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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18
 19
 20 IN RE FACEBOOK INTERNET
 TRACKING LITIGATION

Case No. 12-md-02314 EJD
~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER FOR
 LITIGATION INVOLVING
 CONFIDENTIAL INFORMATION AND
 TRADE SECRETS

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 22
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 24 **IT IS HEREBY STIPULATED AND AGREED**, by and between the Parties hereto,
 25 through their respective counsel of record, that in order to facilitate the exchange of information
 26 and documents that may be subject to confidentiality limitations on disclosure, the Parties stipulate
 27 as follows:
 28

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 warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The Parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The Parties further acknowledge, as set forth in Section
10 13.3, below, that this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that
12 must be followed and the standards that will be applied when a party seeks permission from the
13 court to file material under seal.

14 **2. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 CONFIDENTIAL: any information or item, which is in the possession of a
18 Designating Party, which qualifies for protection under Federal Rule of Civil Procedure 26(c) or
19 which contains trade secrets, proprietary business information, competitively sensitive
20 information, personal identifying information, or other information, the disclosure of which
21 would, in the good faith judgment of the party designating the material as confidential, be
22 detrimental to the conduct of that party’s business or personal affairs.

23 2.3 Designating Party: a Party or Non-Party that designates information or items that it
24 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 2.4 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 things,
28 testimony, transcripts, responses to interrogatories, responses to requests for admission, paper

1 documents, electronic documents, and tangible things), that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 2.5 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action.

6 2.6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”:
7 sensitive “Confidential” information or items, disclosure of which to another Party or Non-Party
8 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

9 2.7 Non-Party: any natural person, partnership, corporation, association, or other legal
10 entity not named as a Party to this action.

11 2.8 Party: any party to this action, including all of its officers, directors, employees,
12 consultants, retained experts, and counsel of record (and their support staffs).

13 2.9 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
14 Material in this action.

15 2.10 Professional Vendors: persons or entities that provide litigation support services
16 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
17 organizing, storing, or retrieving data in any form or medium) and their employees and
18 subcontractors.

19 2.11 Protected Information or Material(s): all Disclosure or Discovery Material, and
20 tangible things, and all information contained therein (regardless of how such information is
21 generated, stored or maintained), designated as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the provisions of this Stipulated
23 Protective Order.

24 2.12 Receiving Party: a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Stipulated Protective Order cover not only Protected
28 Material (as defined above), but also (1) any information copied or extracted from Protected

1 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
2 testimony, conversations, or presentations by Parties or their counsel that might reveal Protected
3 Material. However, the protections conferred by this Stipulated Protective Order do not cover the
4 following information: (a) any information that is in the public domain at the time of disclosure to
5 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
6 a result of publication not involving a violation of this Order, including becoming part of the
7 public record through trial or otherwise; and (b) any information known to the Receiving Party
8 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
9 obtained the information lawfully and under no obligation of confidentiality to the Designating
10 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

11 **4. DURATION**

12 Even after final disposition of this litigation, the confidentiality obligations imposed by this
13 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
14 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
15 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
16 completion and 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 time pursuant to
18 applicable law.

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
21 or Non-Party that designates information or items for protection under this Order must take care to
22 limit any such designation to specific material that qualifies under the appropriate standards. To
23 the extent it is practical to do so, the Designating Party must designate for protection only those
24 parts of material, documents, items, or oral or written communications that qualify – so that other
25 portions of the material, documents, items, or communications for which protection is not
26 warranted are not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
28 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or retard the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated
4 for protection do not qualify for protection, that Designating Party must promptly notify all other
5 Parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order,
7 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
8 under this Order must be clearly so designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) For information in documentary form (e.g. paper or electronic documents,
11 but excluding transcripts of depositions or other pretrial or trial proceedings), to the extent
12 practicable, the Designating Party must affix the legend "CONFIDENTIAL" or "HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page of a paper or electronic
14 document that contains Protected Material.

15 A Party or Non-Party that makes original documents or materials available for inspection
16 need not designate them for protection until after the inspecting Party has indicated which material
17 it would like copied and produced. During the inspection and before the designation, all of the
18 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
19 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
20 copied and produced, the Designating Party must determine which documents qualify for
21 protection under this Order. Then, before producing the specified documents, to the extent
22 practicable, the Designating Party must affix the "CONFIDENTIAL" or "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY" legend to each page of a paper or electronic
24 document that contains Protected Material.

