secretaries,
17 and clerical and administrative staff) of a Receiving Party's outside litigation counsel of record as
18 necessarily incident to the litigation of this Action;
- 19 (d) personnel at document duplication, coding, imaging, or scanning service
20 establishments retained by, but not regularly employed by, outside litigation counsel of record as
21 necessarily incident to the litigation of this Action;
- 22 (e) Qualified Consultants and Qualified Experts, as provided in Paragraph 10;
- 23 (f) the support personnel (such as administrative assistants, secretaries, and
24 clerical and administrative staff) of a Qualified Consultant and Qualified Expert as necessarily
25 incident to the litigation of this Action;
- 26 (g) the Court, its personnel, jurors and alternate jurors, and court reporters,
27 stenographers, and videographers transcribing or recording testimony at depositions, hearings, or trial
28 in this Action; and

1 (h) witnesses testifying at trial or at deposition, as provided in Paragraph 13
2 below, and only after the witness has executed an Agreement to Abide by Protective Order in the
3 form attached hereto as Exhibit B

4 **8. SPECIALLY QUALIFIED PERSONS.** SPECIALLY QUALIFIED PERSONS as
5 used herein shall include only those QUALIFIED PERSONS listed in Paragraphs 7(a), (b), (c), (e),
6 (g) and (h) and any persons specially qualified to receive RESTRICTED OUTSIDE COUNSEL
7 ONLY INFORMATION by virtue of the Producing Party having approved of the proposed Specially
8 Qualified Person pursuant to Paragraph 11, or if the Court has ruled on an application by the
9 Receiving Party that the proposed Specially Qualified Person may receive the RESTRICTED
10 OUTSIDE COUNSEL ONLY INFORMATION of the Producing Party.

11 **9. AGREEMENT BY QUALIFIED PERSONS AND SPECIALLY QUALIFIED**
12 **PERSONS.**

13 (a) Except as provided in this Protective Order, RESTRICTED INFORMATION
14 shall not be made available to any QUALIFIED PERSON, nor shall RESTRICTED OUTSIDE
15 COUNSEL ONLY INFORMATION be made available to any SPECIALLY QUALIFIED PERSON,
16 unless such QUALIFIED PERSON or SPECIALLY QUALIFIED PERSON has first read this
17 Stipulation and Protective Order and has agreed in writing (i) to be bound by the terms hereof, (ii) to
18 maintain the confidentiality of the information and not to use or disclose the information to anyone
19 other than as provided herein, and (iii) to utilize such information solely for the purpose of this
20 Action (as evidenced by signing an Agreement to Abide by Protective Order, in the form set forth in
21 Exhibit A or B hereto, as appropriate).

22 (b) Support personnel (such as paralegals, administrative assistants, secretaries,
23 and clerical and administrative staff) need not sign an Agreement to Abide by Protective Order to
24 constitute QUALIFIED PERSONS or SPECIALLY QUALIFIED PERSONS if their supervisors
25 have done so. In addition, the assent to this Stipulation and Protective Order by counsel for a Party
26 or non-party binds such counsel, his or her law firm, and support personnel employed by such law
27 firm for purposes of constituting QUALIFIED PERSONS and/or SPECIALLY QUALIFIED
28 PERSONS.

1 (c) The Court and other individuals set forth in Paragraph 7(g) need not sign an
2 Agreement to Abide by Protective Order.

3 (d) Counsel for a Party obtaining an Agreement to Abide by Protective Order shall
4 retain a copy of that Agreement during the course of this Action until the case involving that
5 Counsel's client is terminated by judgment, dismissal, or settlement.

6 (e) In the event that any QUALIFIED PERSON or SPECIALLY QUALIFIED
7 PERSON ceases to be actively engaged in the litigation of this Action, access by such person to
8 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION
9 shall be terminated. The provisions of this Protective Order, however, shall otherwise remain in full
10 force and effect as to such QUALIFIED PERSON or SPECIALLY QUALIFIED PERSON.

