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25 UNITED STATES DISTRICT COURT
26
27 NORTHERN DISTRICT OF CALIFORNIA
28
29 SAN JOSE DIVISION

30 CANTON BECKER, JOSEPHINE ASPLUND,
31 and DARRIN WESLEY, individually and on
32 behalf of all others similarly situated,

33 Plaintiffs,

34 v.

35 SKYPE INC., a Delaware Corporation;
36 MICROSOFT CORPORATION, and DOES
37 1-100,

38 Defendants.

Case No. 12-cv-06477 EJD (HRL)

**STIPULATED PROTECTIVE
ORDER FOR LITIGATION
INVOLVING HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION
AND/OR TRADE SECRETS**

Judge: Hon. Edward J. Davila
Courtroom: 4

(MODIFIED BY THE COURT)

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection it affords
8 from public disclosure and use extends only to the limited information or items that are entitled
9 to confidential treatment under the applicable legal principles. The parties further
10 acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective Order does not
11 entitle them to file confidential information under seal; Civil Local Rule 79-5 ~~and General~~
12 ~~Order 62~~ sets forth the procedures that must be followed and the standards that will be applied
13 when a party seeks permission from the court to file material under seal.
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15 **2. DEFINITIONS**

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
17 information or items under this Order.

18 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
19 generated, stored or maintained) or tangible things that qualify for protection under Federal
20 Rule of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
22 well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or items
24 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY".

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including, among other
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1 things, documents, interrogatory responses, responses to requests for admission, testimony,
2 transcripts, and tangible things), that are produced or generated in disclosures or responses to
3 discovery in this matter.

4 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent
5 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness
6 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
7 competitor, and (3) at the time of retention, is not, in good faith, reasonably anticipated to
8 become an employee of a Party or of a Party's competitor.

9 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
10 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
11 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
12 less restrictive means.

13 2.8 House Counsel: attorneys (and their support staff) who are employees of a party
14 to this action. House Counsel does not include Outside Counsel of Record or any other outside
15 counsel.

16 2.9 Non-Party: any natural person, partnership, corporation, association, or other
17 legal entity not named as a Party to this action.

18 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
19 action but are retained to represent or advise a party to this action and have appeared in this
20 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
21 that party.

22 2.11 Party: any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
25 Material in this action.
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1 2.13 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected
11 Material (as defined above), but also (1) any information copied or extracted from Protected
12 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
13 testimony, conversations, or presentations by Parties or their Counsel that might reveal
14 Protected Material. However, the protections conferred by this Stipulation and Order do not
15 cover the following information: (a) any information that is in the public domain at the time of
16 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
17 Receiving Party as a result of publication not involving a violation of this Order; and (b) any
18 information known to the Receiving Party prior to the disclosure or obtained by the Receiving
19 Party after the disclosure from a source who obtained the information lawfully and under no
20 obligation of confidentiality to the Designating Party. Any use of Protected Material at trial
21 shall be governed by a separate agreement or order. The Parties agree that this Order does not
22 sufficiently address the protection of source code. If source code is sought in discovery, the
23 Parties will seek an additional Stipulated Order to protect disclosure of source code
24 information.
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1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations imposed by
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
7 action, including the time limits for filing any motions or applications for extension of time
8 pursuant to applicable law. After the final disposition of this action, this court will retain
9 jurisdiction to enforce the terms of this protective order: **for a period of six months.**

10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 Party or Non-Party that designates information or items for protection under this Order must
13 take care to limit any such designation to specific material that qualifies under the appropriate
14 standards. To the extent it is practical to do so, the Designating Party must designate for
15 protection only those parts of material, documents, items, or oral or written communications
16 that qualify – so that other portions of the material, documents, items, or communications for
17 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, routinized, or indiscriminate designations are prohibited. Designations that have
19 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
20 development process or to impose unnecessary expenses and burdens on other parties) may
21 expose the Designating Party to sanctions upon sufficient findings as required under existing
22 provisions of the Federal Rules of Civil Procedure.

23 If it comes to a Designating Party's attention that information or items that it designated
24 for protection do not qualify for protection at all or do not qualify for the level of protection
25 initially asserted, that Designating Party must promptly notify all other parties that it is
26 withdrawing the mistaken designation.
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1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise stipulated or
3 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be
4 clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that
8 the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” to each page that contains protected material. For documents
10 produced in native format, the Producing Party shall append “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL” to the filename.
12

13 A Party or Non-Party that makes original documents or materials available for
14 inspection need not designate them for protection until after the inspecting Party has indicated
15 which material it would like copied and produced. During the inspection and before the
16 designation, all of the material made available for inspection shall be deemed “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. After the inspecting Party has identified
18 the documents it wants copied and produced, the Producing Party must determine which
19 documents, or portions thereof, qualify for protection under this Order. Then, before producing
20 the specified documents, the Producing Party must affix the appropriate legend
21 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each
22 page that contains Protected Material.

