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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

SOFTVAULT SYSTEMS, INC.,  
Plaintiff,  
vs.  
CA, INC.,  
Defendant.

CASE NO. 12-cv-1940-LHK  
Consolidated Case No.: 12-cv-1099  
Consolidated Case No.: 12-cv-1658

**STIPULATED PROTECTIVE  
ORDER**

JURY TRIAL DEMANDED

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than  
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby  
6 stipulate to and petition the court to enter the following Stipulated Protective  
7 Order. The parties acknowledge that this Order does not confer blanket protections  
8 on all disclosures or responses to discovery and that the protection it affords from  
9 public disclosure and use extends only to the limited information or items that are  
10 entitled to confidential treatment under the applicable legal principles. The parties  
11 further acknowledge, as set forth in Section 14.4, below, that this Stipulated  
12 Protective Order does not entitle them to file confidential information under seal;  
13 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be  
14 followed and the standards that will be applied when a party seeks permission from  
15 the court to file material under seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the  
18 designation of information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of  
20 how it is generated, stored or maintained) or tangible things that qualify for  
21 protection under Federal Rule of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
23 Counsel (as well as their support staff).

24 2.4 Designated House Counsel: House Counsel who seek access to  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this  
26 matter.

27 2.5 Designating Party: a Party or Non-Party that designates information or  
28 items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
2 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

3 2.6 Disclosure or Discovery Material: all items or information, regardless  
4 of the medium or manner in which it is generated, stored, or maintained (including,  
5 among other things, testimony, transcripts, and tangible things), that are produced  
6 or generated in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter  
8 pertinent to the litigation who (1) has been retained by a Party or its counsel to  
9 serve as an expert witness or as a consultant in this action, (2) is not a past or  
10 current employee of a Party or of a Party’s competitor, and (3) at the time of  
11 retention, is not anticipated to become an employee of a Party or of a Party’s  
12 competitor.

13 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
14 Information or Items: extremely sensitive “Confidential Information or Items,”  
15 disclosure of which to another Party or Non-Party would create a substantial risk of  
16 serious harm that could not be avoided by less restrictive means.

17 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
18 Items: extremely sensitive “Confidential Information or Items” representing  
19 computer code and associated comments and revision histories, formulas,  
20 engineering specifications, or schematics that define or otherwise describe in detail  
21 the algorithms or structure of software or hardware designs, disclosure of which to  
22 another Party or Non-Party would create a substantial risk of serious harm that  
23 could not be avoided by  
24 less restrictive means.

25 2.10 House Counsel: attorneys who are employees of a party to this action.  
26 House Counsel does not include Outside Counsel of Record or any other outside  
27 counsel.  
28

1           2.11 Non-Party: any natural person, partnership, corporation, association,  
2 or other legal entity not named as a Party to this action.

3           2.12 Outside Counsel of Record: attorneys who are not employees of a  
4 party to this action but are retained to represent or advise a party to this action and  
5 have appeared in this action on behalf of that party or are affiliated with a law firm  
6 which has appeared on behalf of that party.

7           2.13 Party: any party to this action, including all of its officers, directors,  
8 employees, consultants, retained experts, and Outside Counsel of Record (and their  
9 support staffs).

10          2.14 Producing Party: a Party or Non-Party that produces Disclosure or  
11 Discovery Material in this action.

12          2.15 Professional Vendors: persons or entities that provide litigation  
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
15 and their employees and subcontractors.

16          2.16 Protected Material: any Disclosure or Discovery Material that is  
17 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –  
18 ATTORNEYS’ EYES ONLY.” or as “HIGHLY CONFIDENTIAL – SOURCE  
19 CODE.”

20          2.17 Receiving Party: a Party that receives Disclosure or Discovery  
21 Material from a Producing Party.

22 **3. SCOPE**

23           The protections conferred by this Stipulation and Order cover not only  
24 Protected Material (as defined above), but also (1) any information copied or  
25 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
26 compilations of Protected Material; and (3) any testimony, conversations, or  
27 presentations by Parties or their Counsel that might reveal Protected Material.  
28 However, the protections conferred by this Stipulation and Order do not cover the

1 following information: (a) any information that is in the public domain at the time  
2 of disclosure to a Receiving Party or becomes part of the public domain after its  
3 disclosure to a Receiving Party as a result of publication not involving a violation  
4 of this Order, including becoming part of the public record through trial or  
5 otherwise; and (b) any information known to the Receiving Party prior to the  
6 disclosure or obtained by the Receiving Party after the disclosure from a source  
7 who obtained the information lawfully and under no obligation of confidentiality to  
8 the Designating Party. Any use of Protected Material at trial shall be governed by a  
9 separate agreement or order.