11 **10. APPROVAL OF PROPOSED QUALIFIED CONSULTANTS AND**
12 **QUALIFIED EXPERTS.**

13 (a) A consultant or expert retained by a Party shall become a Qualified Consultant
14 or Qualified Expert, as the case may be, as to a particular Producing Party and may receive the
15 RESTRICTED INFORMATION of that Producing Party only after the proposed Qualified
16 Consultant or Qualified Expert has executed an Agreement to Abide by Protective Order in the form
17 attached hereto as Exhibit B, provided that if the Party chooses a consultant or expert who currently
18 serves as an employee of the Producing Party; as an employee of a competitor of the Producing
19 Party; or as a consultant or expert witness for a competitor of the Producing Party, the Party shall
20 notify the Producing Party before disclosing any RESTRICTED INFORMATION to that individual
21 and shall give the opportunity to ~~move for~~ ^{seek} a protective order preventing or limiting such disclosure.
22 Qualified Consultants or Qualified Experts may only receive RESTRICTED OUTSIDE COUNSEL
23 ONLY INFORMATION if they become a SPECIALLY QUALIFIED PERSON as set forth in
24 Paragraph 11.

25 (b) A Producing Party may object to the designation of any person as a Qualified
26 Consultant or Qualified Expert. Such objection must be for good cause, stating with particularity the
27 reasons for the objection, and must be in writing served on all Parties within seven (7) court days of
28 the discovery by the Producing Party of the identity of the Qualified Consultant or Qualified Expert.

1 Failure to object within the period referenced in this Paragraph shall constitute approval. If a written
2 notice of objection is served, no RESTRICTED INFORMATION or RESTRICTED OUTSIDE
3 COUNSEL ONLY INFORMATION of the Producing Party shall be disclosed to the proposed
4 Qualified Consultant or Qualified Expert until the objection is resolved by agreement or by an order
5 of the Court.

6 (c) A Party that receives a timely written objection pursuant to Paragraph 10(b)
7 must meet and confer with the Producing Party (through direct voice to voice dialogue) to try to
8 resolve the matter by agreement. If no agreement is reached, ~~the Party seeking to make the~~ **the matter may only be brought**
9 ~~disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with~~ **to this court's attention in compliance with the undersigned's Standing Order re Civil Discovery**
10 ~~Civil Local Rule 79-5, if applicable) seeking permission from the Court to do so. Any such motion~~ **Disputes. Any Discovery Dispute Joint Report (DDJR)**
11 must describe the circumstances with specificity, set forth in detail the reasons for which the
12 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
13 entail, and suggest any additional means that might be used to reduce that risk. In addition, any such
14 ~~DDJR motion must be accompanied by a competent declaration in which the movant~~ **DDJR**
15 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
16 discussions) and sets forth the reasons advanced by the Producing Party for its refusal to approve the
17 disclosure.

18 (d) The Producing Party objecting pursuant to Paragraph 10(b) shall have the
19 burden of demonstrating by a preponderance of the evidence that the proposed Qualified Consultant
20 or Qualified Expert should not be permitted to receive RESTRICTED INFORMATION or
21 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.

22 11. APPROVAL OF PROPOSED SPECIALLY QUALIFIED PERSONS.

23 (a) A person shall become a Specially Qualified Person as to a particular
24 Producing Party and may receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION of
25 that Producing Party only after the following conditions have been satisfied: (i) the proposed
26 Specially Qualified Person has executed an Agreement to Abide by Protective Order in the form
27 attached hereto as Exhibit A or B hereto, as appropriate; (ii) the executed Agreement and a list of any
28 known present or former relationships or engagements between the proposed Specially Qualified

1 Person and any Party or known competitor of a Party have been served on the Producing Party; and
2 (iii) the Producing Party has failed to object to the proposed Specially Qualified Person in the manner
3 and within the time specified in Paragraph 11(b), or the Court has ruled that the proposed Specially
4 Qualified Person may receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.

