

1 Michael W. Sobol (State Bar No. 194857)
msobol@lchb.com
2 Melissa Gardner (State Bar No. 289096)
mgardner@lchb.com
3 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
4 San Francisco, CA 94111-3339
Telephone: 415.956.1000
5 Facsimile: 415.956.1008

6 Rachel Geman
rgeman@lchb.com
7 Nicholas Diamand
ndiamand@lchb.com
8 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
9 New York, NY 10013-1413
Telephone: 212.355.9500
10 Facsimile: 212.355.9592

11 Hank Bates (State Bar No. 167688)
hbates@cbplaw.com
12 Allen Carney
acarney@cbplaw.com
13 David Slade
dslade@cbplaw.com
14 CARNEY BATES & PULLIAM, PLLC
11311 Arcade Drive
15 Little Rock, AR 72212
Telephone: 501.312.8500
16 Facsimile: 501.312.8505

17 *Attorneys for Plaintiffs and the Proposed Class*

18 *[Additional Counsel listed on Signature page]*

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 MATTHEW CAMPBELL, MICHAEL
22 HURLEY, and DAVID SHADPOUR, on
23 behalf of themselves and all others
similarly situated,

24 Plaintiffs,

25 v.

26 FACEBOOK, INC.,

27 Defendant.
28

Jeremy A. Lieberman
Lesley F. Portnoy
info@pomlaw.com
POMERANTZ, LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: 212.661.1100
Facsimile: 212.661.8665

Patrick V. Dahlstrom
pdahlstrom@pomlaw.com
POMERANTZ, LLP
10 S. La Salle Street, Suite 3505
Chicago, Illinois 60603
Telephone: 312.377.1181
Facsimile: 312.377.1184

Case No. C 13-05996 PJH

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, and/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
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in Section 14.3, below, that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the
12 procedures that must be followed and the standards that will be applied when a party seeks
13 permission from the 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” Information or Items: any information (regardless of how it
18 is generated, stored or maintained) or tangible things that qualify for protection under Federal
19 Rule of Civil Procedure 26(c) or that contain trade secrets, proprietary business information,
20 competitively sensitive information, personal identifying information, or other information, the
21 disclosure of which would, in the good faith judgment of the party designating the material as
22 confidential, be 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
24 it 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, written discovery responses, paper and electronic documents, and tangible

1 things), that are produced or generated in disclosures or responses to discovery in this matter.

2 2.5 Expert: a person with specialized knowledge or experience in a matter pertinent to
3 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
4 consultant in this action.

5 2.6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”: extremely
6 sensitive “Confidential” Information or Items, the disclosure of which to another Party or Non-
7 Party would create a substantial risk of serious harm that could not be avoided by less restrictive
8 means.

9 2.7 In-House Counsel: attorneys who are employees of a party to this action. In-
10 House Counsel does not include Outside Counsel of Record or any other outside counsel.

11 2.8 Inadvertent Production Material: Disclosure or Discovery Material that is subject
12 to a claim of attorney-client privilege, attorney work product protection, or any other applicable
13 protection from discovery that is inadvertently produced or disclosed in this action.

14 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
17 action but are retained to represent or advise a party to this action and have appeared in this action
18 on behalf of that party or are affiliated with a law firm that has appeared on behalf of that party.

19 2.11 Party: any party to this action, including all of its officers, directors, employees
20 (including In-House Counsel), consultants, retained experts, and Outside Counsel of Record (and
21 their support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
23 Material in this action.

24 2.13 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
26 organizing, storing, or retrieving data in any form or medium) and their employees and
27 subcontractors.

28 2.14 Protected Information or Material(s): all Disclosure or Discovery Material that is

1 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY” pursuant to the provisions of this Stipulated Protective Order.

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
4 Producing Party.

5 **3. SCOPE**

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

19 **4. DURATION**

20 Even after final disposition of this litigation, the confidentiality obligations imposed by
21 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
22 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
23 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
24 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
25 including the time limits for filing any motions or applications for extension of time pursuant to
26 applicable law. This Court will retain jurisdiction to enforce the terms of this Order for a period
27 of five (5) years after final disposition.
28

1 **5. DESIGNATING PROTECTED MATERIAL**

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

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

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

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order,
17 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
18 protection under this Order must be clearly so designated before the material is disclosed or
19 produced.