25 For documents produced electronically in a format that includes separate pagination, to the
26 extent practicable, the Designating Party must affix the legend "CONFIDENTIAL" or "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each electronic page of such documents
28 that contains Protected Material. For documents produced in a format which does not lend itself

1 to separate pagination (e.g., certain databases), confidentiality shall be designated in a reasonable
2 manner.

3 (b) For testimony given in deposition or in other pretrial or trial proceedings,
4 the Designating Party may either:

5 i. identify on the record, before the close of the deposition, hearing, or
6 other proceeding, all “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY” testimony, by specifying all portions of the testimony that qualify as
8 “Confidential” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”; or

9 ii. designate the entirety of the testimony at the deposition, hearing, or
10 other proceeding as “Confidential” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY” (before the deposition, hearing, or other proceeding is concluded) with the right to
12 identify more specific portions of the testimony as to which protection is sought within 30 days
13 following receipt of the transcript of the deposition, hearing, or other proceeding. Only those
14 portions of the testimony that are appropriately designated for protection within the 30 days shall
15 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
16 Party may specify, at the deposition or within 30 days following receipt of the transcript, that the
17 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY.”

19 For court hearings and conferences, whether in-person or telephonic, a Party shall not
20 discuss, display, submit as evidence, or otherwise enter into the record Protected Material
21 produced by the other Party (or the contents thereof) unless it has previously identified that
22 Protected Material to the Designating Party at least 48 hours prior to such hearing or conference.
23 Notwithstanding the foregoing, this advance-notice requirement shall not apply in circumstances
24 where the Party could not have reasonably anticipated so using Protected Material at the court
25 hearing or conference. Parties shall act with caution at court hearings and conferences so as not to
26 disclose Protected Material publicly without providing an opportunity for the Designating Party to
27 be heard concerning, as appropriate, sealing the courtroom, sealing the transcript, or other relief.
28 The Designating Party may move for such sealing or other relief either in writing or orally, either

1 before or during the court hearing or conference. The use of a document as an exhibit at a
2 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 Transcripts containing Protected Material shall have an obvious legend on the title page
5 that the transcript contains Protected Material, and the title page shall be followed by a list of all
6 pages (including line numbers as appropriate) that have been designated as Protected Material. In
7 circumstances where portions of the Testimony are designated for protection, the transcript pages
8 containing “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
9 information may be separately bound by the court reporter, who must affix to the top of each page
10 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
11 as instructed by the Designating Party. The Designating Party shall inform the court reporter of
12 these requirements. Any transcript that is prepared before the expiration of a 30-day period for
13 designation shall be treated during that period as if it had been designated “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
15 the expiration of that period, the transcript shall be treated only as actually designated.

16 (c) For information produced in some form other than documentary and for any
17 other tangible items, including, without limitation, compact discs or DVDs, the Designating Party
18 must affix in a prominent place on the exterior of the container or containers in which the
19 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant
21 protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. The inadvertent production of any Disclosure or
23 Discovery Material or other information during discovery in this proceeding without a
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
25 designation shall be without prejudice to any claim that such item is “CONFIDENTIAL” or
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and such Party shall not be held
27 to have waived any rights by such inadvertent production. In the event that any Disclosure or
28 Discovery Material or other information that is subject to a “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation is inadvertently produced without
2 such designation, the Party that inadvertently produced the Disclosure or Discovery Material shall
3 give written notice of such inadvertent production within twenty (20) business days of discovery
4 of the inadvertent production, together with a further copy of the subject Disclosure or Discovery
5 Material or other information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
6 – ATTORNEYS’ EYES ONLY” (the “Inadvertent Production Notice”). Upon receipt of such
7 Inadvertent Production Notice, the Party that received the inadvertently produced Disclosure or
8 Discovery Material or other information shall promptly destroy the inadvertently produced
9 Disclosure or Discovery Material or other information and all copies thereof, or, at the expense of
10 the Producing Party, return such together with all copies of such Disclosure or Discovery Material
11 or other information to counsel for the producing Party and shall retain only the
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designated
13 Disclosure or Discovery Material. This provision is not intended to apply to any inadvertent
14 production of any information or materials protected by attorney-client or work product privileges,
15 which is governed by Section 12 below.

