

EXHIBIT 3

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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
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20 MOBILE-PLAN-IT, LLC,
 Plaintiff,
 21
 v.
 22 FACEBOOK, INC.,
 Defendant.
 23
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Case No. C 14-1709-RS
 STIPULATED PROTECTIVE ORDER

25
 26 1. PURPOSES AND LIMITATIONS

27 Disclosure and discovery activity in this action are likely to involve production of confidential,
 28 proprietary, or private information for which special protection from public disclosure and from use for any

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

9 **2. DEFINITIONS**

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
11 items under this Order.

12 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
13 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
14 26(c).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their
16 support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or items that it
18 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
19 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

20 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
21 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,
22 and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

23 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
24 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
25 in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time
26 of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

27 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:

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1 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
2 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

3 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
4 sensitive “Confidential Information or Items” representing computer code and associated comments and
5 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in
6 detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or
7 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
8 means.

9 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel does
10 not include Outside Counsel of Record or any other outside counsel.

11 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity
12 not named as a Party to this action.

13 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but
14 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
15 party or are employed by a law firm which has appeared on behalf of that party.

16 2.12 Party: any party to this action, including all of its officers, directors, employees, consultants,
17 retained experts, and Outside Counsel of Record (and their support staffs).

18 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
19 this action.

20 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
21 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
22 retrieving data in any form or medium) and their employees and subcontractors.

23 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
24 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as “HIGHLY
25 CONFIDENTIAL – SOURCE CODE.”

26 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
27 Party.

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3. SCOPE

1 The protections conferred by this Stipulation and Order cover not only Protected Material (as
2 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
3 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
4 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
5 conferred by this Stipulation and Order do not cover the following information: (a) any information that is in
6 the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after
7 its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including
8 becoming part of the public record through trial or otherwise; and (b) any information known to the
9 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
10 who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.
11 However, if the accuracy of information is confirmed only through the review of Protected Material, then
12 the information shall not be considered to be in the public domain. For example, unsubstantiated media
13 speculations or rumors that are later confirmed to be accurate through access to Protected Material are not
14 “public domain” information. Such information is explicitly included in the definition of “Protected
15 Material” set forth in 2.15 above. Any use of Protected Material at trial shall be governed by a separate
16 agreement or order.

4. DURATION

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

5. DESIGNATING PROTECTED MATERIAL

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

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
9 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
10 Material that qualifies for protection under this Order must be clearly so designated before the material is
11 disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
14 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
16 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material.

17 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
18 Designating Party identify on the record or up to 21 days afterwards if that period is properly invoked, that
19 the transcript shall be treated as “CONFIDENTIAL” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY” or “HIGHLY CONFIDENTIAL –SOURCE CODE.”

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

27 Transcripts containing Protected Material shall have an obvious legend on the title page that the
28 transcript contains Protected Material, and the title page shall be followed by a list of all pages that have

1 been designated as Protected Material and the level of protection being asserted by the Designating Party.
2 The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared
3 before the expiration of a 21-day period for designation shall be treated during that period as if it had been
4 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
5 agreed. After the expiration of that period, or as of such earlier time that such transcript is designated, the
6 transcript shall be treated only as actually designated.

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

13 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified information
14 or items does not waive the Designating Party’s right to secure protection under this Order for such material.
15 Upon correction of a designation, the Receiving Party must make all reasonable efforts to assure that the
16 material is treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is
20 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
21 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
22 designation by electing not to mount a challenge promptly after the original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
24 providing written notice of each designation it is challenging and describing the basis for each challenge. To
25 avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to
26 confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties
27 shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in
28 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of

1 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
2 confidentiality designation was not proper and must give the Designating Party an opportunity to review the
3 designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain
4 the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge
5 process only if it has engaged in this meet and confer process first or establishes that the Designating Party
6 is unwilling to participate in the meet and confer process in a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
8 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
9 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
10 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
11 whichever is later. Each such motion must be accompanied by a competent declaration affirming that the
12 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Any
13 motion brought pursuant to this provision must be accompanied by a competent declaration affirming that
14 the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

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

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
24 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
25 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
26 persons and under the conditions described in this Order. When the litigation has been terminated, a
27 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure

1 manner that ensures that access is limited to the persons authorized under this Order.

