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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

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Case No. C 13-05996 PJH

**AMENDED 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 14.4, 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” or HIGHLY CONFIDENTIAL – SOURCE  
26 CODE.”

27             2.4     Disclosure or Discovery Material: all items or information, regardless of the  
28 medium or manner in which it is generated, stored, or maintained (including, among other things,

1 testimony, transcripts, written discovery responses, paper and electronic documents, and tangible  
2 things), that are produced or generated in 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”: extremely  
7 sensitive “Confidential” Information or Items, the disclosure of which to another Party or Non-  
8 Party would create a substantial risk of serious harm that could not be avoided by less restrictive  
9 means.

10 2.7 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
11 extremely sensitive “Confidential” Information or Items representing computer code and  
12 associated comments and revision histories, formulas, engineering specifications, or schematics  
13 that define or otherwise describe in detail the algorithms or structure of software or hardware  
14 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
15 serious harm that could not be avoided by less restrictive means.

16 2.8 In-House Counsel: attorneys who are employees of a party to this action. In-  
17 House Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.9 Inadvertent Production Material: Disclosure or Discovery Material that is subject  
19 to a claim of attorney-client privilege, attorney work product protection, or any other applicable  
20 protection from discovery that is inadvertently produced or disclosed in this action.

21 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
22 entity not named as a Party to this action.

23 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this  
24 action but are retained to represent or advise a party to this action and have appeared in this action  
25 on behalf of that party or are affiliated with a law firm that has appeared on behalf of that party.

26 2.12 Party: any party to this action, including all of its officers, directors, employees  
27 (including In-House Counsel), consultants, retained experts, and Outside Counsel of Record (and  
28 their support staffs).

1           2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
2 Material in this action.

3           2.14 Professional Vendors: persons or entities that provide litigation support services  
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
5 organizing, storing, or retrieving data in any form or medium) and their employees and  
6 subcontractors.

7           2.15 Protected Information or Material(s): all Disclosure or Discovery Material that is  
8 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
9 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to the provisions of this  
10 Stipulated Protective Order.

11           2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
12 Producing Party.

13 **3. SCOPE**

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

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1     **4.     DURATION**

2             Even after final disposition of this litigation, the confidentiality obligations imposed by  
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
7 including the time limits for filing any motions or applications for extension of time pursuant to  
8 applicable law. After the final disposition of this action, this Court will retain jurisdiction to  
9 enforce the terms of this Order. This Court’s retention of jurisdiction pursuant to this paragraph  
10 shall not exceed five (5) years after final disposition.

11     **5.     DESIGNATING PROTECTED MATERIAL**

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

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

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

26             5.2     Manner and Timing of Designations. Except as otherwise provided in this Order,  
27 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
28 protection under this Order must be clearly so designated before the material is disclosed or

1 produced.

2 Designation in conformity with this Order requires:

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

8 (i) A Party or Non-Party that makes original documents or materials available  
9 for inspection need not designate them for protection until after the inspecting Party has indicated  
10 which material it would like copied and produced. During the inspection and before the  
11 designation, all of the material made available for inspection shall be deemed “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
13 documents it wants copied and produced, the Designating Party must determine which documents  
14 qualify for protection under this Order. Then, before producing the specified documents, to the  
15 extent practicable, the Designating Party must affix the appropriate legend (“CONFIDENTIAL”  
16 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
17 CONFIDENTIAL – SOURCE CODE”) to each page of a paper or electronic document that  
18 contains Protected Material.

19 (ii) For documents produced electronically in a format that includes separate  
20 pagination, to the extent practicable, the Designating Party must affix the legend  
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
22 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each electronic page of such documents that  
23 contains Protected Material. For documents produced in a format which does not lend itself to  
24 separate pagination, confidentiality shall be designated in a reasonable manner.

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

27 (i) identify on the record, before the close of the deposition, hearing, or other  
28 proceeding, all “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” testimony by specifying the  
2 portions of the testimony that qualify for protection; or

3 (ii) designate the entirety of the testimony as “CONFIDENTIAL” or  
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
5 SOURCE CODE” (before the deposition, hearing, or other proceeding is concluded) with the  
6 right to have up to 30 days after receipt of the final transcript of the deposition, hearing, or other  
7 proceeding to identify the specific portions of the testimony qualifying for protection as  
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
9 “HIGHLY CONFIDENTIAL – SOURCE CODE” testimony. Only those portions of the  
10 testimony that are appropriately designated for protection within the 30 days of receipt of the final  
11 transcript shall be covered by the provisions of this Stipulated Protective Order, unless the  
12 Designating Party specifies that the entire transcript shall be treated as “CONFIDENTIAL” or  
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
14 SOURCE CODE.”

