

1 RICHARD C. COFFIN (State Bar No. 70562); rcc@bcctlaw.com
 2 J. THOMAS BOER (State Bar No. 199563); jtb@bcctlaw.com
 3 LAURA S. BERNARD (State Bar No. 197556); lsb@bcctlaw.com
 4 BARG COFFIN LEWIS & TRAPP, LLP
 5 350 California Street, 22nd Floor
 6 San Francisco, California 94104-1435
 7 Telephone: (415) 228-5400
 8 Fax: (415) 228-5450

9 Attorneys for Plaintiff
 10 SCHLUMBERGER TECHNOLOGY CORPORATION, INC.
 11 and Third Party Defendant
 12 FAIRCHILD SEMICONDUCTOR CORPORATION

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 SCHLUMBERGER TECHNOLOGY CORPORATION, Inc., a Texas corporation

Case No. C 11-02587 LHK

16 Plaintiff,

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER

17 v.

18 EAST CHARLESTON, INC., a California corporation; PACIFIC AMERICAN MANAGEMENT COMPANY, a California Limited Liability Corporation

19 Defendants.

20 AND RELATED ACTIONS

21 Plaintiff Schlumberger Technology Corporation (“STC”), defendants East Charleston Inc.
 22 (“ECI”) and Pacific American Management Company (“PAMCO”) and cross-defendant
 23 Fairchild Semiconductor Corporation (“Fairchild”) (collectively, the “Parties”) hereby stipulate
 24 to and petition the Court to enter the following Stipulated Protective Order (“Protective Order”).
 25 The Parties agree that good cause exists to enter into the Protective Order to address the
 26 production of confidential, proprietary and private information in this action (the “Action”) in
 27 order to prevent the disclosure of such information in a manner that would compromise or injure
 28 the business interests of the Parties.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

It is hereby ORDERED as follows:

1. Purpose. This Protective Order will be applicable to and govern all documents, depositions, information or things produced by a Party or third party in connection with this litigation in response to requests for production of documents, requests for inspections of things, answers to interrogatories, responses to requests for admissions, answers to deposition questions and all other discovery taken pursuant to the Federal Rules of Civil Procedure, as well as testimony adduced at trial, matters in evidence, and other information (hereinafter, "Discovery Material") that the disclosing party designates as "Confidential Information."

2. Confidential Information. For the purpose of this Protective Order, "Confidential Information" includes all non-public information or matter related to: confidential financial data; corporate acquisition, merger or reorganization documents; proprietary technical information and specifications; current or future business and marketing information, plans, and strategies; studies or analyses by internal or outside experts; confidential information regarding assets and liabilities; confidential personnel information; or other commercially or personally sensitive or proprietary information. Notwithstanding the foregoing, Confidential Information shall not mean information or documents produced or disclosed that are or become, without violating this Protective Order, a matter of public record or publicly available by law or otherwise. Any Discovery Material designated as "Confidential Information," whether such information is provided orally or by a document or in electronic form, shall be maintained as set forth in the Protective Order, and shall not be disclosed to any person or entity, except as permitted in the Protective Order.

3. Designation of Confidential Information.
a. A Party (or, if applicable, non-party) designating Discovery Material as "Confidential Information" shall be referred to for purposes of this Protective Order as the "Designating Party." Any Party (or, if applicable, non-party) receiving Discovery Material designated as "Confidential Information" shall be referred to for purposes of this Protective Order as the "Receiving Party."

///



1 b. Counsel for any Designating Party may designate any Discovery
2 Material as “Confidential Information” under the terms of this Protective Order only if such
3 counsel in good faith believes that such Discovery Material contains such information and is
4 subject to protection under Federal Rule of Civil Procedure 26(c). The designation by any
5 Designating Party of any Discovery Material as “Confidential Information” will constitute a
6 representation that an attorney for the Designating Party reasonably believes there is a valid basis
7 for such designation.

8 c. Any non-party to this Action may designate any Discovery Material
9 produced by it, whether pursuant to subpoena or by agreement, as “Confidential Information”
10 pursuant to the terms of this Protective Order, upon such non-party’s execution of a Declaration
11 of Compliance with this Protective Order substantially in the form attached to this Protective
12 Order as Exhibit A.

13 d. All Discovery Material, whether or not filed or lodged with the
14 Court, that a Designating Party contends constitutes “Confidential Information” shall be
15 designated by the Designating Party as follows:

16 i. Documents or other tangible Discovery Material shall, at the
17 time of their production, be designated by stamping or labeling the same with the legend
18 “Confidential Information” on each page of a document or material containing such information.

19 ii. Deposition testimony shall be designated “Confidential
20 Information” (i) at the taking of the deposition by a statement on the record, by counsel at the
21 time of such disclosure, or (ii) by written notice sent to counsel of record for all Parties within
22 seven (7) business days after receiving a copy of the final, hard copy transcript thereof,
23 identifying the specific pages thereof designated as “Confidential Information.” In both of the
24 foregoing instances, counsel for the Designating Party shall direct that the legend “Confidential
25 Information” be affixed to the portions of the original and all copies of the transcript. The Parties
26 may modify this procedure for any particular deposition through agreement on the record at such
27 depositions without further order of the Court.