20 Designation in conformity with this Order requires:

21 (a) For information in documentary form (e.g., paper or electronic documents,
22 but excluding transcripts of depositions or other pretrial or trial proceedings), to the extent
23 practicable, the Designating Party shall affix the legend “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page of the paper or electronic
25 document that contains Protected Material.

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

1 designation, all of the material made available for inspection shall be deemed “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
3 documents it wants copied and produced, the Designating Party must determine which documents
4 qualify for protection under this Order. Then, before producing the specified documents, to the
5 extent practicable, the Designating Party must affix the appropriate legend (“CONFIDENTIAL”
6 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page of a paper or
7 electronic document that contains Protected Material.

8 (ii) For documents produced electronically in a format that includes separate
9 pagination, to the extent practicable, the Designating Party must affix the legend
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each
11 electronic page of such documents that contains Protected Material. For documents produced in a
12 format which does not lend itself to separate pagination, confidentiality shall be designated in a
13 reasonable manner.

14 (b) For testimony given in deposition, hearing or other proceeding, the
15 Designating Party may either:

16 (i) identify on the record, before the close of the deposition, hearing, or other
17 proceeding, all “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY” testimony by specifying the portions of the testimony that qualify for protection; or

19 (ii) designate the entirety of the testimony as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (before the deposition, hearing, or
21 other proceeding is concluded) with the right to have up to 30 days after receipt of the final
22 transcript of the deposition, hearing, or other proceeding to identify the specific portions of the
23 testimony qualifying for protection as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” testimony. Only those portions of the testimony that are
25 appropriately designated for protection within the 30 days of receipt of the final transcript shall be
26 covered by the provisions of this Stipulated Protective Order, unless the Designating Party
27 specifies that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1 Parties shall give the other parties notice if they reasonably expect a deposition, court
2 hearing or conference, or other proceeding to include Protected Material so that the other parties
3 can ensure that only authorized individuals who have signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A) are present at those proceedings. Parties shall act with
5 caution at court hearings and conferences so as not to disclose Protected Material publicly
6 without providing an opportunity for the Designating Party to be heard concerning, as appropriate,
7 sealing the courtroom, sealing the transcript, or other relief. For court hearings and conferences, a
8 Party shall provide at least 48 hours’ notice to the Designating Party before discussing, displaying,
9 submitting as evidence, or otherwise entering into the record any Protected Material produced by
10 the other Party. Notwithstanding the foregoing sentence, this advance-notice requirement shall
11 not apply in circumstances where the Party could not have reasonably anticipated so using
12 Protected Material at the court hearing or conference. The Designating Party may move to seal
13 the Protected Material or for other relief either in writing or orally, either before or during the
14 court hearing or conference. The use of a document as an exhibit at a deposition, hearing, or
15 other proceeding shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17 Transcripts containing Protected Material shall have an obvious legend on the title page
18 that the transcript contains Protected Material, and the title page shall be followed by a list of all
19 pages (including line numbers as appropriate) that have been designated as Protected Material. In
20 circumstances where portions of the testimony are designated for protection, the transcript pages
21 containing “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
22 information may be separately bound by the court reporter, who must affix to the top of each page
23 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
24 as instructed by the Designating Party. The Designating Party shall inform the court reporter of
25 these requirements. Any transcript that is prepared before the expiration of a 30-day period for
26 designation shall be treated during that period as if it had been designated “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
28 the expiration of that period, the transcript shall be treated only as actually designated.

1 (c) for information produced in some form other than documentary and for any
2 other tangible items, including, without limitation, DVDs or other recordable media, the
3 Designating Party shall affix in a prominent place on the exterior of the container or containers in
4 which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
6 information or item warrant protection, the Producing Party, to the extent practicable, shall
7 identify the protected portion(s) and specify the level of protection being asserted.