15 Parties shall give the other parties notice if they reasonably expect a deposition, court  
16 hearing or conference, or other proceeding to include Protected Material so that the other parties  
17 can ensure that only authorized individuals who have signed the “Acknowledgment and  
18 Agreement to Be Bound” (Exhibit A) are present at those proceedings. Parties shall act with  
19 caution at court hearings and conferences so as not to disclose Protected Material publicly  
20 without providing an opportunity for the Designating Party to be heard concerning, as appropriate,  
21 sealing the courtroom, sealing the transcript, or other relief. For court hearings and conferences, a  
22 Party shall provide at least 48 hours’ notice to the Designating Party before discussing, displaying,  
23 submitting as evidence, or otherwise entering into the record any Protected Material produced by  
24 the other Party. Notwithstanding the foregoing sentence, this advance-notice requirement shall  
25 not apply in circumstances where the Party could not have reasonably anticipated so using  
26 Protected Material at the court hearing or conference. The Designating Party may move to seal  
27 the Protected Material or for other relief either in writing or orally, either before or during the  
28 court hearing or conference. The use of a document as an exhibit at a deposition, hearing, or

1 other proceeding shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
3 CODE.”

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 or “HIGHLY CONFIDENTIAL – SOURCE CODE” information may be separately bound by the  
10 court reporter, who must affix to the top of each page the legend “CONFIDENTIAL” or  
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
12 SOURCE CODE,” as instructed by the Designating Party. The Designating Party shall inform  
13 the court reporter of these requirements. Any transcript that is prepared before the expiration of a  
14 30-day period for designation shall be treated during that period as if it had been designated  
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise  
16 agreed. After the expiration of that period, the transcript shall be treated only as actually  
17 designated.

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

26 5.3 Inadvertent Failures to Designate. In the event that any Disclosure or Discovery  
27 Material or other information that is subject to a “CONFIDENTIAL” or “HIGHLY  
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE



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

18 5.4 Personally Identifiable Information of Named Plaintiffs. Defendant shall make  
19 reasonable efforts to designate as “CONFIDENTIAL” all Discovery Material within its  
20 possession, custody, or control that it produces that relates specifically to and/or identifies any  
21 named plaintiff in this action.

## 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 (in voice to voice  
7 dialogue; other forms of communication are not sufficient) within 14 days of the date of service  
8 of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
9 confidentiality designation was not proper and must give the Designating Party an opportunity to  
10 review the designated material, to reconsider the circumstances, and, if no change in designation  
11 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
12 the next stage of the challenge process only if it has engaged in this meet and confer process first  
13 or establishes that the Designating Party is unwilling to participate in the meet and confer process  
14 in a timely manner.

15           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
16 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
17 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if  
18 applicable) within 20 business days of the initial notice of challenge or within 10 business days of  
19 the parties agreeing that the meet and confer process will not resolve their dispute, whichever is  
20 earlier. Each such motion must be accompanied by a competent declaration affirming that the  
21 movant has complied with the meet and confer requirements imposed in the preceding paragraph.  
22 Failure by the Designating Party to make such a motion including the required declaration within  
23 20 business days (or 10 business days, if applicable) shall automatically waive the confidentiality  
24 designation for each challenged designation. In addition, the Challenging Party may file a motion  
25 challenging a confidentiality designation at any time if there is good cause for doing so, including  
26 a challenge to the designation of a deposition transcript or any portions thereof. Any motion  
27 brought pursuant to this provision must be accompanied by a competent declaration affirming that  
28 the movant has complied with the meet and confer requirements imposed by the preceding

1 paragraph.