5 (b) A Producing Party shall have seven ~~(9)~~⁷ court days from the date of facsimile or
6 electronic mail service of the materials and information served pursuant to Paragraphs 11(a) or this
7 Paragraph 11(b), to object to a proposed Specially Qualified Person. Such objection must be for
8 good cause, stating with particularity the reasons for the objection, and must be in writing served on
9 all Parties. Failure to object within the period referenced in this Paragraph shall constitute approval.
10 If a written notice of objection is served, no RESTRICTED INFORMATION or RESTRICTED
11 OUTSIDE COUNSEL ONLY INFORMATION of the Producing Party shall be disclosed to the
12 proposed Specially Qualified Person until the objection is resolved by agreement or by an order of
13 the Court.

14 (c) A Party that receives a timely written objection pursuant to Paragraph 11(a)
15 must meet and confer with the Producing Party (through direct voice to voice dialogue) to try to
16 resolve the matter by agreement. If no agreement is reached, the ~~Party seeking to make the~~
matter may only be brought to
17 **this court's attention in compliance with the undersigned's Standing Order re Civil Discovery**
~~disclosure to the Specially Qualified Person may file a motion as provided in Civil Local Rule 7 (and~~
18 ~~in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do so.~~
Disputes.

19 **DDJR**
Any ~~such motion~~ must describe the circumstances with specificity, set forth in detail the reasons for
20 which the disclosure to the Specially Qualified Person is reasonably necessary, assess the risk of
21 harm that the disclosure would entail, and suggest any additional means that might be used to reduce
22 that risk. In addition, any such ~~motion~~
DDJR
~~motion~~ must be accompanied by a competent declaration in which the
23 ~~movant~~ describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the
24 content of the meet and confer discussions) and sets forth the reasons advanced by the Producing
25 Party for its refusal to approve the disclosure.

26 (d) The Producing Party objecting pursuant to Paragraph 11(b) shall have the
27 burden of demonstrating by a preponderance of the evidence that the proposed Specially Qualified
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1 Person should not be permitted to receive RESTRICTED INFORMATION or RESTRICTED
2 OUTSIDE COUNSEL ONLY INFORMATION.

3 **12. LIMITED DISCLOSURE TO PARTIES WITH PRIOR ACCESS.** Nothing
4 herein shall prevent the disclosure of any RESTRICTED INFORMATION or RESTRICTED
5 OUTSIDE COUNSEL ONLY INFORMATION to any of the following:

- 6 (a) the Producing Party;
- 7 (b) any current employee of the Producing Party;
- 8 (c) anyone who authored or received the RESTRICTED INFORMATION or
9 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, as evidenced by the identification of
10 the person as an author, recipient, or copyee on the face of the RESTRICTED INFORMATION or
11 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.

12 **13. LIMITED DISCLOSURE TO WITNESSES TESTIFYING AT TRIAL OR AT**
13 **DEPOSITION.** ^{Subject to any further orders re the use of information at trial,} RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
14 INFORMATION may be made available, or the contents thereof disclosed, to witnesses testifying at
15 trial or at deposition, or who provide an affidavit or certification, only if:

- 16 (a) in the case of a document, it appears that the witness has previously seen or
17 received the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
18 INFORMATION contained therein, either because the document identifies the witness as an author,
19 recipient or copyee, or because the document comes from the files of the witness;
- 20 (b) the lawyer disclosing such RESTRICTED INFORMATION or RESTRICTED
21 OUTSIDE COUNSEL ONLY INFORMATION has a reasonable, good-faith belief based upon the
22 witness's testimony or the testimony of other witnesses that the witness has had previous access to
23 the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
24 INFORMATION;
- 25 (c) the Producing Party agrees in writing or on the record that the witness may
26 have access to the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
27 INFORMATION for purposes of his or her testimony at trial and/or at deposition; or
- 28 (d) the witness is employed by or affiliated with the Producing Party.

