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

17 PALANTIR TECHNOLOGIES INC.,
 18
 19 Plaintiff,
 20 v.
 21 MARC L. ABRAMOWITZ, in his individual
 22 capacity and as trustee of the MARC
 23 ABRAMOWITZ CHARITABLE TRUST NO.
 2, KT4 PARTNERS LLC, and DOES 1
 through 50, inclusive,
 24 Defendants.
 25

CASE NO.: 5:19-cv-6879
**DEFENDANTS' NOTICE OF REMOVAL OF
 CIVIL ACTION UNDER 28 U.S.C. § 1441(A)
 (FEDERAL QUESTION)**
EXHIBIT 2, Part 1

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Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

8 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CLARA**

11 **UNLIMITED JURISDICTION**

12 **16CV299476**

13 PALANTIR TECHNOLOGIES INC., a)
14 Delaware corporation,)
15 *Plaintiff,*)

16 v.)

17 MARC L. ABRAMOWITZ, in his individual)
18 capacity and as trustee of the MARC)
19 ABRAMOWITZ CHARITABLE TRUST NO.)
20 2, KT4 PARTNERS LLC, a Delaware limited)
21 liability company, and DOES 1 through 50,)
22 inclusive,)

23 *Defendants.*)

Case No.)
) **COMPLAINT FOR:**
) (1) Breach of Contract
) (2) Breach of the Implied Covenant of Good
) Faith and Fair Dealing
) (3) Violation of Cal. Civ. Code § 3426 et seq.
) (4) Declaratory Relief
) (5) Violation of California's Unfair
) Competition Law, Cal. Bus. & Prof. Code §
) 17200 et seq.
JURY TRIAL DEMAND
)
) Complaint Filed: September 1, 2016
) Trial Date: Not set

1 Plaintiff Palantir Technologies Inc. (“Palantir”) sues defendants Marc L. Abramowitz
2 (“Abramowitz”), both in his individual capacity and as trustee of the Marc Abramowitz
3 Charitable Trust No. 2 (the “Trust”), KT4 Partners LLC (“KT4”), and Does 1 through 50
4 (collectively with Abramowitz, KT4, and the Trust, “Defendants”) as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action to stop Defendants from misappropriating Palantir’s confidential
7 information and proprietary trade secrets for their own benefit and to prevent them from receiving
8 any additional confidential or proprietary information from Palantir pursuant to their Investors’
9 Rights Agreement.

10 2. Abramowitz was a respected confidant and advisor to Palantir and its senior
11 executives until he betrayed the trust they bestowed upon him for his own personal gain. He was,
12 through KT4 and other entities, an early equity investor in Palantir who personally engaged in
13 regular discussions with executives about some of the company’s most sensitive business
14 strategies and trade secrets. Those discussions were highly confidential, as was made clear by
15 express written agreements among the parties at the time and a course of dealing based on the
16 most basic principles of fairness and honesty between a trusted shareholder and advisor and
17 management.

18 3. Nonetheless, as part of brazen scheme to claim Palantir’s own highly confidential
19 information and trade secrets as his own, Abramowitz stole those secrets, engaged in methodical
20 deception of Palantir’s senior executives, and made false claims to the United States Patent and
21 Trademark Office. Abramowitz’s claim to be a patent innovator is directly contradicted by the
22 facts surrounding his professional career.

23 4. To start, Abramowitz has no notable history as an inventor or patent innovator in
24 the data analysis area. He has made most of his career and fortune in real estate and buyout
25 investing. Yet, beginning in 2014, Abramowitz suddenly filed three patents, all of them based on
26 ideas and trade secrets he stole from Palantir. This was plainly illegal and highly unethical
27 conduct, and it was a betrayal of his trusted relationship with Palantir and its executives.
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1 5. But Abramowitz’s scheme did not end there. After stealing from Palantir, he hired
2 lawyers to demand from Palantir sensitive and confidential information about the company,
3 including the Company’s finances and business dealings, which Palantir considers to be, and
4 treats as, highly sensitive and confidential. Having uncovered Abramowitz’s breach of Palantir’s
5 trust (and of his contractual obligations to Palantir under multiple agreements), it is apparent that
6 Abramowitz is not seeking this information in good faith for a proper purpose. In fact, history
7 has shown that Abramowitz has and will misuse any information provided to him in breach of
8 confidence, causing Palantir irreparable harm in the process.