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

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

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
10 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
12 to the categories of persons and under the conditions described in this Stipulated Protective Order.  
13 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
14 Section 15 below (FINAL DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
19 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
20 disclose any information or item designated "CONFIDENTIAL" only to:

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

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

26 (c) the officers, directors, and employees of the Receiving Party (other than the  
27 In-House Counsel and legal staff described in (b) above) to whom disclosure is reasonably  
28 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be

1 Bound” (Exhibit A);

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

6 (e) the Court and its personnel;

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

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

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

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
19 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
20 ordered by the Court or permitted in writing by the Designating Party, any information or item  
21 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
22 CONFIDENTIAL – SOURCE CODE” shall be disclosed only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action and their  
24 employees, as well as any non-employee contract attorneys and/or paralegals retained by said  
25 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
26 litigation who have signed the “Acknowledgment and Agreement to Be Bound” that is attached  
27 hereto as Exhibit A. The Parties agree that “HIGHLY CONFIDENTIAL – ATTORNEYS’  
28 EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” information or items shall

1 not be disclosed to the named plaintiffs in this action;

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

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

8 (d) the Court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, mock  
10 jurors (except mock jurors may not be shown any information or item designated “HIGHLY  
11 CONFIDENTIAL – SOURCE CODE”), and Professional Vendors to whom disclosure is  
12 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
13 Agreement to Be Bound” (Exhibit A); and

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

16 7.4 Additional Provisions Regarding Experts.

17 (i) Unless otherwise ordered by the Court or agreed to in writing by  
18 the Designating Party, a Party that seeks to disclose to an Expert any information or item that has  
19 been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
20 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to Paragraphs 7.2(d) and  
21 7.3(c) first must make a written request to the Designating Party that (1) indicates that the  
22 information that the Receiving Party seeks permission to disclose to the Expert is designated  
23 “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
24 and/or “HIGHLY CONFIDENTIAL – SOURCE CODE,” (2) sets forth the full name of the  
25 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s  
26 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity  
27 from whom the Expert has received compensation or funding for work in his or her areas of  
28 expertise or to whom the Expert has provided professional services, including in connection with

1 a litigation, at any time during the preceding five years and the party to the litigation for whom  
2 such work was done,<sup>1</sup> (6) identifies (by name and number of the case, filing date, and location of  
3 court) any litigation in connection with which the Expert has offered expert testimony, including  
4 through a declaration, report, or testimony at a deposition or trial, during the preceding five years,  
5 and (7) identifies any patents or patent applications in which the Expert is identified as an  
6 inventor or applicant, is involved in prosecuting or maintaining, or has any pecuniary interest.

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

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

25  
26 \_\_\_\_\_  
27 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a  
28 third party, then the Expert should provide whatever information the Expert believes can be  
disclosed without violating any confidentiality agreements, and the Party seeking to disclose to  
the Expert shall be available to meet and confer with the Designating Party regarding any such  
engagement.

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

17 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE  
18 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –  
19 ATTORNEYS' EYES ONLY" information including the Prosecution Bar set forth in Paragraph  
20 9, and may be disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL –  
21 ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in Paragraphs 7.3 and  
22 7.4.

23 (c) Any source code produced in discovery shall be made available for inspection, in a  
24 format allowing it to be reasonably reviewed and searched, during normal business hours or at  
25 other mutually agreeable times, at an office of the Producing Party's counsel or another location  
26 in the Northern District of California designated by the Producing Party's counsel. The computer  
27 containing source code will be made available upon reasonable notice to the Producing Party,  
28 which shall not be less than 2 business days in advance of the requested inspection. The source

1 code shall be made available for inspection on a secured computer in a secured room without  
2 Internet access or network access to other computers, and the Receiving Party shall not copy,  
3 remove, or otherwise transfer any portion of the source code onto any recordable media or  
4 recordable device. The Producing Party may visually monitor the activities of the Receiving  
5 Party's representatives during any source code review, but only to ensure that there is no  
6 unauthorized recording, copying, or transmission of the source code. All persons viewing Source  
7 Code shall sign on each day they view Source Code a log that will include the names of persons  
8 who enter the secured room to view the Source Code and when they enter and depart.

9 (d) The Receiving Party may request paper copies of limited portions of source code  
10 that are reasonably necessary to prepare court filings, pleadings, expert reports, or other papers, or  
11 for use as an exhibit at deposition or trial, but shall not request paper copies for the purposes of  
12 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
13 instance. The Producing Party shall provide all such source code on non-copyable paper  
14 including bates numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The  
15 Producing Party may challenge the amount of source code requested in hard copy form pursuant  
16 to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the  
17 Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for  
18 purposes of dispute resolution. In no case may the Receiving Party request more than 15  
19 consecutive pages, or an aggregate of more than 100 pages, of Source Code during the duration of  
20 the case without prior written approval of the Producing Party.