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

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
6 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
7 litigation;

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

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

14 (d) the court and its personnel;

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

19 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
20 necessary with the consent of the Designating Party or as ordered by the court. Pages of transcribed
21 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by
22 the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective
23 Order.

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

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

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

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

7 (b) *Intentionally left blank*;

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

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants including mock
13 jurors who have signed a confidentiality agreement, and Professional Vendors to whom disclosure is
14 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A), except that mock jurors shall not be given access to material designated “HIGHLY
16 CONFIDENTIAL – SOURCE CODE”; and

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

19 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items
21 to Experts.

22 (a)(1) *Intentionally left blank*;

23 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
24 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
25 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
26 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the
27 Designating Party that (1) sets forth the full name of the Expert and the city and state of his or her primary
28 residence, (2) attaches a copy of the Expert’s current resume, (3) identifies the Expert’s current employer(s),

1 (4) identifies each person or entity from whom the Expert has received compensation or funding for work in
2 his or her areas of expertise or to whom the expert has provided professional services, including in
3 connection with a litigation, at any time during the preceding five years and the party to the litigation for
4 whom such work was done, (5) identifies (by name and number of the case, filing date, and location of
5 court) any litigation in connection with which the Expert has offered expert testimony, including through a
6 declaration, report, or testimony at a deposition or trial, during the preceding five years, and (6) identifies
7 any patents or patent applications in which the Expert is identified as an inventor or applicant, is involved in
8 prosecuting or maintaining, or has any pecuniary interest. With regard to the information sought through
9 part (4) of this disclosure, if the Expert believes any of this information is subject to a confidentiality
10 obligation to a third party, then the Expert should provide whatever information the expert believes can be
11 disclosed, without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
12 shall be available to meet and confer with the Designating Party regarding any such engagement.

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

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

28 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving

1 that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the
2 Receiving Party's need to disclose the Protected Material to its Expert.

3 8. PROSECUTION BAR

4 Absent written consent from the Producing Party, any individual who reviews or is informed of the
5 contents of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL
6 – SOURCE CODE" information shall not be involved in the prosecution of patents or patent applications
7 relating to the subject matter of the patent-in-suit as well as the subject matter of the Protected Material
8 received, including without limitation the patent asserted in this action and any patent or application
9 claiming priority to or otherwise related to the patent asserted in this action, before any foreign or domestic
10 agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes of this
11 paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting
12 the scope or maintenance of patent claims. Prosecution includes, for example, original prosecution, reissue,
13 and reexamination and other post-grant proceedings, but does not include, and this prosecution bar does not
14 prevent, counsel for Plaintiff in this case from otherwise representing Plaintiff in post-grant proceedings by
15 participating in other activities not involving amendment of the claims or crafting of new claims.
16 "Prosecution" as used in this paragraph also does not include representing a party challenging a patent
17 before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination,
18 post grant review, *inter partes* reexamination, or *inter partes* review). This Prosecution Bar shall begin
19 when "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
20 SOURCE CODE" information is first reviewed by the affected individual or the affected individual is
21 informed of the contents of, and shall end two (2) years after final termination of this action.

22 9. SOURCE CODE

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

26 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"
27 shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
28 ONLY" information including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to

1 the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be
2 disclosed, as set forth in Paragraphs 7.3 and 7.4.

3 (c) Any source code produced in discovery shall be made available for inspection, in a
4 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
5 mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon
6 location. The computer containing source code will be made available upon reasonable notice to the
7 Producing Party, which shall not be less than 2 days in advance of the requested inspection. The source
8 code shall be made available for inspection on a secured computer in a secured room without Internet access
9 or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer
10 any portion of the source code onto any recordable media or recordable device. The Producing Party shall
11 provide a backup secured computer within two business days in the event that the primary secured computer
12 fails or otherwise suffers technical problems impeding the inspection. The Receiving Party may request that
13 software tools for viewing and searching source code be installed on the secured computer. The Receiving
14 Party must provide the Producing Party with the CD or DVD containing the agreed upon software tool(s) at
15 least four business days in advance of the inspection. The tools may not allow the source code to be
16 compiled. The Receiving Party’s counsel or experts shall be entitled to take notes relating to the source code
17 but may not copy any portion of the source code into the notes. The Producing Party may visually monitor
18 the activities of the Receiving Party’s representatives during any source code review, but only to ensure that
19 there is no unauthorized recording, copying, or transmission of the source code. All persons viewing Source
20 Code shall sign on each day they view Source Code a log that will includes the names of persons who enter
21 the secured room to view the Source Code and when they enter and depart.