1 If the basis of the disclosure is (a) or (b) above, then immediately after the disclosure, the lawyer
2 disclosing such RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
3 INFORMATION must make an inquiry with respect to the witness's previous access to such
4 information, and if it becomes apparent on such inquiry that the witness has not had previous access
5 to the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
6 INFORMATION, the item shall be withdrawn and no further inquiry regarding the RESTRICTED
7 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION shall be
8 permitted. Any witness testifying at trial or at deposition or who provides an affidavit or
9 certification, or his or her counsel, who receives RESTRICTED INFORMATION or RESTRICTED
10 OUTSIDE COUNSEL ONLY INFORMATION shall not reveal or discuss the contents of that
11 information to or with any person who is not entitled to receive such information pursuant to this
12 Protective Order.

13 **14. DESIGNATION OF DEPOSITION TESTIMONY.** A Party or non-party may
14 designate information disclosed during a deposition as RESTRICTED INFORMATION or
15 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION by so indicating on the record at the
16 deposition. A Party or non-party may also designate in writing, within thirteen (13) calendar days of
17 the receipt of the final version of the transcript (the "Designation Period"), specific pages of the
18 transcript to be treated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL
19 ONLY INFORMATION. Until the Designation Period has elapsed for a given transcript or portion
20 thereof, that transcript or such portion shall be treated as RESTRICTED OUTSIDE COUNSEL
21 ONLY INFORMATION. When information contained or incorporated in a deposition transcript is
22 designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
23 INFORMATION, arrangements shall be made with the court reporter by the Party making the
24 designation to label the relevant pages RESTRICTED INFORMATION or RESTRICTED OUTSIDE
25 COUNSEL ONLY INFORMATION, as the case may be.

26 **15. ATTENDANCE AT DEPOSITIONS.** During depositions of any Party or non-party,
27 a Party or non-party claiming that information to be disclosed or upon which questions may be based
28 is RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY

1 INFORMATION may exclude from the room any person who is not a QUALIFIED PERSON or
2 SPECIALLY QUALIFIED PERSON, as appropriate under this Protective Order.

3 **16. FILING RESTRICTED INFORMATION AND RESTRICTED OUTSIDE**
4 **COUNSEL ONLY INFORMATION.** Without written permission from the Producing Party, or a
5 court order secured after appropriate notice to all interested persons, a Party may not file in the public
6 record in this action any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL
7 ONLY INFORMATION. Requests by any Party to file RESTRICTED INFORMATION and
8 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION under seal shall be governed by
9 Civil Local Rule 79-5.

10 **17. USE OF RESTRICTED INFORMATION OR RESTRICTED OUTSIDE**
11 **COUNSEL ONLY INFORMATION AT TRIAL.** Nothing in this Protective Order shall prevent a
12 Party from using any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL
13 ONLY INFORMATION at a hearing or at trial. The Parties may request that attendance at those
14 portions of the hearing or trial, or access to the transcripts of those portions of the hearing or the trial,
15 in which RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
16 INFORMATION is disclosed be restricted to court personnel, QUALIFIED PERSONS, and
17 SPECIALLY QUALIFIED PERSONS, as appropriate, pursuant to this Protective Order.

18 **18. PROCEDURE FOR POST-PRODUCTION DESIGNATION.** ~~At any time prior to~~ **If timely corrected,**
19 ~~the final pretrial conference in this Action,~~ a Producing Party may seek additional protection for
20 previously produced Litigation Material by designating such Litigation Material as RESTRICTED
21 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, or changing the
22 classification of any Litigation Material designated RESTRICTED INFORMATION or
23 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, by providing written notice to the
24 Receiving Party. If Litigation Material was properly shown to a person who would not be entitled
25 to see it as newly designated or redesignated, that person shall be advised by the Receiving Party that
26 the Litigation Material has been designated or redesignated as RESTRICTED INFORMATION or
27 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, as the case may be, and instructed
28 not to use the Litigation Material for any purpose other than the litigation of this Action. That person

1 and the Receiving Party shall not be subject to liability for failure to comply with such terms, until
2 receipt of such written notice.