21 (e) The Receiving Party shall maintain a log of all paper copies of the Source Code.  
22 The log shall include the names of the reviewers and/or recipients of paper copies and locations  
23 where the paper copies are stored. Upon one (1) day's advance notice to the Receiving Party by  
24 the Producing Party, the Receiving Party shall provide a copy of this log to the Producing Party.  
25 The Receiving Party shall maintain all paper copies of any printed portions of the source code in a  
26 secured, locked area. The Receiving Party shall not create any electronic or other images of the  
27 paper copies and shall not convert any of the information contained in the paper copies into any  
28 electronic format. The Receiving Party shall only request additional paper copies if such



1 additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a  
2 testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the  
3 preparation of its case. The Receiving Party shall not request paper copies for the purposes of  
4 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
5 instance.

6 **9. PROSECUTION BAR**

7 Absent written consent from the Producing Party, any individual who receives access to  
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
9 SOURCE CODE” information of the opposing party shall not be involved in the prosecution of  
10 patents or patent applications relating to the subject matter of the “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information  
12 he or she received before any foreign or domestic agency, including the United States Patent and  
13 Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution” includes  
14 directly or indirectly drafting, amending, advising, or otherwise affecting the scope or  
15 maintenance of patent claims. Prosecution includes, for example, original prosecution, reissue,  
16 and reexamination and other post-grant proceedings. To avoid any doubt, “prosecution” as used  
17 in this paragraph does not include representing a party challenging a patent before a domestic or  
18 foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter*  
19 *partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY  
20 CONFIDENTIAL– ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
21 CODE” information is first received by the affected individual and shall end two (2) years after  
22 final termination of this action.

23 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
24 **OTHER LITIGATION**

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

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

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

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

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

18 10.2 The provisions set forth herein are not intended to, and do not, restrict in any way  
19 the procedures set forth in Federal Rule of Civil Procedure 45(d)(3) or (f).

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

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

28 (b) In the event that a Party is required, by a valid discovery request, to

1 produce a Non-Party's confidential information in its possession, and the Party is subject to an  
2 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
3 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  
12 within 28 days of receiving the notice and accompanying information, the Receiving Party may  
13 produce the Non-Party's confidential information responsive to the discovery request. If the  
14 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
15 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
16 before a determination by the Court. Absent a court order to the contrary, the Non-Party shall  
17 bear the burden and expense of seeking protection in this Court of its Protected Material.

18 **12. 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  
23 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
24 made of all the terms of this Order, and (d) request such person or persons to execute the  
25 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

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

1 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
2 **PROTECTED MATERIAL**

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

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

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

19 (c) A Party may move the Court for an order compelling production of the Inadvertent  
20 Production Material on the ground that it is not, in fact, privileged or protected. The motion shall  
21 be filed under seal and shall not assert as a ground for entering such an order the fact or  
22 circumstance of the inadvertent production. Any effort to file under seal pursuant to this  
23 paragraph must comply with Civil Local Rule 79-5 and General Order 62. The Producing Party  
24 retains the burden of establishing the privileged or protected nature of any inadvertently disclosed  
25 or produced information. While such a motion is pending, the Inadvertent Production Material at  
26 issue shall be treated in accordance with Paragraph 13(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  
3 identify the material in question to the Producing Party (by document number or other equally  
4 precise 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  
6 a claim, the provisions of Paragraphs 13(a)-(b) above shall apply.

7 **14. MISCELLANEOUS**

8 14.1 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 14.2 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,  
13 no Party waives any right to object on any ground to use in evidence of any of the material  
14 covered by this Protective Order.

15 14.3 Export Control. The Protected Material disclosed by the Producing Party may  
16 contain technical data subject to export control laws and therefore the release of such technical  
17 data to foreign persons or nationals in the United States or elsewhere may be restricted.  
18 The Receiving Party shall take measures necessary to ensure compliance with applicable export  
19 control laws, including confirming that no unauthorized foreign person has access to such  
20 technical data. No Protected Material may leave the territorial boundaries of the United States of  
21 America. Without limitation, this prohibition extends to Protected Material (including copies) in  
22 physical and electronic form. The viewing of Protected Material through electronic means  
23 outside the territorial limits of the United States of America is similarly prohibited.