28 ///



1 iii. Non-documentary and non-testimonial material, such as oral
2 statements, shall be designated as “Confidential Information” at the time of disclosure and
3 promptly confirmed in writing.

4 e. Inadvertent failure to designate Discovery Material as “Confidential
5 Information” shall not constitute a waiver of such claim and may be corrected by prompt
6 supplemental written notice designating such Discovery Material as “Confidential Information.”
7 The Party receiving such supplemental written notice shall thereafter mark and treat materials so
8 designated as “Confidential Information” and such materials shall be fully subject to this
9 Protective Order as if they had been initially so designated. A person disclosing Discovery
10 Material that is subsequently designated as “Confidential Information” shall in good faith assist
11 the Designating Party in retrieving such Discovery Material from all recipients not entitled to
12 receive such Discovery Material under the terms of this Protective Order and prevent further
13 disclosures except as authorized under the terms of this Protective Order.

14 4. Use of Confidential Information.

15 a. Except as the Designating Party or its counsel may otherwise agree
16 in writing, or as the Court may otherwise order, all Discovery Material marked or otherwise
17 identified as “Confidential Information” and received by any Receiving Party pursuant to this
18 Protective Order: (a) shall be disclosed only to such persons and in such manner as set forth in
19 this Protective Order; (b) shall be used solely for the purposes of preparation for trial and trial of
20 and/or appeal from this Action only; and (c) shall not be used by the Receiving Party for any
21 other purposes, including, without limitation, any business or commercial purpose. The
22 prohibitions on the use of Confidential Information as set forth in this Protective Order shall
23 survive the termination of this Action.

24 b. Counsel for a Receiving Party may disclose or make available any
25 Discovery Material designated as “Confidential Information” and/or any information derived
26 from such Discovery Material only to the following persons:

27 i. Counsel to the Parties in this Action (outside counsel, of
28 counsel, and in-house counsel, including members of the outside counsel firms, associate



1 attorneys, contract attorneys, paralegals, secretarial staff, clerical and other regular or temporary
2 employees);

3 ii. Consultants and vendors of such Counsel to the Parties
4 (including trial consultants, jury consultants, and service vendors such as outside copying
5 services, outside litigation support services, translations services or graphics, design, or document
6 handling services/consultants retained in connection with this Action for purposes of preparing
7 demonstrative or other exhibits for deposition, trial, or other court proceedings and excluding
8 consulting or testifying subject-matter experts);

9 iii. The Parties and directors or employees of the Parties
10 assisting counsel for the purposes of this Action;

11 iv. Witnesses or deponents (other than witnesses and deponents
12 otherwise covered by (iii) above), and their counsel, during the course of and, only to the extent
13 necessary, in preparation for depositions or testimony in this Action;

14 v. Retained experts and expert consultants assisting counsel for
15 the Parties in this Action, and only to the extent necessary for the expert or expert consultant to
16 prepare a written opinion, to prepare to testify, or to assist counsel in the prosecution or defense
17 of this Action;

18 vi. Court reporters, videographers and stenographers employed
19 for taking depositions;

20 vii. Any other person only upon order of the Court or upon
21 stipulation of the Designating Party; and

22 viii. The Court and its staff and administrative personnel and any
23 essential personnel retained by the Court.

24 The Parties shall take all reasonable and necessary measures to ensure that
25 the persons described in paragraphs 4(ii) through (vii) above do not view any Confidential
26 Information unless and until such persons have executed a Declaration of Compliance
27 substantially in the form attached to this Protective Order as Exhibit A;

28 ///



1 c. This Protective Order has no effect upon, and shall not apply to, the
2 Parties' use of their own Confidential Information for any purpose or impose any restrictions on the
3 use or disclosure by a Party of documents, materials, or information designated "Confidential
4 Information" if such documents, materials, or information were both lawfully obtained by and
5 lawfully retained in the possession of such Party independently of the discovery proceedings in this
6 Action.

7 5. Filing Confidential Information. A Party or non-party that seeks to file under
8 seal any "Confidential Information" must comply with the applicable procedures of this Court.

9 6. Challenge to Confidentiality Designation. Unless a prompt challenge to a
10 Designating Party's confidentiality designation is necessary to avoid foreseeable substantial
11 unfairness, unnecessary economic burdens, or a later significant disruption or delay of the
12 litigation, a Receiving Party does not waive its right to challenge a confidentiality designation by
13 electing not to mount a challenge promptly after the Designating Party discloses the designation.

14 a. A Receiving Party that elects to initiate a challenge to a Designating
15 Party's confidentiality designation must do so in good faith and must begin the process by
16 conferring directly with counsel for the Designating Party. In conferring, the challenging
17 Receiving Party must explain the basis for its belief that the confidentiality designation was not
18 proper and must give the Designating Party an opportunity to review the designated material, to
19 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for
20 the chosen designation. A challenging Receiving Party may proceed to the next stage of the
21 challenge process only if it first has engaged in this meet and confer process.

