

# EXHIBIT A

1 CHRIS R. OTTENWELLER (STATE BAR NO. 73649)  
cottenweller@orrick.com  
2 I. NEEL CHATTERJEE (STATE BAR NO. 173985)  
nchatterjee@orrick.com  
3 ORRICK, HERRINGTON & SUTCLIFFE LLP  
1000 Marsh Road  
4 Menlo Park, California 94025  
Telephone: +1-650-614-7400  
5 Facsimile: +1-650-614-7401

6 BENJAMIN S. LIN (STATE BAR NO. 232735)  
blin@orrick.com  
7 ORRICK, HERRINGTON & SUTCLIFFE LLP  
2050 Main Street, Suite 1100  
8 Irvine, California 92614-8255  
Telephone: +1-949-567-6700  
9 Facsimile: +1-949-567-6710

10 Attorneys for Defendant  
SYNOPSYS, INC.

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 DYNETIX DESIGN SOLUTIONS, INC., a  
California corporation,

16 Plaintiff,

17 v.

18 SYNOPSYS, INC., a Delaware corporation,  
19 and DOES 1-50,

20 Defendants.

Case No. 5:11-cv-05973-PSG

~~STIPULATED~~ [PROPOSED]  
PROTECTIVE ORDER

JUDGE: HON. PAUL S. GREWAL

21  
22 1. PURPOSES AND LIMITATIONS

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

1 and use extends only to the limited information or items that are entitled to confidential treatment  
2 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
3 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential  
4 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that  
5 must be followed and the standards that will be applied when a party seeks permission from the  
6 court to file material under seal.

7 **2. DEFINITIONS**

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

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

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

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

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

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

25 2.7. Expert: a person with specialized knowledge or experience in a matter pertinent  
26 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness  
27 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s  
28

1 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
2 or of a Party's competitor.

3 2.8. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
4 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
5 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
6 less restrictive means.

7 2.9. "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
8 extremely sensitive "Confidential Information or Items" representing computer code and  
9 associated comments and revision histories, formulas, engineering specifications, or schematics  
10 that define or otherwise describe in detail the algorithms or structure of software or hardware  
11 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
12 serious harm that could not be avoided by less restrictive means.

13 2.10. House Counsel: attorneys who are employees of a party to this action. House  
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 2.11. Non-Party: any natural person, partnership, corporation, association, or other  
16 legal entity not named as a Party to this action.

17 2.12. Outside Counsel of Record: attorneys who are not employees of a party to this  
18 action but are retained to represent or advise a party to this action and have appeared in this  
19 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
20 that party.

21 2.13. Party: any party to this action, including all of its officers, directors, employees,  
22 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

23 2.14. Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
24 Material in this action.

25 2.15. Professional Vendors: persons or entities that provide litigation support services  
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
27 organizing, storing, or retrieving data in any form or medium) and their employees and  
28 subcontractors.

1           2.16. Protected Material: any Disclosure or Discovery Material that is designated as  
2 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as  
3 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

4           2.17. Receiving Party: a Party that receives Disclosure or Discovery Material from a  
5 Producing Party.

6 3. SCOPE

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

19 4. DURATION

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

1        5.        DESIGNATING PROTECTED MATERIAL

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

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

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

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

21            Designation in conformity with this Order requires:

22            (a)        for information in documentary form (e.g., paper or electronic documents,  
23 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
24 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
25 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
26 protected material. If only a portion or portions of the material on a page qualifies for protection,  
27 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
28

1 appropriate markings in the margins) and must specify, for each portion, the level of protection  
2 being asserted.

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

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

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

7 Transcripts containing Protected Material shall have an obvious legend on the title page  
8 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
9 pages (including line numbers as appropriate) that have been designated as Protected Material and  
10 the level of protection being asserted by the Designating Party. The Designating Party shall  
11 inform the court reporter of these requirements. Any transcript that is prepared before the  
12 expiration of a 21-day period for designation shall be treated during that period as if it had been  
13 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
14 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
15 actually designated.

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

23 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items does not, standing alone, waive the Designating Party’s  
25 right to secure protection under this Order for such material. Upon timely correction of a  
26 designation, the Receiving Party must make reasonable efforts to assure that the material is  
27 treated in accordance with the provisions of this Order.  
28



1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
5 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
7 original designation is disclosed.

8 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution  
9 process by providing written notice of each designation it is challenging and describing the basis  
10 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
11 notice must recite that the challenge to confidentiality is being made in accordance with this  
12 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
13 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
14 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
15 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
16 designation was not proper and must give the Designating Party an opportunity to review the  
17 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
18 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
19 stage of the challenge process only if it has engaged in this meet and confer process first or  
20 establishes that the Designating Party is unwilling to participate in the meet and confer process  
21 in a timely manner.