24 14.4 Filing Protected Material. Without written permission from the Designating Party  
25 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
26 the public record in this action any Protected Material. A Party that seeks to file under seal any  
27 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
28 Material may only be filed under seal pursuant to a court order authorizing the sealing of the

1 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
2 sealing order will issue only upon a request establishing that the Protected Material at issue is  
3 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
4 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
5 5(d) and General Order 62 is denied by the Court, then the Receiving Party may file the Protected  
6 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by  
7 the Court. If a Receiving Party believes that only a portion of Designated Material is Protected  
8 Material, the Receiving Party and Producing Party shall meet and confer in good faith concerning  
9 the redaction of only the Protected Material prior to filing with the Court.

10 14.5 Right to Seek Further Protection. Nothing in this Stipulated Protective Order shall  
11 be construed to preclude any Party from asserting in good faith that certain Protected Materials  
12 require additional protections. The Parties shall meet and confer to agree upon the terms of such  
13 additional protection.

14 14.6 Additional Signatories. Any Party or Non-Party to this Proceeding who has not  
15 executed this Stipulated Protective Order as of the time it is presented to the Court for signature  
16 may thereafter become a Party to this Stipulated Protective Order by its counsel's signing and  
17 dating a copy thereof and filing the same with the Court, and serving copies of such signed and  
18 dated copy upon the other Parties to this Stipulated Protective Order.

19 14.7 Agreement Regarding Privilege Log. The parties need not identify, on any  
20 privilege or work product log in response to document requests, privileged or protected  
21 documents postdating the filing of this action, December 30, 2013. Privilege logs shall identify  
22 the documents or information withheld with sufficient specificity to identify the material withheld  
23 and the basis for the claimed privilege or protection. If appropriate, the parties may agree that  
24 certain categories of documents or information may be logged by category rather than  
25 individually. For email strings, the parties are permitted to use only one entry on their respective  
26 privilege logs to identify withheld emails that contain a string of emails provided, however, that  
27 the entry notes the presence of a string, beginning and ending dates, all of the authors and  
28 recipients, and a description of all the subject matters discussed.

1 **15. COMMUNICATIONS WITH TESTIFYING EXPERTS**

2 Testifying experts shall not be subject to discovery of any draft of their reports in this case  
3 and such draft reports, notes, outlines, or any other writings leading up to an issued report(s) in  
4 this litigation are exempt from discovery. In addition, all communications between counsel for a  
5 party and that party's testifying expert, and all materials generated by a testifying expert with  
6 respect to that person's work, are exempt from discovery unless they identify facts, data or  
7 assumptions relied upon by the expert in forming any opinions in this litigation and such  
8 information is not already disclosed in the expert's report. The Parties agree that this section in  
9 no way limits protections against discovery of testifying expert draft reports and communications  
10 with counsel provided by Federal Rule of Civil Procedure 26(b)(4). The Parties further agree that,  
11 in the event a current or former employee of a Party is designated as a testifying expert, this  
12 section in no way limits the discoverability of material that would have otherwise been  
13 discoverable had the current or former employer not been designated as a testifying expert.

14 **16. FINAL DISPOSITION**

15 Within 60 days after the final disposition of this action, as defined in Paragraph 4, 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.  
19 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a  
20 written certification to the Producing Party (and, if not the same person or entity, to the  
21 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
22 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
23 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
24 capturing any of the Protected Material. Notwithstanding this provision, counsel are entitled to  
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
27 product, and consultant and expert work product, even if such materials contain Protected  
28

1 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
2 this Protective Order as set forth in Paragraph 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH OUTSIDE COUNSEL OF RECORD.

4 Dated: June 26, 2015

LIEFF CABRASER HEIMANN & BERNSTEIN  
LLP

5

6 By: /s/ Michael W. Sobol

Michael W. Sobol  
Attorneys for Plaintiffs

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Dated: June 26, 2015

GIBSON, DUNN & CRUTCHER, LLP

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11 By: /s/ Joshua A. Jessen

Joshua A. Jessen  
Attorneys for Defendant Facebook, Inc.

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

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Dated: July 1, 2015

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By: \_\_\_\_\_

The Honorable Phyllis J. Hamilton  
United States District Judge

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**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: June 26, 2015

/s/ Michael W. Sobol  
Michael W. Sobol

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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 \_\_\_\_\_, 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]