3 **19. AVAILABILITY TO NON-PARTIES.** Any non-party, whether an individual or
4 entity, from whom discovery is sought may obtain the protection of this Protective Order by written
5 request to the Party seeking such discovery.

6 **20. NOTICE TO NON-PARTIES.** Any Party issuing a subpoena to a non-party shall
7 enclose a copy of this Protective Order with a request that, within ten (10) calendar days, the non-
8 party either request the protection of this Protective Order or notify the issuing party that the non-
9 party does not need the protection of this Protective Order or wishes to seek different protection.

10 **21. NO WAIVER.**

11 (a) Nothing in this Protective Order shall prejudice the right of any Party to object
12 to the production of any document or part thereof upon any appropriate ground, including any
13 applicable privilege, and nothing herein shall be construed as a waiver of such right. Moreover,
14 nothing in this Protective Order shall prejudice the right of any Party to object to the admissibility at
15 trial of any Litigation Material or other evidentiary material on any appropriate ground, and nothing
16 herein shall be construed as a waiver of such right.

17 (b) Entering into, agreeing to and/or complying with the terms of this Protective
18 Order shall not (i) operate as an admission by any Party that any particular Litigation Material
19 contains or reflects currently valuable trade secrets or protected proprietary or commercial
20 information; or (ii) operate as an admission by any Party that any particular Litigation Material is, or
21 is not, relevant to this Action.

22 **22. PARTIES' OWN INFORMATION.** Nothing in this Protective Order shall limit any
23 Producing Party's use of its own documents, things or information. Nor shall anything in this
24 Protective Order prevent any Producing Party from disclosing its RESTRICTED INFORMATION or
25 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION to any person. Such disclosures
26 shall not affect any designation of such information as RESTRICTED INFORMATION or
27 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION pursuant to the terms of this
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1 Protective Order so long as the disclosure is made in a manner which is reasonably calculated to
2 maintain the confidentiality of the information.

3 **23. DISCLOSURES BEYOND PROTECTIVE ORDER.** Nothing in this Protective
4 Order shall prevent disclosure beyond the terms of this Protective Order (i) if the Designating
5 Party(ies) consents to such disclosure; (ii) if the Court, after notice to all affected persons, allows
6 such disclosure; or (iii) if the Party to whom RESTRICTED INFORMATION or RESTRICTED
7 OUTSIDE COUNSEL ONLY INFORMATION has been produced thereafter becomes obligated to
8 disclose the information in response to a lawful subpoena or other legal process, provided that the
9 subpoenaed party gives prompt written notice to counsel for the Designating Party and permits
10 counsel for that party at least ten (10) calendar days from receipt of the written notice to intervene
11 and seek judicial protection from the enforcement of the subpoena and/or entry of an appropriate
12 protective order in the action in which the subpoena was issued **Nothing in this order should be construed
as authorizing or encouraging a party to disobey a lawful directive from another court.**

13 **24. INADVERTENT PRODUCTION OF PRIVILEGED LITIGATION**
14 **MATERIAL.** The inadvertent production of Litigation Material which a Party or non-party later
15 claims should not have been produced because of a privilege, including but not limited to the
16 attorney-client privilege, work-product privilege, or joint defense privilege (“Inadvertently Produced
17 Privileged Material”) will not be deemed a waiver of any privileges. A Party or non-party may
18 request the return of any Inadvertently Produced Privileged Material. A request for the return of any
19 Inadvertently Produced Privileged Material shall identify the Litigation Material inadvertently
20 produced and the basis for withholding such Litigation Material from production. If a Party or non-
21 party requests the return, pursuant to this Paragraph, of any Inadvertently Produced Privileged
22 Material then in custody of another party, such party shall within five (5) business days return to the
23 requesting Party or non-party the Inadvertently Produced Privileged Material and destroy all copies
24 thereof. The party or parties returning such Inadvertently Produced Privileged Material shall not
25 assert as a ground for entering an order compelling production of the Inadvertently Produced
26 Privileged Material the fact or circumstances of the inadvertent production. The return of any
27 Inadvertently Produced Privileged Material shall not in any way preclude the Receiving Party from
28 ~~moving the Court for~~ **seeking** an order that (i) the Litigation Material was never privileged or otherwise

1 immune from disclosure; or (ii) any applicable privilege or immunity has been waived by some act
2 other than the production of the Litigation Material.