8 5.3 Inadvertent Failures to Designate. In the event that any Disclosure or Discovery
9 Material or other information that is subject to a “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation is inadvertently produced
11 without such designation, the Party that inadvertently produced the Disclosure or Discovery
12 Material shall give written notice of such inadvertent production promptly after the Party
13 discovers the inadvertent failure to designate (but no later than fourteen (14) calendar days after
14 the Party discovers the inadvertent failure to designate), together with a further copy of the
15 subject Disclosure or Discovery Material or other information designated as “CONFIDENTIAL”
16 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (the “Inadvertent Production
17 Notice”). Upon receipt of such Inadvertent Production Notice, the Party that received the
18 inadvertently produced Disclosure or Discovery Material or other information shall promptly
19 destroy the inadvertently produced Disclosure or Discovery Material or other information and all
20 copies thereof, or, at the expense of the Producing Party, return such together with all copies of
21 such Disclosure or Discovery Material or other information to counsel for the Producing Party
22 and shall retain only the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY” designated Disclosure or Discovery Material. This provision is not intended to
24 apply to any inadvertent production of any information or materials protected by attorney-client
25 or work product privileges, which inadvertent production is governed by Section 13 below.

26 5.4 Personally Identifiable Information of Named Plaintiffs. Defendant shall make
27 reasonable efforts to designate as “CONFIDENTIAL” all Discovery Material within its
28 possession, custody, or control that it produces that relates specifically to and/or identifies any

1 named plaintiff in this action.

2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
24 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
25 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if
26 applicable) within 20 business days of the initial notice of challenge or within 10 business days of
27 the parties agreeing that the meet and confer process will not resolve their dispute, whichever is
28 earlier. Each such motion must be accompanied by a competent declaration affirming that the

1 movant has complied with the meet and confer requirements imposed in the preceding paragraph.
2 Failure by the Designating Party to make such a motion including the required declaration within
3 20 business days (or 10 business days, if applicable) shall automatically waive the confidentiality
4 designation for each challenged designation. In addition, the Challenging Party may file a motion
5 challenging a confidentiality designation at any time if there is good cause for doing so, including
6 a challenge to the designation of a deposition transcript or any portions thereof. Any motion
7 brought pursuant to this provision must be accompanied by a competent declaration affirming that
8 the movant has complied with the meet and confer requirements imposed by the preceding
9 paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating
11 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
12 unnecessary expenses and burdens on other parties) and/or without a good faith basis may expose
13 the Challenging Party to sanctions. All parties shall continue to afford the material in question
14 the level of protection to which it is entitled under the Designating Party's designation until the
15 Court rules on the challenge.

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

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
18 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
20 to the categories of persons and under the conditions described in this Stipulated Protective Order.
21 When the litigation has been terminated, a Receiving Party must comply with the provisions of
22 Section 16 below (FINAL DISPOSITION).

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
27 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
28 disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action and their
2 affiliated attorneys, paralegals, clerical and secretarial staff employed or retained by Outside
3 Counsel of Record;

4 (b) In-House Counsel to the Parties and the paralegal, clerical, and secretarial
5 staff employed by such In-House Counsel;

6 (c) the officers, directors, and employees of the Receiving Party (other than the
7 In-House Counsel and legal staff described in (b) above) to whom disclosure is reasonably
8 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be
9 Bound" (Exhibit A);

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

14 (e) the Court and its personnel;

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

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

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

26 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
27 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the
28 Designating Party, any information or item designated "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" shall be disclosed only to:

2 (a) the Receiving Party's Outside Counsel of Record in this action and their
3 employees, as well as any non-employee contract attorneys and/or paralegals retained by said
4 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
5 litigation who have signed the "Acknowledgment and Agreement to Be Bound" that is attached
6 hereto as Exhibit A. The Parties agree that "HIGHLY CONFIDENTIAL – ATTORNEYS'
7 EYES ONLY" information or items shall not be disclosed to the named plaintiffs in this action;

8 (b) In-House Counsel to the undersigned Parties and the paralegal, clerical,
9 and secretarial staff employed by such In-House Counsel;

10 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving
11 Party: (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the
12 "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures
13 set forth in Section 7.4 have been followed;

14 (d) the Court and its personnel;

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

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

20 7.4 Additional Provisions Regarding Experts.