23 (b) for testimony given in deposition or in other pretrial or trial proceedings,
24 that the Designating Party identifies on the record or up to 30 days after completion of the
25 deposition, whether protection is sought and the level of protection being asserted. Only those
26 portions of the testimony that are appropriately designated for protection within the 30 days
27 shall be covered by the provisions of this Stipulated Protective Order. If no designation is
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1 made at the deposition, the transcript shall be treated as “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” during the 30-day period referenced above. Alternatively, a
3 Designating Party may specify, at the deposition or up to 30 days afterwards, that the entire
4 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY.” After the expiration of that period, the transcript shall be
6 treated only as actually designated.

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

14 Transcripts containing Protected Material shall have an obvious legend on the title page
15 that the transcript contains Protected Material. The Designating Party shall inform the court
16 reporter of these requirements.

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

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

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
24 intervention, the ~~Challenging Party may file a motion challenging a confidentiality designation~~
25 ~~parties shall comply with the undersigned's Standing Order re Civil Discovery Disputes.~~
26 ~~at any time if there is good cause for doing so, including a challenge to the designation of a~~
27 ~~deposition transcript or any portions thereof. Any motion brought pursuant to this provision~~
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1 ~~must be accompanied by a competent declaration affirming that the movant has complied with~~
2 ~~Any Discovery Dispute Joint Resolution shall affirm that~~
3 ~~the meet and confer requirements imposed by the preceding paragraph. have been met.~~

4 The burden of persuasion in any such challenge proceeding shall be on the Designating
5 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
6 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
7 sanctions. All parties shall continue to afford the material in question the level of protection to
8 which it is entitled under the Producing Party's designation until the court rules on the
9 challenge.

10 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 7.1 Basic Principles. A Receiving Party and/or Receiving Party's counsel may
12 access and use (only insofar as more specifically provided in this Order) Protected Material that
13 is disclosed or produced by another Party or by a Non-Party in connection with this case only
14 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may
15 be disclosed only to the categories of persons and under the conditions described in this Order.
16 When the litigation has been terminated, a Receiving Party must comply with the provisions of
17 Section 14 below (FINAL DISPOSITION).

18 Protected Material must be stored and maintained by Receiving Party and Receiving
19 Party's counsel at a location and in a secure manner¹ that ensures that access is limited to the
20 persons authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the Designating Party, any information or item
23 designated "CONFIDENTIAL" by the Designating Party shall be disclosed only to:
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28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to
store any electronic Protected Material in password-protected form.

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well
2 as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
3 the information for this litigation;

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
6 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) (for the sake of clarity,
7 the parties agree that "CONFIDENTIAL" information or items shall not be disclosed to the
8 named plaintiffs in this action);

9 (c) Experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this litigation and who have signed the
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A) and as to whom the procedures
12 set forth in Section 7.4(a), below, have been followed;

13 (d) the court and its personnel;

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

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

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

25 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
26 Information or Items: Unless otherwise ordered by the court or permitted in writing by the
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1 Designating Party, any information or item designated "HIGHLY CONFIDENTIAL –
2 ATTORNEYS' EYES ONLY" by the Designating Party shall be disclosed only to:

3 (a) the Receiving Party's Counsel in this action, as well as employees of
4 said Counsel to whom it is reasonably necessary to disclose the information for this litigation
5 (for the sake of clarity, the parties agree that "HIGHLY CONFIDENTIAL – ATTORNEYS'
6 EYES ONLY" information or items shall not be disclosed to the named plaintiffs in this
7 action);

8 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
9 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be
10 Bound" (Exhibit A), and (3) as to whom the procedures set forth in Section 7.4(a), below, have
11 been followed;

12 (c) the court and its personnel;

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

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

18 7.4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
19 ONLY" information or items may be disclosed to an Expert without disclosure of the identity
20 of the Expert as long as the Expert is not a current officer, director, employee, or consultant of
21 a competitor of a Party or anticipated to become one.

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

12
13 (b) A Party that makes a request and provides the information specified in
14 Section 7.4(a) may disclose the subject Protected Material to the identified Expert 15 days after
15 making its 7.4(a) disclosure unless, within 14 days of delivering the request, the Party receives
16 a written objection from the Designating Party. Any such objection must set forth in detail the
17 grounds on which it is based.