16 5.4 Personally Identifiable Information of Named Plaintiffs. Defendant Facebook shall
17 make reasonable efforts to designate as “CONFIDENTIAL” all Discovery Material within its
18 possession, custody, or control that it produces that relates specifically to or identifies any named
19 plaintiff in this action. “Named Plaintiffs” shall include plaintiffs serving as lead plaintiffs in *In*
20 *re: Facebook Internet Tracking Litigation*, No. 12-md-02314-EJD (N.D. Cal.), as well as plaintiffs
21 in any action consolidated with the current action by the JPML.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
27 challenge a confidentiality designation by electing not to mount a challenge promptly after the
28 original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process by providing written notice of each designation it is challenging and describing the basis
3 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
4 notice must recite that the challenge to confidentiality is being made in accordance with this
5 specific paragraph of the Stipulated Protective Order. The Parties shall attempt to resolve each
6 challenge in good faith and must begin the process by conferring directly within 14 days of the
7 date of service of notice. In conferring, the Challenging Party must explain the basis for its belief
8 that the confidentiality designation was not proper and must give the Designating Party an
9 opportunity to review the designated material, to reconsider the circumstances, and, if no change
10 in designation is offered, to explain the basis for the chosen designation. A Challenging Party may
11 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
12 process first or establishes that the Designating Party is unwilling to participate in the meet and
13 confer process in a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
15 intervention, the Challenging Party shall file and serve a motion challenging the confidentiality
16 designation under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General
17 Order 62, if applicable) within 20 business days of the initial notice of challenge or within 10
18 business days of the parties agreeing that the meet and confer process will not resolve their
19 dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration
20 affirming that the movant has complied with the meet and confer requirements imposed in the
21 preceding paragraph. Failure by the Challenging Party to make such a motion including the
22 required declaration within 20 business days (or 10 business days, if applicable) shall
23 automatically waive any challenge to the confidentiality designation for each challenged
24 designation.

25 The burden of persuasion in any such challenge proceeding shall be on the Designating
26 Party. All parties shall continue to afford the material in question the level of protection to which
27 it is entitled under the Designating Party's designation until the Court rules on the challenge.

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

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
3 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
5 the categories of persons and under the conditions described in this Stipulated Protective Order.
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of
7 section 14 below (FINAL DISPOSITION).

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

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

13 (a) Attorneys of record in this proceeding and their affiliated attorneys,
14 paralegals, clerical and secretarial staff employed by such attorneys;

15 (b) In-house counsel to the undersigned Parties and the paralegal, clerical and
16 secretarial staff employed by such counsel, provided, however, that each non-lawyer given access
17 to Protected Materials shall be advised that such Materials are being disclosed pursuant to, and are
18 subject to, the terms of this Stipulated Protective Order and that they may not be disclosed other
19 than pursuant to its terms;

20 (c) the officers, directors, and employees of the Receiving Party to whom
21 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
22 and Agreement to Be Bound” (Exhibit A);

23 (d) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
25 and Agreement to Be Bound” (Exhibit A) and as to whom the procedures set forth in Section 7.4,
26 below, have been followed;

27 (e) the Court and its personnel;

28 (f) court reporters and their staff, professional jury or trial consultants, and

1 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
13 Designating Party, any information or item designated “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” by the Designating Party shall be disclosed only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action and their
16 employees, as well as any non-employee contract attorneys or paralegals retained by said Outside
17 Counsel of Record to whom it is reasonably necessary to disclose the information for this
18 litigation (for the sake of clarity, the parties agree that “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” information or items shall not be disclosed to named plaintiffs in
20 this action), who have signed the “Acknowledgment and Agreement to Be Bound” that is attached
21 hereto as Exhibit A;

22 (b) In-house counsel to the undersigned Parties and the paralegal, clerical and
23 secretarial staff employed by such counsel, provided, however, that each non-lawyer given access
24 to Protected Materials shall be advised that such Materials are being disclosed pursuant to, and are
25 subject to, the terms of this Stipulated Protective Order and that they may not be disclosed other
26 than pursuant to its terms;

27 (c) Experts (as defined in this Order) of the Receiving Party to whom
28 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment

1 and Agreement to Be Bound” (Exhibit A) and as to whom the procedures set forth in Section 7.4,
2 below, have been followed;