21 (a) Unless otherwise ordered by the Court or agreed to in writing by the
22 Designating Party, a Party that seeks to disclose to an Expert any information or item that has
23 been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
24 ONLY" pursuant to Paragraphs 7.2(d) and 7.3(c) first must make a written request to the
25 Designating Party that (1) indicates that the information that the Receiving Party seeks permission
26 to disclose to the Expert is designated "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY" (2) sets forth the full name of the Expert and the city and state of
28 his or her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the

1 Expert's current employer(s), (5) identifies each person or entity from whom the Expert has
2 received compensation or funding for work in his or her areas of expertise or to whom the Expert
3 has provided professional services, including in connection with a litigation, at any time during
4 the preceding five years,¹ and (6) identifies (by name and number of the case, filing date, and
5 location of court) any litigation in connection with which the Expert has offered expert testimony,
6 including through a declaration, report, or testimony at a deposition or trial, during the preceding
7 five years.

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

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

26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a
27 third party, then the Expert should provide whatever information the Expert believes can be
28 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 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
2 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
3 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

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

13 **8. SOURCE CODE**

14 The parties disagree about the relevance of source code in this action, and they agree that
15 should the production of source code become necessary, they will need to amend or supplement
16 the terms of this Order. To the extent production of source code becomes necessary in this case,
17 the parties will work expeditiously to propose amendments to this Order to cover any production
18 of source code.

19 **9. 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 party
22 shall not be involved in the prosecution of patents or patent applications relating to the subject
23 matter of the "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information he or
24 she received before any foreign or domestic agency, including the United States Patent and
25 Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes
26 directly or indirectly drafting, amending, advising, or otherwise affecting the scope or
27 maintenance of patent claims. To avoid any doubt, "prosecution" as used in this paragraph does
28 not include representing a party challenging a patent before a domestic or foreign agency

1 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
2 reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL–
3 ATTORNEYS’ EYES ONLY” information is first received by the affected individual and shall
4 end two (2) years after final termination of this action.

5 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
6 **OTHER LITIGATION**

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

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

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

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

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

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

28 (a) The terms of this Order are applicable to information produced by a Non-

1 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
3 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
4 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

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

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
25 Material to any person or in any circumstance not authorized under this Stipulated Protective
26 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
27 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
28 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were

1 made of all the terms of this Order, and (d) request such person or persons to execute the
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

3 Notwithstanding the foregoing, nothing in this paragraph shall be construed as to limit a
4 Designating Party’s rights or remedies relating to the unauthorized disclosure of its Protected
5 Material, or any injury resulting therefrom.

6 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
7 **PROTECTED MATERIAL**

8 (a) Pursuant to Federal Rule of Evidence 502(d), in the event that Inadvertent
9 Production Material is produced or disclosed, such inadvertent production or disclosure shall in
10 no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-
11 client privilege, attorney work product protection, or other applicable protection in this case or
12 any other federal or state proceeding, provided that the Producing Party shall notify the Receiving
13 Party in writing of such protection or privilege promptly after the Producing Party discovers such
14 materials have been inadvertently produced.

15 (b) If a claim of inadvertent production is made, pursuant to this Stipulated Protective
16 Order, with respect to Discovery Material then in the custody of another Party, that Party shall:

17 (i) refrain from any further examination or disclosure of the claimed Inadvertent Production
18 Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent Production
19 Material and all copies thereof (including summaries and excerpts) to counsel for the Producing
20 Party, or destroy all such claimed Inadvertent Production Material (including summaries and
21 excerpts) and certify in writing to that fact; and (iii) not disclose or use the claimed Inadvertent
22 Production Material for any purpose until further order of the Court expressly authorizing such
23 use.

24 (c) A Party may move the Court for an order compelling production of the Inadvertent
25 Production Material on the ground that it is not, in fact, privileged or protected. The motion shall
26 be filed under seal and shall not assert as a ground for entering such an order the fact or
27 circumstance of the inadvertent production. Any effort to file under seal pursuant to this
28 paragraph must comply with Civil Local Rule 79-5 and General Order 62. The Producing Party

1 retains the burden of establishing the privileged or protected nature of any inadvertently disclosed
2 or produced information. While such a motion is pending, the Inadvertent Production Material at
3 issue shall be treated in accordance with Paragraph 13(b) above.

4 (d) If a Party, in reviewing Disclosure or Discovery Material it has received from any
5 other Party or any non-Party, finds anything the reviewing Party believes in good faith may be
6 Inadvertent Production Material, the reviewing Party shall: (i) refrain from any further
7 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
8 identify the material in question to the Producing Party (by document number or other equally
9 precise description); and (iii) give the Producing Party seven (7) days to respond as to whether the
10 Producing Party will make a claim of inadvertent production. If the Producing Party makes such
11 a claim, the provisions of Paragraphs 13(a)-(b) above shall apply.