3 **25. INADVERTENT DISCLOSURE OF RESTRICTED INFORMATION OR**
4 **RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.**

5 (a) If any Litigation Material that a Party or non-party intends to designate as
6 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION
7 is inadvertently disclosed without being marked in accordance with this Protective Order, the failure
8 to so mark the Litigation Material shall not be deemed a waiver of its confidentiality.
9 [^]

10 (b) If any Litigation Material designated as RESTRICTED INFORMATION or
11 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION hereunder is disclosed, through
12 inadvertence or otherwise, to a person or party other than a QUALIFIED PERSON or
13 SPECIFICALLY QUALIFIED PERSON, as the case may be, then the party disclosing the
14 information shall use its best efforts to bind such person or party to the terms of this Protective Order
15 and (a) such person shall be informed promptly of all provisions of this Protective Order by the
16 disclosing party; (b) such person shall be identified immediately to the Party that designated the
17 Litigation Material as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL
18 ONLY INFORMATION; and (c) the person to whom disclosure was made shall be requested to sign
19 an Agreement to Abide by Protective Order in the form of Exhibit C hereto, which signed Agreement
20 shall be served on the Party that designated the Litigation Material as RESTRICTED
21 INFORMATION or RESTRICTED OUTSIDE COUNSEL INFORMATION. Nothing in this
22 Paragraph shall affect the Producing Party's remedies under this Protective Order or otherwise for
23 such unauthorized disclosure.

24 **26. RETURN OR DESTRUCTION OF RESTRICTED INFORMATION OR**
25 **RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION UPON CONCLUSION OF**
26 **THIS ACTION.**

27 (a) At the conclusion of this Action, each party subject to the terms of this
28 Protective Order shall assemble and return to each Producing Party all originals and reproductions of
any Litigation Material containing information designated as RESTRICTED INFORMATION or

1 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION in its possession, custody or control
2 within sixty (60) days of the conclusion of this Action, including notes made therefrom or summaries
3 thereof, or, in lieu of returning Litigation Materials containing information designated as
4 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION,
5 a party may destroy all such Litigation Material within sixty (60) days of the conclusion of this
6 Action, provided the party electing to undertake such destruction certifies to the Producing Party in
7 writing that it has made a reasonable and good-faith effort to destroy such Litigation Material, and
8 that all such material has been destroyed to the best of its knowledge.

9 (b) Notwithstanding Paragraph 26(a), and subject to Paragraph 6, outside litigation
10 counsel for each Party may retain a record including one copy of the following, irrespective of
11 whether or not RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
12 INFORMATION or another Party or non-party is included: (i) its correspondence file of this case;
13 (ii) its pleading file, including all briefs, memoranda, affidavits, supporting materials, and all papers
14 served on the Party; (iii) any briefs and appendixes on appeal; (iv) all legal research memoranda;
15 (v) its file of deposition transcripts and accompanying exhibits; and (vi) its file of trial transcripts and
16 accompanying exhibits.

17 **27. SURVIVAL OF OBLIGATIONS.**

18 (a) All the provisions of this Protective Order shall survive the conclusion of this
19 Action, and shall continue to be binding after the conclusion of this Action unless subsequently
20 modified by agreement among the Parties or further order of the Court.

21 (b) “Conclusion of this Action” shall mean such time as all appeal periods have
22 expired and any settlement or judgment has become final.

23 (c) For the purposes of enforcing this Protective Order and resolving any disputes
24 thereunder, the Court retains jurisdiction over the Parties and any persons provided access to
25 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION
26 under the terms of this Protective Order for a period of six months after the final termination of this
27 action.

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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 CHAIM KOWALSKY, on Behalf of Himself and
13 All Others Similarly Situated,

14 Plaintiff,

15 v.