3 (d) the Court and its personnel;

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

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

9 7.4 Additional Provisions Regarding Experts: “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items may be disclosed to an
11 Expert without disclosure of the identity of the Expert to the opposing Party as long as the Expert
12 is not a current officer, director, employee, family member, or paid consultant of a Party or a
13 competitor of a Party or agreed to become one, or a past officer, director, employee, family
14 member, or paid consultant of a Party. An Expert who is a current officer, director, employee,
15 family member, or paid consultant of a Party or a competitor of a Party or agreed to become one,
16 or a past officer, director, employee, family member, or paid consultant of a Party shall be deemed
17 a 7.4 Expert.

18 (a) Unless otherwise ordered by the court or agreed to in writing by the
19 Designating Party, a Party that seeks to disclose to an 7.4 Expert any information or item that has
20 been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” first must make a written request to the Designating Party that (1) identifies the general
22 categories of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information that the
23 Receiving Party seeks permission to disclose to the 7.4 Expert; (2) sets forth the full name of the
24 7.4 Expert and the city and state of his or her primary residence; (3) attaches a copy of the 7.4
25 Expert’s current resume; (4) identifies the 7.4 Expert’s current employer(s); (5) identifies each
26 person or entity from whom the 7.4 Expert has received compensation or funding for work in his
27 or her areas of expertise or to whom the 7.4 Expert has provided professional services, including
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1 in connection with a litigation, at any time during the preceding five years;¹ and (6) identifies (by
2 name and number of the case, filing date, and location of court) any litigation in connection with
3 which the 7.4 Expert has offered expert testimony, including through a declaration, report, or
4 testimony at a deposition or trial, during the preceding five years. This written request shall be
5 sent by email to Facebook's outside counsel, using the following email addresses:
6 rhodesmg@cooley.com; brownmd@cooley.com; gutkinjm@cooley.com; and wong@cooley.com,
7 or if the 7.4 Expert is being retained by Defendant, to the named plaintiffs' counsel, using the
8 following email addresses: jimf@bflawfirm.com and dstrait@kaplanfox.com.

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

14 (c) A Party that receives a timely written objection must meet and confer with
15 the Designating Party to try to resolve the matter by agreement within seven days of the written
16 objection. If no agreement is reached, the Party seeking to make the disclosure to the 7.4 Expert
17 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
18 5 and General Order 62, if applicable) seeking permission from the court to do so. Any such
19 motion must describe the circumstances with specificity, set forth in detail the reasons why the
20 disclosure to the 7.4 Expert is reasonably necessary, assess the risk of harm that the disclosure
21 would entail, and suggest any additional means that could be used to reduce that risk. In addition,
22 any such motion must be accompanied by a competent declaration describing the parties' efforts to
23 resolve the matter by agreement (*i.e.*, the extent and the content of the meet and confer
24 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to

25 _____
26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third party, then
27 the Expert should provide whatever information the Expert believes can be disclosed without violating any
28 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 approve the disclosure. The Party opposing the disclosure may file a formal opposition with the
2 Court within 14 days of the motion.

3 In any such proceeding, the Party opposing disclosure to the 7.4 Expert shall bear the
4 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
5 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its 7.4
6 Expert.

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

16 **8. PROSECUTION BAR**

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

1 action.

2 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
3 **OTHER LITIGATION**

4 If a Party is served with a subpoena or a court order issued in other litigation that compels
5 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” 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 or order is
11 subject to this Order. Such notification shall include a copy of this Order; and

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

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

22 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
23 **THIS LITIGATION**

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

1 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
2 Party's confidential information in its possession, and the Party is subject to an agreement with the
3 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party that
5 some or all of the information requested is subject to a confidentiality agreement with a Non-
6 Party;

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

10 (3) make the information requested available for inspection by the Non-Party.

11 (c) If the Non-Party fails to object or seek a protective order from this court within 28
12 days of receiving the notice and accompanying information, the Receiving Party may produce the
13 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
14 seeks a protective order, the Receiving Party shall not produce any information in its possession or
15 control that is subject to the confidentiality agreement with the Non-Party before a determination
16 by the court.² Absent a court order to the contrary, the Non-Party shall bear the burden and
17 expense of seeking protection in this court of its Protected Material.