#### 10 **4. DURATION**

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

#### 19 **5. DESIGNATING PROTECTED MATERIAL**

##### 20 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

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

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
11 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
12 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
13 under this Order must be clearly so designated before the material is disclosed or  
14 produced.

15 Designation in conformity with this Order requires:

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

25 A Party or Non-Party that makes original documents or materials available  
26 for inspection need not designate them for protection until after the inspecting  
27 Party has indicated which material it would like copied and produced. During the  
28 inspection and before the designation, all of the material made available for

1 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
2 ONLY.” After the inspecting Party has identified the documents it wants copied  
3 and produced, the Producing Party must determine which documents, or portions  
4 thereof, qualify for protection under this Order. Then, before producing the  
5 specified documents, the Producing Party must affix the appropriate legend  
6 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
7 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE) to each page that  
8 contains Protected Material. If only a portion or portions of the material on a page  
9 qualifies for protection, the Producing Party also must clearly identify the  
10 protected portion(s) (e.g., by making appropriate markings in the margins) and  
11 must specify, for each portion, the level of protection being asserted.

12 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
13 that the Designating Party identify on the record, before the close of the deposition,  
14 hearing, or other proceeding, all protected testimony and specify the level of  
15 protection being asserted. When it is impractical to identify separately each portion  
16 of testimony that is entitled to protection and it appears that substantial portions of  
17 the testimony may qualify for protection, the Designating Party may invoke on the  
18 record (before the deposition, hearing, or other proceeding is concluded) a right to  
19 have up to 21 days to identify the specific portions of the testimony as to which  
20 protection is sought and to specify the level of protection being asserted. To the  
21 extent practicable and not burdensome, only those portions of the testimony that  
22 are appropriately designated for protection within the 21 days shall be covered by  
23 the provisions of this Stipulated Protective Order. Alternatively, a Designating  
24 Party may specify, at the deposition or up to 21 days afterwards if that period is  
25 properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL”  
26 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

27 Parties shall give the other parties notice if they reasonably expect a  
28 deposition, hearing or other proceeding to include Protected Material so that the

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

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

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

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



1 provisions of this Order, including retrieval or destruction of copies distributed to  
2 unauthorized individuals; and destroy copies of documents that have been replaced  
3 with documents containing the proper designations.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
13 resolution process by providing written notice of each designation it is challenging  
14 and describing the basis for each challenge. To avoid ambiguity as to whether a  
15 challenge has been made, the written notice must recite that the challenge to  
16 confidentiality is being made in accordance with this specific paragraph of the  
17 Protective Order. The parties shall attempt to resolve each challenge in good faith  
18 and must begin the process by conferring directly (in voice to voice dialogue; other  
19 forms of communication are not sufficient) within 14 days of the date of service of  
20 notice. In conferring, the Challenging Party must explain the basis for its belief that  
21 the confidentiality designation was not proper and must give the Designating Party  
22 an opportunity to review the designated material, to reconsider the circumstances,  
23 and, if no change in designation is offered, to explain the basis for the chosen  
24 designation. A Challenging Party may proceed to the next stage of the challenge  
25 process only if it has engaged in this meet and confer process first or establishes  
26 that the Designating Party is unwilling to participate in the meet and confer process  
27 in a timely manner.  
28

1           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without  
2 court intervention, the Designating Party shall file and serve a motion to retain  
3 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule  
4 79-5 and General Order 62, if applicable) within 21 days of the initial notice of  
5 challenge or within 14 days of the parties agreeing that the meet and confer process  
6 will not resolve their dispute, whichever is earlier. Each such motion must be  
7 accompanied by a competent declaration affirming that the movant has complied  
8 with the meet and confer requirements imposed in the preceding paragraph. Failure  
9 by the Designating Party to make such a motion including the required declaration  
10 within 21 days (or 14 days, if applicable) shall automatically waive the  
11 confidentiality designation for each challenged designation. In addition, the  
12 Challenging Party may file a motion challenging a confidentiality designation at  
13 any time if there is good cause for doing so, including a challenge to the  
14 designation of a deposition transcript or any portions thereof. Any motion brought  
15 pursuant to this provision must be accompanied by a competent declaration  
16 affirming that the movant has complied with the meet and confer requirements  
17 imposed by the preceding paragraph.

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

## 26   **7.    ACCESS TO AND USE OF PROTECTED MATERIAL**

27           7.1    Basic Principles. A Receiving Party may use Protected Material that is  
28 disclosed or produced by another Party or by a Non-Party in connection with this

1 case only for prosecuting, defending, or attempting to settle this litigation. Such  
2 Protected Material may be disclosed only to the categories of persons and under  
3 the conditions described in this Order. When the litigation has been terminated, a  
4 Receiving Party must comply with the provisions of section 15 below (FINAL  
5 DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a  
7 location and in a secure manner that ensures that access is limited to the persons  
8 authorized under this Order.