9 6. Palantir now has been forced to protect itself, both through amendments to its
10 corporate documents and through this action, by which Palantir seeks redress for Abramowitz’s
11 breaches of contract, breaches of confidence, and misuse of Palantir’s confidential and
12 proprietary information and trade secrets. Further, to protect Palantir and its shareholders—
13 including employees, former employees and other investors—from continued breaches of
14 confidence in the future, Palantir seeks a declaratory judgment that Abramowitz has no right to
15 the information he has demanded under the Investors’ Rights Agreement.

16 **PARTIES, JURISDICTION, AND VENUE**

17 7. The Court has jurisdiction over this action by virtue of Article VI § 10 of the
18 California Constitution and California Code of Civil Procedure § 410.10.

19 8. Palantir is a Delaware corporation with its principal place of business at 100
20 Hamilton Avenue, Palo Alto, California, 94301. Palantir has suffered, and continues to suffer,
21 injury in this jurisdiction by reason of Defendants’ actions.

22 9. Palantir is informed and believes and on that basis alleges that defendant Marc L.
23 Abramowitz is an individual residing in California at 1029 Ramona Street, Palo Alto, California,
24 94301. Palantir is informed and believes and on that basis alleges that Abramowitz is the trustee
25 of the Marc Abramowitz Charitable Trust No. 2. The wrongful actions of Abramowitz occurred
26 in, were targeted to, and caused damage in, California.

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1 10. Palantir is informed and believes and on that basis alleges that defendant KT4
2 Partners LLC is a Delaware limited liability company with its principal place of business at 1029
3 Ramona Street, Palo Alto, California, 94301. On information and belief, KT4 does business in
4 California and has committed acts that submit it to the jurisdiction of California’s courts. Upon
5 information and belief, Abramowitz is the sole member of KT4 and controls and directs the
6 activities of KT4. The wrongful actions of KT4 occurred in, were targeted to, and caused damage
7 in, California.

8 11. Palantir is ignorant of the true names of Does 1 through 50 and such names are
9 fictitious. Such defendants are legally responsible for the events and happenings described herein
10 and for the damages proximately caused thereby. Once Palantir learns of the true names of Does
11 1 through 50, Palantir will amend the complaint to include the real name(s) of such party or
12 parties.

13 12. This action is founded on injuries and damages suffered by Palantir in Santa Clara
14 County by virtue of the Defendants’ misappropriation of trade secrets, breach of contract, breach
15 of confidence and other illegal and wrongful acts as alleged in this Complaint. Venue is proper in
16 this Court because the parties reside in this County and the events that form the basis for this
17 Complaint largely took place in this County.

18 **FACTUAL BACKGROUND**

19 **Palantir’s Business**

20 13. Palantir is a software and services company that specializes in data analytics. In
21 2004, Palantir was founded on a vision: to provide solutions not only to problems then faced by
22 business and government, but also solutions to problems that did not yet exist, but that would
23 surely come to be as part of our rapidly-evolving world. It sought to make this vision a reality by
24 the use of technology. And it embarked on an ambitious, time-consuming, and costly endeavor to
25 create a viable, successful business. As a result of hard work, Palantir has succeeded and is now a
26 leader in its industry. Today, Palantir’s products are deployed at the most critical government,

1 commercial, and non-profit institutions in the world to solve problems the company's founders
2 had not even dreamed of back in 2004.

3 14. In particular, at its founding Palantir set out to create products that would
4 transform the way organizations use perhaps their most important asset in today's business world:
5 data. Palantir's mission has been and remains to develop flexible tools and services to provide
6 human-driven analysis of real-world data, with a focus on creating the world's best user
7 experience for working with data. To achieve this, Palantir builds platforms for integrating,
8 managing, and securing data, on top of which it layers applications for fully interactive, human-
9 driven, machine-assisted analysis. This means that Palantir develops programs and provides
10 services that allow businesses and government to run their businesses in a way that corresponds
11 with the reality of their marketplace and consumers.