22 (d) The Receiving Party may request paper copies of limited portions of source code
23 that are reasonably necessary to attach to filings, pleadings, expert reports, or other papers, or for use as an
24 exhibit at deposition or trial, but shall not request paper copies for the purposes of reviewing the source code
25 other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide
26 all such source code within 5 business days on non-copyable paper including bates numbers and the label
27 “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party may challenge the amount of
28 source code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set

1 forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the
2 “Designating Party” for purposes of dispute resolution. In no case may the Receiving Party request more
3 than 40 consecutive pages, or an aggregate of more than 250 pages, of Source Code during the duration of
4 the case without prior written approval of the Producing Party.

5 (e) The Receiving Party shall maintain a log of all paper copies of the Source Code.
6 The log shall include the names of the reviewers and/or recipients of paper copies and the locations where
7 the paper copies are stored. Upon one (1) day’s advance notice to the Receiving Party by the Producing
8 Party, the Receiving Party shall provide a copy of this log to the Producing Party. The Receiving Party shall
9 maintain all paper copies of any printed portions of the source code in a secured, locked area. The Receiving
10 Party shall not create any electronic or other images of the paper copies and shall not convert any of the
11 information contained in the paper copies into any electronic format. The Receiving Party shall only request
12 additional paper copies if such additional copies are (1) necessary to attach to court filings, pleadings, or
13 other papers (including a testifying expert’s expert report), (2) necessary for deposition, or (3) necessary for
14 trial. The Receiving Party shall not request paper copies for the purposes of reviewing source code other
15 than electronically as set forth in paragraph (c) in the first instance. Any paper copies used during a
16 deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left
17 with a court reporter or any other individual.

18 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
19 LITIGATION

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

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

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

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

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

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

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

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

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

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

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

27 (c) If the Non-Party fails to object or seek a protective order from this court within 14
28

1 days of receiving the notice and accompanying information, the Receiving Party¹ may produce the Non-
2 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
3 protective order, the Receiving Party shall not produce any information in its possession or control that is
4 subject to the confidentiality agreement with the Non-Party before a determination by the court.

5 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
14 MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently
16 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving
17 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
18 modify whatever procedure may be established in an e-discovery order that provides for production without
19 prior privilege review.

20 14. MISCELLANEOUS

21 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
22 modification by the Court in the future.

23 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
24 Party waives any right it otherwise would have to object to disclosing or producing any information or item
25 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
26 object on any ground to use in evidence of any of the material covered by this Protective Order.

27 _____
28 ¹ "Receiving Party," in this paragraph only, refers to the Party that is in possession of a Non-Party's confidential information subject to an agreement with that Non-Party not to produce the Non-Party's confidential information.

1 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and
2 regulations relating to the export of technical data contained in such Protected Material, including the
3 release of such technical data to foreign persons or nationals in the United States or elsewhere. No
4 Protected Material may leave the territorial boundaries of the United States of America. Without limitation,
5 this prohibition extends to Protected Material (including copies) in physical and electronic form. The
6 viewing of Protected Material through electronic means outside the territorial limits of the United States of
7 America is similarly prohibited. The restrictions contained within this paragraph may be amended through
8 the express written consent of the Producing Party to the extent that such agreed to procedures conform with
9 applicable export control laws and regulations. Nothing in this paragraph is intended to remove any
10 obligation that may otherwise exist to produce documents currently located in a foreign country.

11 14.4 Filing Protected Material. Without written permission from the Designating Party or a court order
12 secured after appropriate notice to all interested persons, a Party may not file in the public record in this
13 action any Protected Material, but rather must seek to file under seal any Protected Material, in compliance
14 with Civil Local Rule 79-5.

15 14.5 Privilege Logs. No party is required to identify in its respective privilege log any document
16 or communication dated on or after the filing of the Complaint. The parties shall exchange their
17 respective initial privilege logs on March 4, 2015.

18 15. FINAL DISPOSITION

19 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
20 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used
21 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any
22 other format reproducing or capturing any of the Protected Material. Whether the Protected Material is
23 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if
24 not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by
25 category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
26 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
27 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled
28 to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal

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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 **Mobile-Plan-It, LLC v. Facebook, Inc., Case No. C 14-1709**. 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]