12 **14. MISCELLANEOUS**

13 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the Court in the future.

15 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
18 no Party waives any right to object on any ground to use in evidence of any of the material
19 covered by this Protective Order.

20 14.3 Filing Protected Material. Without written permission from the Designating Party
21 or a court order secured after appropriate notice to all interested persons, a Party may not file in
22 the public record in this action any Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
24 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
25 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
26 sealing order will issue only upon a request establishing that the Protected Material at issue is
27 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
28 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-

1 5(d) and General Order 62 is denied by the Court, then the Receiving Party may file the Protected
2 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
3 the Court. If a Receiving Party believes that only a portion of Designated Material is Protected
4 Material, the Receiving Party and Producing Party shall meet and confer in good faith concerning
5 the redaction of only the Protected Material prior to filing with the Court.

6 14.4 Right to Seek Further Protection. Nothing in this Stipulated Protective Order shall
7 be construed to preclude any Party from asserting in good faith that certain Protected Materials
8 require additional protections. The Parties shall meet and confer to agree upon the terms of such
9 additional protection.

10 14.5 Additional Signatories. Any Party or Non-Party to this Proceeding who has not
11 executed this Stipulated Protective Order as of the time it is presented to the Court for signature
12 may thereafter become a Party to this Stipulated Protective Order by its counsel's signing and
13 dating a copy thereof and filing the same with the Court, and serving copies of such signed and
14 dated copy upon the other Parties to this Stipulated Protective Order.

15 14.6 Agreement Regarding Privilege Log. The parties need not identify, on any
16 privilege or work product log in response to document requests, privileged or protected
17 documents postdating the filing of this action, December 30, 2013. Privilege logs shall identify
18 the documents or information withheld with sufficient specificity to identify the material withheld
19 and the basis for the claimed privilege or protection. If appropriate, the parties may agree that
20 certain categories of documents or information may be logged by category rather than
21 individually. For email strings, the parties are permitted to use only one entry on their respective
22 privilege logs to identify withheld emails that contain a string of emails provided, however, that
23 the entry notes the presence of a string, beginning and ending dates, all of the authors and
24 recipients, and a description of all the subject matters discussed.

25 **15. COMMUNICATIONS WITH TESTIFYING EXPERTS**

26 Testifying experts shall not be subject to discovery of any draft of their reports in this case
27 and such draft reports, notes, outlines, or any other writings leading up to an issued report(s) in
28 this litigation are exempt from discovery. In addition, all communications between counsel for a

1 party and that party's testifying expert, and all materials generated by a testifying expert with
2 respect to that person's work, are exempt from discovery unless they identify facts, data or
3 assumptions relied upon by the expert in forming any opinions in this litigation and such
4 information is not already disclosed in the expert's report. The Parties agree that this section in
5 no way limits protections against discovery of testifying expert draft reports and communications
6 with counsel provided by Federal Rule of Civil Procedure 26(b)(4). The Parties further agree that,
7 in the event a current or former employee of a Party is designated as a testifying expert, this
8 section in no way limits the discoverability of material that would have otherwise been
9 discoverable had the current or former employer not been designated as a testifying expert.

10 **16. FINAL DISPOSITION**

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

26 IT IS SO STIPULATED, THROUGH OUTSIDE COUNSEL OF RECORD.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: April 16, 2015

LIEFF CABRASER HEIMANN & BERNSTEIN
LLP

By: /s/ Michael W. Sobol
Michael W. Sobol
Attorneys for Plaintiffs

Dated: April 16, 2015

GIBSON, DUNN & CRUTCHER, LLP

By: /s/ Joshua A. Jessen
Joshua A. Jessen
Attorneys for Defendant Facebook, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April __, 2015

By: _____
The Honorable Phyllis J. Hamilton
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Michael W. Sobol, am the ECF user whose identification and password are being used to file this Stipulation. I hereby attest that Joshua A. Jessen has concurred in this filing.

DATED: April 16, 2015

/s/ Michael W. Sobol
Michael W. Sobol

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 _____, 2015 in the case of *Campbell et al. v. Facebook, Inc.*; Case No. C13-05996-PJH. 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]