16 HEWLETT-PACKARD COMPANY and DOES
17 1 Through 100, inclusive,

18 Defendants.
19

CASE NO. 10-CV-02176 LHK (PVT)

**JOINT STIPULATION AND
[PROPOSED] PROTECTIVE ORDER**

20 **AGREEMENT TO ABIDE BY PROTECTIVE ORDER**

21 I, _____, being duly sworn, state that:

22 1. My address is _____
23 _____.

24 2. My present employer is _____,
25 and the address of my present employment is _____
26 _____.

1 3. My present occupation or job description is _____

2 _____
3 _____
4 4. I have attached hereto my current curriculum vitae and, to the best of my knowledge, a
5 complete list of any present or former relationships or engagements between myself and any Party to
6 the above-captioned action (the “Action”) or any known competitor thereof.

7 5. I hereby acknowledge that I have read the Stipulation and Protective Order
8 (“PROTECTIVE ORDER”) in the above-captioned action (the “Action”), that I am familiar with the
9 terms thereof, and that I agree to be bound by the terms thereof.

10 5. I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may receive
11 information designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL
12 ONLY INFORMATION in this Action, and certify my understanding that such information is
13 provided to me pursuant to the terms and restrictions of the PROTECTIVE ORDER. I agree not to
14 reveal any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY
15 INFORMATION or any notes containing or reflecting such information to anyone not authorized to
16 receive such information pursuant to the terms of the PROTECTIVE ORDER, and I agree not to use,
17 directly or indirectly, or allow the use of any RESTRICTED INFORMATION or RESTRICTED
18 OUTSIDE COUNSEL ONLY INFORMATION for any purpose other than a purpose directly
19 associated with my duties in this litigation.

20 6. I understand that I am to retain all copies of the materials that I receive which have
21 been designated as containing or reflecting RESTRICTED INFORMATION or RESTRICTED
22 OUTSIDE COUNSEL ONLY INFORMATION in a container, cabinet, drawer, room, or other safe
23 place in a manner consistent with the PROTECTIVE ORDER. I understand that all copies of any
24 such materials are to remain in my custody until the conclusion of this Action or the completion of
25 my assigned duties, whereupon the copies are to be destroyed or returned to the Producing Party.
26 Such return or destruction shall not relieve me from the obligations imposed upon me by the
27 PROTECTIVE ORDER. I further agree to notify any support personnel (such as paralegals,
28 administrative assistants, secretaries, and clerical and administrative staff) who are necessary to assist

1 me of the terms of the PROTECTIVE ORDER and of their obligation not to reveal any
2 RESTRICTED INFORMATION to anyone not authorized to receive such information pursuant to
3 the terms of the PROTECTIVE ORDER.

4 7. I understand that I shall be subject to the jurisdiction of the U.S. District Court for the
5 Northern District of California in any proceeding relating to my performance under, compliance with,
6 or violation of the PROTECTIVE ORDER.

7 Signature: _____

8 Date: _____

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHAIM KOWALSKY, on Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY and DOES
1 Through 100, inclusive,

Defendants.

CASE NO. 10-CV-02176 LHK (PVT)

**JOINT STIPULATION AND
[PROPOSED] PROTECTIVE ORDER**

AGREEMENT TO ABIDE BY PROTECTIVE ORDER

I, _____, being duly sworn, state that:

1. My address is _____

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2. My present employer is _____,

and the address of my present employment is _____

_____.

1 3. My present occupation or job description is _____

2 _____
3 _____
4 4. If I am a Qualifying Consultant or Qualifying Expert, I have attached hereto my
5 current curriculum vitae and, to the best of my knowledge, a complete list of any present or former
6 relationships or engagements between myself and any Party to the above-captioned action (the
7 “Action”) or any known competitor thereof.

8 5. I hereby acknowledge that I have read the Stipulation and Protective Order
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17 allow the use of any RESTRICTED INFORMATION for any purpose other than a purpose directly
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6 Signature: _____

7 Date: _____

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