18 (c) A Party that receives a timely written objection must meet and confer
19 with the Designating Party to try to resolve the matter by agreement within seven days of the
20 written objection. If no agreement is reached, ~~the Party seeking to make the disclosure to the~~
~~undersigned's Standing Order re Civil Discovery Disputes.~~ ~~Parties may seek judicial relief per the~~
21 ~~Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local~~
~~Rule 79-5 and General Order 62, if applicable) seeking permission from the court to do so.~~
22 ~~Discovery Dispute Joint Report~~
23 Any ~~such motion~~ must describe the circumstances with specificity, set forth in detail the
24 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that
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26 ² If the Expert believes any of this information is subject to a confidentiality obligation
27 to a third-party, then the Expert should provide whatever information the Expert believes can
28 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 the disclosure would entail, and suggest any additional means that could be used to reduce that
2 risk. In addition, any such ~~motion~~ ^{DDJR} must be accompanied by a competent declaration describing
3 the parties' efforts to resolve the matter by agreement (*i.e.*, the extent and the content of the
4 meet and confer discussions) and setting forth the reasons advanced by the Designating Party
5 for its refusal to approve the disclosure.
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7 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
8 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
9 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

10 (d) Notwithstanding the above, Discovery Material may be provided to
11 experts or consultants only to the extent necessary for such expert or consultant to prepare a
12 written opinion, to prepare to testify, or to assist counsel or the Parties, provided that such
13 expert or consultant is using said Discovery Material solely in connection with this Litigation,
14 and further provided that such expert or consultant has previously executed an undertaking in
15 the form attached hereto as Exhibit A, agreeing in writing to be bound by the terms and
16 conditions of this Stipulation, consenting to the jurisdiction of this Court for purposes of
17 enforcement of the terms of this Stipulation, and agreeing not to disclose or use any Discovery
18 Material for purposes other than those permitted hereunder.

19 **8. PROSECUTION BAR**

20 Absent written consent from the Producing Party, any individual who receives access to
21 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information of the opposing
22 party shall not be involved in the prosecution of patents or patent applications relating to the
23 subject matter of the "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
24 information he or she received before any foreign or domestic agency, including the United
25 States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph,
26 "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise
27 affecting the scope or maintenance of patent claims. To avoid any doubt, "prosecution" as used
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1 in this paragraph does not include representing a party challenging a patent before a domestic
2 or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or
3 *inter partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY information is first received by the affected
5 individual and shall end five (5) years after final termination of this action.

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7 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
8 **OTHER LITIGATION**

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

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

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

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

20 If the Designating Party timely seeks a protective order, the Party served with the
21 subpoena or court order shall not produce any information designated in this action as
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” before a
23 determination by the court from which the subpoena or order issued, unless the Party has
24 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
25 expense of seeking protection in that court of its confidential material – and nothing in these
26 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
27 disobey a lawful directive from another court.
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1 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
2 **THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-
6 Parties in connection with this litigation is protected by the remedies and relief provided by this
7 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
8 seeking additional protections.
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10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
12 agreement with the Non-Party not to produce the Non-Party’s confidential information, then
13 the Party shall:

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

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

20 3. make the information requested available for inspection by the
21 Non-Party.

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

4 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

12 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
13 **PROTECTED MATERIAL.**

14 If Discovery Material that is subject to a claim of attorney-client privilege, attorney
15 work product protection, or any other applicable privilege is inadvertently produced or
16 disclosed (“Inadvertent Production Material”), such inadvertent production shall in no way
17 prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client
18 privilege, attorney work product protection, or other applicable privilege.

19 (a) If a claim of inadvertent production is made, pursuant to this Stipulated
20 Protective Order, with respect to Discovery Material then in the custody of another Party, that
21 Party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
22 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
23 Production Material and all copies thereof (including summaries and excerpts) to counsel for
24 the Producing Party, or destroy all such claimed Inadvertent Production Material (including
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27 ³ The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its
confidentiality interests in this court.

1 summaries and excerpts) and certify in writing to that fact; and (iii) not use the Inadvertent
2 Production Material for any purpose until further order of the Court expressly authorizing such
3 use.

4 ~~(b) A Party may move the Court for an order compelling production of the~~
5 ~~re Civil Discovery Disputes. The DDJR shall be filed under seal in compliance with L.R. 79-5~~
6 ~~claimed Inadvertent Production Material. The motion shall be filed under seal and shall not~~
7 assert as a ground for entering such an order the fact or circumstance of the inadvertent
8 production. While such a motion is pending, the Discovery Material in question shall be
9 treated in accordance with paragraph 12(a) above.

10 (c) If a Party, in reviewing Discovery Material it has received from the other
11 Party or any non-Party, finds anything the reviewing Party believes in good faith may be
12 Inadvertent Production Material, the Party shall: (i) refrain from any further examination or
13 disclosure of the potentially Inadvertent Production Material; (ii) promptly identify the material
14 in question to the Producing Party (by document number or other equally precise description);
15 and (iii) give the Producing Party seven (7) days to respond as to whether the material was, in
16 fact, inadvertently produced. If the Producing Party makes a claim of inadvertent production,
17 the provisions of paragraph 12(a) shall apply.