22 b. A Receiving Party that elects to press a challenge to a confidentiality
23 designation after considering the justification offered by the Designating Party may file and serve
24 a motion in compliance with all applicable Federal and Local rules that identifies the challenged
25 material and sets forth in detail the basis for the challenge. Each such motion must be
26 accompanied by a competent declaration that affirms that the movant has complied with the meet
27 and confer requirements imposed in the preceding subparagraph and that (to the extent possible)
28 sets forth with specificity the justification for the confidentiality designation that was given by

1 the Designating Party in the meet and confer dialogue.

2 c. The burden of proof in any such challenge proceeding shall be on the
3 Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the
4 material in question the level of protection to which it is entitled under the Designating Party'
5 designation. This provision applies only to challenge proceedings, and shall not be construed to
6 affect the burden of proof for a motion to seal.

7 7. Additional Parties. In the event additional persons or entities become Parties
8 to this Action, none of such Parties' counsel, experts or expert consultants retained to assist said
9 counsel, shall have access to Confidential Information produced by or obtained from any
10 Designating Party until said Party has executed and filed with the Court its agreement to be fully
11 bound by this Protective Order.

12 8. Modification. It is the present intention of the Parties that the provisions of
13 this Protective Order shall govern discovery in this Action, but each of the Parties to this
14 Protective Order shall be entitled to seek modification of this Protective Order, or relief from it,
15 by application to the Court on notice to the other Parties here.

16 9. Duration. The provisions of this Protective Order shall, absent written
17 permission of the Designating Party or further order of the Court, continue to be binding
18 throughout and after the conclusion of this Action, including without limitation any appeals in
19 this Action. Within thirty (30) days after receiving notice of the entry of an order, judgment, or
20 decree finally disposing of this Action, including the exhaustion of all permissible appeals, all
21 persons and entities having received "Confidential Information" Discovery Material, shall either
22 make a good faith effort to return such material and all copies thereof (including summaries and
23 excerpts) to counsel for the Designating Party or destroy all such "Confidential Information"
24 Discovery Material and copies thereof (including summaries and excerpts) and certify that fact to
25 counsel for the Designating Party. Outside counsel for the Parties shall be entitled to retain all
26 filings, court papers, deposition and trial transcripts, deposition and trial exhibits, and attorney
27 work product (regardless of whether such materials contain or reference Discovery Materials
28 designated as "Confidential Information" by any Designating Party), provided that such outside



1 counsel, and employees and agents of such outside counsel, shall not disclose any Confidential
2 Information contained or referenced in such materials to any person except pursuant to court
3 order or agreement with the Designating Party. All materials, if any, returned to the Parties or
4 their counsel by the Court likewise shall be disposed of in accordance with this Paragraph. This
5 Court shall have continuing jurisdiction to enforce the terms of this Protective Order, including
6 without limitation during any appeals in this Action.

7 10. Legal Obligations. If any person receiving Discovery Material covered by
8 this Protective Order (the “Receiving Party”) is: (a) subpoenaed in or (b) served with a demand in
9 another action to which he, she or it is a party, or (c) served with any other legal process by one
10 not a party to this Action seeking Discovery Material that was produced or designated as
11 “Confidential Information” by someone other than the Receiving Party, the Receiving Party shall
12 give actual written notice, by hand or facsimile transmission, within five (5) business days of
13 receipt of such subpoena, demand, or legal process, to the Designating Party. Nothing in this
14 paragraph shall be construed as requiring the Receiving Party or anyone else covered by this
15 Protective Order to challenge or appeal any order requiring production of “Confidential
16 Information” Discovery Material covered by this Protective Order or to subject such person to
17 any penalties for non-compliance with any legal process or order, or to seek any relief from this
18 or any Court.

19 11. Enforcement. Any Designating or Receiving Party seeking enforcement of
20 this Protective Order against any other Designating or Receiving Party may petition the Court by
21 properly noticed motion, pursuant to this Court’s rules, including a concise statement of the
22 specific relief sought.



1 IT IS SO STIPULATED.

2 DATED:

BARG COFFIN LEWIS & TRAPP, LLP

3

4

By: /s/Laura S. Bernard
Attorneys for Plaintiff
SCHLUMBERGER TECHNOLOGY
CORPORATION, INC. and
Third-Party Defendant
FAIRCHILD SEMICONDUCTOR
CORPORATION

5

6

7

8

9 DATED:

GREBEN & ASSOCIATES

10

11

By: /s/Jeff Coyner
Attorneys for Defendants
EAST CHARLESTON, INC. AND
PACIFIC AMERICAN MANAGEMENT
COMPANY

12

13

14

PURSUANT TO STIPULATION, IT IS SO ORDERED:

15

16

DATED: February 3, 2012

 Lucy H. Koh
Hon. Lucy H. Koh

17

18

19

20

21

22

23

24

25

26

27

28