22 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without court  
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
24 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if  
25 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties  
26 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
27 Each such motion must be accompanied by a competent declaration affirming that the movant  
28 has complied with the meet and confer requirements imposed in the preceding paragraph. Failure

1 by the Designating Party to make such a motion including the required declaration within 21  
2 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each  
3 challenged designation. In addition, the Challenging Party may file a motion challenging a  
4 confidentiality designation at any time if there is good cause for doing so, including a challenge  
5 to the designation of a deposition transcript or any portions thereof. Any motion brought  
6 pursuant to this provision must be accompanied by a competent declaration affirming that the  
7 movant has complied with the meet and confer requirements imposed by the preceding  
8 paragraph.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating  
10 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
11 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
12 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
13 file a motion to retain confidentiality as described above, 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 until the court rules on the challenge.

## 16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed  
18 or produced by another Party or by a Non-Party in connection with this case only for  
19 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
20 disclosed only to the categories of persons and under the conditions described in this Order.  
21 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
22 section 15 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location and  
24 in a secure manner<sup>1</sup> that ensures that access is limited to the persons authorized under this Order.

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27  
28 <sup>1</sup> It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected  
Material in password-protected form.

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

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

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

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

14           (d) the court and its personnel;

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

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

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

26           7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
27 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
28 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may

1 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
2 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

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

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

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

16 (d) the court and its personnel;

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

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

22 7.4. Procedures for Approving or Objecting to Disclosure of “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
24 SOURCE CODE” Information or Items to Designated House Counsel<sup>4</sup> or Experts.

25 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the

26 \_\_\_\_\_  
27 <sup>2</sup> It may be appropriate under certain circumstances to limit the number of Designated House Counsel who may  
28 access ‘HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY’ information under this provision.

<sup>3</sup> This Order contemplates that Designated House Counsel shall not have access to any information or items  
designated ‘HIGHLY CONFIDENTIAL – SOURCE CODE.’”

1 Designating Party, a Party that seeks to disclose to Designated House Counsel any information  
2 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
3 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)  
4 sets forth the full name of the Designated House Counsel and the city and state of his or her  
5 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable  
6 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is  
7 involved, or may become involved, in any competitive decision-making.

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

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24 <sup>5</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the  
25 Expert should provide whatever information the Expert believes can be disclosed without violating any  
26 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 <sup>6</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to  
28 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 (b) A Party that makes a request and provides the information specified in the  
2 preceding respective paragraphs may disclose the subject Protected Material to the identified  
3 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party  
4 receives a written objection from the Designating Party. Any such objection must set forth in  
5 detail the grounds on which it is based.

6 (c) A Party that receives a timely written objection must meet and confer with  
7 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
8 agreement within seven days of the written objection. If no agreement is reached, the Party  
9 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as  
10 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order  
11 62, if applicable) seeking permission from the court to do so. Any such motion must describe the  
12 circumstances with specificity, set forth in detail the reasons why the disclosure to Designated  
13 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure  
14 would entail, and suggest any additional means that could be used to reduce that risk. In addition,  
15 any such motion must be accompanied by a competent declaration describing the parties' efforts  
16 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
17 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
18 approve the disclosure.

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

23 8. SOURCE CODE

24 (a) To the extent production of source code becomes necessary in this case, a  
25 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"  
26 if it comprises or includes confidential, proprietary or trade secret source code.

27 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE  
28 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" information, and may be disclosed only to the individuals to  
2 whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be  
3 disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House  
4 Counsel.<sup>7</sup>

5 (c) Any source code produced in discovery shall be made available for  
6 inspection, in a format allowing it to be reasonably reviewed and searched, during normal  
7 business hours or at other mutually agreeable times, at an office of the Producing Party's counsel  
8 or another mutually agreed upon location. The source code shall be made available for inspection  
9 on a secured computer in a secured room without Internet access or network access to other  
10 computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of  
11 the source code onto any recordable media or recordable device. The Producing Party may  
12 visually monitor the activities of the Receiving Party's representatives during any source code  
13 review, but only to ensure that there is no unauthorized recording, copying, or transmission of the  
14 source code.<sup>8</sup>

15 (d) The Receiving Party may request paper copies of limited portions of source  
16 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports,  
17 or other papers, or for deposition or trial, but shall not request paper copies for the purposes of  
18 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
19 instance. The Producing Party shall provide all such source code in paper form including bates  
20 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." The Producing Party  
21 may challenge the amount of source code requested in hard copy form pursuant to the dispute  
22 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the  
23 "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute  
24 resolution.

25  
26 \_\_\_\_\_  
27 <sup>7</sup> It may be appropriate under certain circumstances to allow House Counsel access to derivative materials including  
"HIGHLY CONFIDENTIAL – SOURCE CODE" information, such as exhibits to motions or expert reports.