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
10 otherwise ordered by the court or permitted in writing by the Designating Party, a  
11 Receiving Party may disclose any information or item designated  
12 “CONFIDENTIAL” only to:

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

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

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

24 (d) the court and its personnel;

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

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

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

10 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
11 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
12 Items. Unless otherwise ordered by the court or permitted in writing by the  
13 Designating Party, a Receiving Party may disclose any information or item  
14 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
15 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

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

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

25 (c) the court and its personnel;

26 (d) court reporters and their staff, professional jury or trial consultants, and  
27 Professional Vendors to whom disclosure is reasonably necessary for this litigation  
28

1 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
2 A); and

3 (e) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information.

5 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
7 CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

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

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<sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 (b) A Party that makes a request and provides the information specified in  
2 the preceding respective paragraphs may disclose the subject Protected Material to  
3 the identified Expert unless, within 14 days of delivering the request, the Party  
4 receives a written objection from the Designating Party. Any such objection must  
5 set forth in detail the grounds on which it is based.

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

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

24 **8. PROSECUTION BAR**

25 Absent written consent from the Producing Party, any individual who  
26 receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
27 or "HIGHLY CONFIDENTIAL – SOURCE CODE" technical or source code  
28 information shall not be involved in the prosecution of patents or patent

1 applications relating to software, hardware and systems for data loss prevention,  
2 mobile device management or software activation, including without limitation the  
3 patents asserted in this action and any patent or application claiming priority to or  
4 otherwise related to the patents asserted in this action, before any foreign or  
5 domestic agency, including the United States Patent and Trademark Office (“the  
6 Patent Office”). For purposes of this paragraph, “prosecution” includes directly or  
7 indirectly drafting, amending, advising, or otherwise affecting the scope or  
8 maintenance of patent claims.<sup>2</sup> To avoid any doubt, “prosecution” as used in this  
9 paragraph does not include representing a party challenging a patent before a  
10 domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte*  
11 reexamination or *inter partes* reexamination). This Prosecution Bar shall begin  
12 when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
13 “HIGHLY CONFIDENTIAL – SOURCE CODE” technical or source information  
14 is first received by the affected individual and shall end two (2) years after final  
15 termination of this action.<sup>3</sup>

16 **9. SOURCE CODE**

17 (a) To the extent production of source code becomes necessary in this  
18 case, a Producing Party may designate source code as “HIGHLY  
19 CONFIDENTIAL - SOURCE CODE” if it comprises or includes confidential,  
20 proprietary or trade secret source code.

21 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –  
22 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, including the  
24 Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the  
25 individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
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28 <sup>2</sup> Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

<sup>3</sup> The Prosecution Bar shall not apply to individuals who only receive access to another party’s financial information that has been designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

1 ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with  
2 the exception of Designated House Counsel.

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

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

25 (e) The Receiving Party shall maintain a record of any individual who has  
26 inspected any portion of the source code in electronic or paper form. The  
27 Receiving Party shall maintain all paper copies of any printed portions of the  
28 source code in a secured, locked area. The Receiving Party shall not create any



1 electronic or other images of the paper copies and shall not convert any of the  
2 information contained in the paper copies into any electronic format. The  
3 Receiving Party shall only make additional paper copies if such additional copies  
4 are (1) necessary to prepare court filings, pleadings, or other papers (including a  
5 testifying expert's expert report), (2) necessary for deposition, or (3) otherwise  
6 necessary for the preparation of its case. Any paper copies used during a deposition  
7 shall be retrieved by the Producing Party at the end of each day and must not be  
8 given to or left with a court reporter or any other individual.

9 (f) Unless a Producing Party chooses to disclose Source Code prior to  
10 request from the Receiving Party, the Receiving Party shall provide ten (10)  
11 business days notice of the Source Code that it wishes to inspect prior to the first  
12 inspection of any Source Code.

13 (g) Once the Producing Party has initially produced the Source Code for  
14 inspection and review, it shall make it available for additional inspection upon  
15 three (3) business days notice and, to the extent shorter notice is provided, the  
16 Producing Party agrees to use reasonable efforts to accommodate the Receiving  
17 Party's request. The Producing Party and the Receiving Party shall consult with  
18 one another in advance regarding particular Source Code review tools to be  
19 installed on the computer. The Producing Party agrees to make review tools  
20 available on the Source Code Computer to the Receiving Party upon reasonable  
21 request, including free tools downloadable from the internet (such as Visual Studio  
22 Express tools). If the requested review tools must be purchased, the Receiving  
23 Party shall be responsible for bearing the cost and for providing the installation  
24 files at least seven (7) business days in advance of the date upon which the  
25 Receiving Party wishes to have the requested review tools available for use on the  
26 Source Code Computer.