18 13. MISCELLANEOUS

19 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person
20 to seek its modification by the court in the future.

21 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
22 Order no Party waives any right it otherwise would have to object to disclosing or producing
23 any information or item on any ground not addressed in this Stipulated Protective Order.
24 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
25 material covered by this Protective Order.

26 13.3 Filing Protected Material. Without written permission from the Designating
27 Party or a court order secured after appropriate notice to all interested persons, a Party may not
28

1 file in the public record in this action any Protected Material. A Party that seeks to file under
2 seal any Protected Material must comply with Civil Local Rule 79-5 ~~and General Order 62~~.
3 Protected Material may only be filed under seal pursuant to a court order authorizing the
4 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 ~~and~~
5 ~~General Order 62~~, a sealing order will issue only upon a request establishing that the Protected
6 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection
7 under the law. If a Receiving Party's request to file Protected Material under seal pursuant to
8 Civil Local Rule 79-5(d) ~~and General Order 62~~ is denied by the court, then the Receiving Party
9 may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless
10 otherwise instructed by the court.
11


12 **14. FINAL DISPOSITION**

13 Within 60 days after the final disposition of this action, as defined in Section 4, each
14 Receiving Party must return all Protected Material to the Producing Party or destroy such
15 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
16 compilations, summaries, and any other format reproducing or capturing any of the Protected
17 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
18 submit a written certification to the Producing Party (and, if not the same person or entity, to
19 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
20 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
21 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
22 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
23 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
24 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
25 reports, attorney work product, and consultant and expert work product, even if such materials
26 contain Protected Material. Any such archival copies that contain or constitute Protected
27 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
28

1 **IT IS SO STIPULATED.**

2
3 DATED: July 18, 2013

THE ARNS LAW FIRM

4
5
6 By: 
7 Robert S. Arns
8 Jonathan E. Davis
9 Steven R. Weinmann

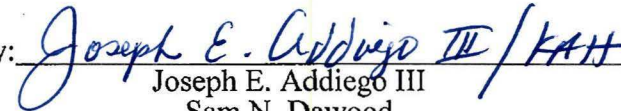
10 --and--

JONATHAN JAFFE LAW

11 By: 
12 Jonathan M. Jaffe
13 Attorneys for Plaintiffs

14
15 DATED: July 19, 2013

DAVIS WRIGHT TREMAINE LLP

16
17 By: 
18 Joseph E. Addiego III
19 Sam N. Dawood
20 Jeanne M. Sheahan

21 Attorneys for Defendants

22 Skype Inc. and Microsoft Corporation

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full
5 address], declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for the Northern
7 District of California on _____ [date] in the case of *Becker v. Skype, Inc.*,
8 Case No. 12-cv-06477-EJD. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
11 will not disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of this
13 Order.

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

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type
20 full address and telephone number] as my California agent for service of process in connection
21 with this action or any proceedings related to enforcement of this Stipulated Protective Order.
22

23 Date: _____

24
25 City and State where sworn and signed: _____

26
27 Printed name: _____
28

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7 Telephone: (213) 633-6800
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8 Email: karenhenry@dwt.com

9 Attorneys for Defendants
10 SKYPE INC. and MICROSOFT CORPORATION

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

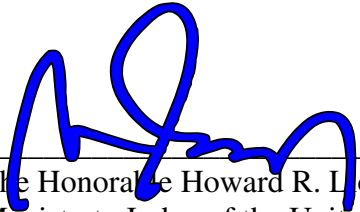
15 CANTON BECKER, JOSEPHINE ASPLUND,) Case No. C-12-06477 EJD
and DARRIN WESLEY, individually and on)
16 behalf of all others similarly situated,) ~~PROPOSED~~ ORDER GRANTING
Plaintiff,) STIPULATED PROTECTIVE ORDER
17)
18 v.)
19 SKYPE INC., a Delaware Corporation;)
MICROSOFT CORPORATION, and DOES 1-)
20 20,)
21 Defendants.)

DAVIS WRIGHT TREMAINE LLP

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The Court, having reviewed the parties' concurrently-filed Stipulated Protective Order for Litigation Involving Highly Sensitive Confidential Information and/or Trade Secrets ("Protective Order"), and good cause appearing therefore, hereby GRANTS the Protective Order.

DATED: ~~July 19, 2013~~ 1/3/14



The Honorable Howard R. Lloyd
Magistrate Judge of the United States District Court
for the Northern District of California

Submitted by:
DAVIS WRIGHT TREMAINE LLP
865 S. Figueroa Street, Suite 2400
Los Angeles, CA 90017

By: _____ / s /
Joseph E. Addiego III

Attorneys for Defendants
SKYPE INC. and MICROSOFT CORPORATION