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

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

26 ///

27 _____
28 ² 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 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 (a) Pursuant to Federal Rule of Evidence 502(d), in the event that Disclosure or
4 Discovery Material that is subject to a claim of attorney-client privilege, attorney work product
5 protection, or any other applicable protection from discovery is inadvertently produced or
6 disclosed (“Inadvertent Production Material”), such inadvertent production shall in no way
7 prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client
8 privilege, attorney work product protection, or other applicable protection in this case or any other
9 federal or state proceeding. This provision shall govern regardless of the reasonableness of any
10 steps taken to prevent such inadvertent disclosure.

11 (b) If a claim of inadvertent production is made, pursuant to this Stipulated Protective
12 Order, with respect to Discovery Material then in the custody of another Party, that Party shall: (i)
13 refrain from any further examination or disclosure of the claimed Inadvertent Production Material;
14 (ii) promptly make a good-faith effort to return the claimed Inadvertent Production Material and
15 all copies thereof (including summaries and excerpts) to counsel for the Producing Party, or
16 destroy all such claimed Inadvertent Production Material (including summaries and excerpts) and
17 certify in writing to that fact; and (iii) not sequester, disclose, or use the claimed Inadvertent
18 Production Material for any purpose until further order of the Court expressly authorizing such
19 use. This includes a restriction against presenting the information to the Court in connection with
20 any dispute under this Section 12 or in connection with any dispute over a claim of attorney-client
21 privilege, attorney work product protection, or other applicable protection.

22 (c) A Party may move the Court for an order compelling production of the claimed
23 Inadvertent Production Material. The motion shall be filed under seal and shall not assert as a
24 ground for entering such an order the fact or circumstance of the inadvertent production. While
25 such a motion is pending, the Disclosure or Discovery Material in question shall be treated in
26 accordance with Section 12(b) above.

27 (d) If a Party, in reviewing Disclosure or Discovery Material it has received from any
28 other Party or any non-Party, finds anything the reviewing Party believes in good faith may be

1 Inadvertent Production Material, the reviewing Party shall: (i) refrain from any further
2 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly identify
3 the material in question to the Producing Party (by document number or other equally precise
4 description); and (iii) give the Producing Party seven (7) days to respond as to whether the
5 Producing Party will make a claim of inadvertent production. If the Producing Party makes such a
6 claim, the provisions of Section 12(a)-(b) above shall apply.

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, no
13 Party waives any right to object on any ground to use in evidence of any of the material covered
14 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 Protected Material at issue is
22 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
23 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
24 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the
25 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
26 by the court.

27 13.4 Right to Seek Further Protection. Nothing in this Stipulated Protective Order shall
28 be construed to preclude any Party from asserting in good faith that certain Protected Materials

1 require additional protections. The Parties shall meet and confer to agree upon the terms of such
2 additional protection.

3 13.5 Scope of Stipulated Protective Order. Any Party or Non-Party to this Proceeding
4 who has not executed this Stipulated Protective Order as of the time it is presented to the Court for
5 signature may thereafter become a Party to this Stipulated Protective Order by its counsel's
6 signing and dating a copy thereof and filing the same with the Court, and serving copies of such
7 signed and dated copy upon the other Parties to this Stipulated Protective Order.

8 13.6 Agreement Regarding Privilege Log. No Party need produce a privilege log entry
9 for communications between a Party and outside counsel if the attorney is in the to, from or cc
10 field of the communication, or for communications between Facebook, Inc. and in-house counsel
11 Colin Stretch or Sandeep Solanki, if counsel was in the to or from fields of the communication;
12 provided, however, that all privileged documents must be preserved for the entirety of the
13 litigation regardless of whether logged.

14 **14. FINAL DISPOSITION**

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

1 as set forth in Section 4 (DURATION).

2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3 Dated: September 6, 2013

COOLEY LLP

4
5 */s/ Matthew D. Brown*

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11 *Attorneys for Defendant FACEBOOK, INC.*

12
13
14 Dated: September 6, 2013

**BARTMUS, FRICKLETON, ROBERTSON, &
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 11, 2014

~~The Honorable Edward J. Davila~~
~~UNITED STATES DISTRICT JUDGE~~

Paul S. Grewal
UNITED STATES 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 *In re Facebook Internet Tracking Litigation*, No. 5:12-md-02314-EJD. 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: _____
[printed name]

Signature: _____
[signature]