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1 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that  
4 compels disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
6 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

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

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

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

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

24 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
25 **PRODUCED IN THIS LITIGATION**

26 (a) The terms of this Order are applicable to information produced by a  
27 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY  
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY

1 CONFIDENTIAL – SOURCE CODE”. Such information produced by Non-Parties  
2 in connection with this litigation is protected by the remedies and relief provided  
3 by this Order. Nothing in these provisions should be construed as prohibiting a  
4 Non-Party from seeking additional protections.

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

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

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

15 3. make the information requested available for inspection by the  
16 Non-Party.

17 (c) If the Non-Party fails to object or seek a protective order from this  
18 court within 14 days of receiving the notice and accompanying information, the  
19 Receiving Party may produce the Non-Party’s confidential information responsive  
20 to the discovery request. If the Non-Party timely seeks a protective order, the  
21 Receiving Party shall not produce any information in its possession or control that  
22 is subject to the confidentiality agreement with the Non-Party before a  
23 determination by the court. Absent a court order to the contrary, the Non-Party  
24 shall bear the burden and expense of seeking protection in this court of its  
25 Protected Material.

26 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has  
28 disclosed Protected Material to any person or in any circumstance not authorized

1 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
2 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
3 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
4 the person or persons to whom unauthorized disclosures were made of all the terms  
5 of this Order, and (d) request such person or persons to execute the  
6 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
7 A.

8 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
9 **OTHERWISE PROTECTED MATERIAL**

10 The inadvertent or unintentional production of documents or information which a  
11 party or non-party later claims should not have been produced because it is  
12 protected by a privilege, protection, or immunity will not be deemed to be a waiver  
13 of such privilege, protection, or immunity. A party or non-party may request the  
14 return of any inadvertently produced privileged material, and the Receiving Party  
15 shall make no further use such document(s) or information and, as soon as  
16 practicable, shall return or destroy all copies of such inadvertently produced  
17 document(s) or information, and confirm such destruction in writing to the  
18 Producing Party. Upon destruction of or return of inadvertently produced  
19 documents, the Producing Party shall provide a privilege log to the Receiving Party  
20 describing the inadvertently produced documents that the Receiving Party returned  
21 or destroyed. Notwithstanding this paragraph, the Receiving Party shall reserve  
22 the right to challenge, by motion to the Court, whether any inadvertently produced  
23 document are, in fact, subject to the attorney-client privilege or work product  
24 doctrine or whether the such privilege has been waived.

25 **14. MISCELLANEOUS**

26 14.1 Right to Further Relief. Nothing in this Order abridges the right of any  
27 person to seek its modification by the court in the future.  
28

1           14.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order no Party waives any right it otherwise would have to object to  
3 disclosing or producing any information or item on any ground not addressed in  
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
5 any ground to use in evidence of any of the material covered by this Protective  
6 Order.

7           14.3 Export Control. Disclosure of Protected Material shall be subject to all  
8 applicable laws and regulations relating to the export of technical data contained in  
9 such Protected Material, including the release of such technical data to foreign  
10 persons or nationals in the United States or elsewhere. The Producing Party shall  
11 be responsible for identifying any such controlled technical data, and the Receiving  
12 Party shall take measures necessary to ensure compliance.

13           14.4 Filing Protected Material. Without written permission from the  
14 Designating Party or a court order secured after appropriate notice to all interested  
15 persons, a Party may not file in the public record in this action any Protected  
16 Material. A Party that seeks to file under seal any Protected Material must comply  
17 with Civil Local Rule 79-5 and General Order 62. Protected Material may only be  
18 filed under seal pursuant to a court order authorizing the sealing of the specific  
19 Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order  
20 62, a sealing order will issue only upon a request establishing that the Protected  
21 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
22 protection under the law. If a Receiving Party's request to file Protected Material  
23 under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by  
24 the court, then the Receiving Party may file the Protected Material in the public  
25 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the  
26 court.

1 **15. FINAL DISPOSITION**

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: August 24, 2012

/s/ Corby R. Vowell  
Attorneys for SoftVault Systems, Inc.

DATED: August 24, 2012

/s/ Benjamin M. Stern  
Attorneys for CA, Inc.

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

DATED: August 24, 2012

  
\_\_\_\_\_  
Honorable Lucy H. Koh  
United States District/Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *SoftVault Systems, Inc. v. CA, Inc.*, case no. 12-cv-1940-LHK, in the United States District Court for the Northern District of California. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

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

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

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

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



1 DATED: August 24, 2012

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