28 <sup>8</sup> It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log indicating the  
names of any individuals inspecting the source code and dates and times of inspection, and the names of any  
individuals to whom papers copies of portions of source code are provided.

1 (e) The Receiving Party shall maintain a record of any individual who has  
2 inspected any portion of the source code in electronic or paper form. The Receiving Party shall  
3 maintain all paper copies of any printed portions of the source code in a secured, locked area. The  
4 Receiving Party shall not create any electronic or other images of the paper copies and shall not  
5 convert any of the information contained in the paper copies into any electronic format. The  
6 Receiving Party shall only make additional paper copies if such additional copies are (1)  
7 necessary to prepare court filings, pleadings, or other papers (including a testifying expert's  
8 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its  
9 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the  
10 end of each day and must not be given to or left with a court reporter or any other individual.<sup>9</sup>

11 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
12 LITIGATION

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

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

19 (b) promptly notify in writing the party who caused the subpoena or order to  
20 issue in the other litigation that some or all of the material covered by the subpoena or order is  
21 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
22 Protective Order; and  
23  
24  
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27 <sup>9</sup> The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For  
28 example it may be appropriate under certain circumstances to require the Receiving Party to provide notice to the  
Producing Party before including "HIGHLY CONFIDENTIAL – SOURCE CODE" information in a court filing,  
pleading, or expert report.



1 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
2 the Designating Party whose Protected Material may be affected.<sup>10</sup>

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

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

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

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

24 1. promptly notify in writing the Requesting Party and the Non-Party  
25 that some or all of the information requested is subject to a confidentiality agreement with a Non-  
26

27 \_\_\_\_\_  
28 <sup>10</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this 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 Party;

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

5                                 3.         make the information requested available for inspection by the  
6 Non-Party.

7                                 (c)         If the Non-Party fails to object or seek a protective order from this court  
8 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
9 produce the Non-Party's confidential information responsive to the discovery request. If the  
10 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
11 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
12 before a determination by the court.<sup>11</sup> Absent a court order to the contrary, the Non-Party shall  
13 bear the burden and expense of seeking protection in this court of its Protected Material.

14 11.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

22 12.     INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
23 MATERIAL

24             When a Producing Party gives notice to Receiving Parties that certain inadvertently  
25 produced material is subject to a claim of privilege or other protection, the obligations of the  
26 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
27

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28 <sup>11</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 provision is not intended to modify whatever procedure may be established in an e-discovery  
2 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
3 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
4 communication or information covered by the attorney-client privilege or work product  
5 protection, the parties may incorporate their agreement in the stipulated protective order  
6 submitted to the court.

7 13. MISCELLANEOUS

8 13.1. Right to Further Relief. Nothing in this Order abridges the right of any person to  
9 seek its modification by the court in the future.

10 13.2. Right to Assert Other Objections. By stipulating to the entry of this Protective  
11 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
12 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
13 no Party waives any right to object on any ground to use in evidence of any of the material  
14 covered by this Protective Order.

15 13.3. Filing Protected Material. Without written permission from the Designating Party  
16 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
17 the public record in this action any Protected Material. A Party that seeks to file under seal any  
18 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
19 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
20 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
21 sealing order will issue only upon a request establishing that the

22 An alternate provision could state: "If information is produced in discovery that is subject  
23 to a claim of privilege or of protection as trial-preparation material, the party making the claim  
24 may notify any party that received the information of the claim and the basis for it. After being  
25 notified, a party must promptly return or destroy the specified information and any copies it has  
26 and may not sequester, use or disclose the information until the claim is resolved. This includes a  
27 restriction against presenting the information to the court for a determination of the claim."

28 Protected Material at issue is privileged, protectable as a trade secret, or otherwise

1 entitled to protection under the law. If a Receiving Party's request to file Protected Material under  
2 seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the  
3 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
4 79-5(e) unless otherwise instructed by the court.

5 14. FINAL DISPOSITION

6 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
7 Receiving Party must return all Protected Material to the Producing Party or destroy such  
8 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
9 compilations, summaries, and any other format reproducing or capturing any of the Protected  
10 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
11 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
12 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
13 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
14 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
15 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
16 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
17 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
18 product, and consultant and expert work product, even if such materials contain Protected  
19 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
20 this Protective Order as set forth in Section 4 (DURATION).

21 ~~IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.~~

22  
23 ~~DATED:~~ \_\_\_\_\_

~~Attorneys for Plaintiff~~

24  
25 ~~DATED:~~ \_\_\_\_\_

~~Attorneys for Defendant~~

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~~PURSUANT TO STIPULATION~~, IT IS SO ORDERED.

DATED: Paul S. Amodeo

4/12/2012

[Name of Judge]  
United States ~~District~~/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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

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

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

20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22 Printed name: \_\_\_\_\_

23 [printed name]

24 Signature: \_\_\_\_\_

25 [signature]