12 15. Businesses and government use Palantir's software to interpret and visualize large
13 quantities of information from various sources. For example, businesses use Palantir's software
14 to analyze their internal and market data to better understand consumer trends, and government
15 agencies use Palantir's software to analyze intelligence data to better understand emerging
16 threats.

17 16. Palantir's success is due in part to its early recognition that many organizations are
18 traditionally unable to leverage insights from their internal data because the data is held in
19 separate silos that are often disconnected and have different access, security controls, and privacy
20 requirements. When information is siloed—that is, when important information is stored in
21 containerized, unrelated units—businesses and government cannot fully realize the potential of
22 that data. Palantir provides software solutions that avoid this problem, allowing users to run their
23 businesses consistent with the actual environment in which they operate. Thus, Palantir's
24 products are used to fuse and analyze customer data across platforms and sources and enable
25 secure collaboration among analysts, while protecting data privacy and security.

26 17. As is expected in this type of work, Palantir is also heavily involved in research
27 and development. Palantir spends millions of dollars each year to expand its business and seek
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1 out new opportunities—and to stay ahead of the curve and atop the industry. This research and
2 development investment involves both creating new software, technologies and processes as well
3 as adapting existing products and technologies to new applications and uses.

4 **Abramowitz’s Relationship with Palantir**

5 18. Initial funding for Palantir came from a variety of sources, including the
6 company’s founders who remain with Palantir today as shareholders of common shares of
7 Palantir stock. Abramowitz, through KT4 and other entities he controls, was an early investor in
8 Palantir, first investing in the company in 2005.

9 19. Through the years, Abramowitz was involved with the business of Palantir.
10 Rather than acting as a passive investor, he became a regular fixture at Palantir. He established
11 relationships with the company’s founders, officers, and employees. As a result, he was viewed
12 as a trusted figure by the company, including its several founders and senior employees.
13 Abramowitz fostered these relationships of confidence and held himself out as a friend of Palantir
14 whose interests were completely aligned with the company. He made clear that he could be
15 trusted to keep confidences and act in the company’s best interests.

16 20. Indeed, Abramowitz spent so much time at Palantir that in 2014 he asked for an
17 office. Between 2010 and 2015, Abramowitz visited Palantir offices over thirty times. When
18 Abramowitz had questions about Palantir’s business, including financial information, that were
19 relevant to his status as a shareholder and trusted advisor to the company, he was provided with
20 the information.

21 21. In this context, Abramowitz often inquired about specific Palantir projects. On
22 several occasions, Palantir provided information to Abramowitz about concepts for new
23 technology and/or new use cases for existing technology that Palantir had spent significant time
24 and resources researching, developing and testing. Palantir always provided any information to
25 Abramowitz with the express and reasonable expectation that Abramowitz would maintain its
26 confidentiality and would never pass Palantir’s ideas off as his own or use the information to
27 Palantir’s detriment without Palantir’s knowledge or permission.

1 **Abramowitz’s Agreements Not to Violate Confidentiality**

2 22. In addition to relying on the confidential nature of its communications with
3 Abramowitz, Palantir also protected its confidential information and trade secrets through written
4 agreements.

5 23. In an August 14, 2012 Preferred Stock Transfer Agreement,
6 Abramowitz agreed “to keep confidential and refrain from using or disclosing all agreements,
7 documents and other information regarding the Company or its securityholders provided or made
8 available to [Abramowitz]...in [his] capacity as a stockholder of the Company...” (2012 PSTA
9 at ¶ 7.) Abramowitz renewed that agreement in a June 17, 2015 Preferred Stock Transfer
10 Agreement. (2017 PSTA at 7.)

11 24. In a June 17, 2015 Preferred Stock Transfer Agreement, KT4 similarly agreed “to
12 keep confidential and refrain from using or disclosing all agreements, documents and other
13 information regarding the Company or its securityholders provided or made available to
14 [Abramowitz]...in [his] capacity as a stockholder of the Company...” (2015 PSTA at ¶ 7.)

15 25. In addition, during at least one of his visits to Palantir, on July 12, 2014,
16 Abramowitz executed an NDA (the “July 2014 NDA”) covering “Proprietary Information,”
17 which is defined in the NDA as “non-public business, technical or other information, materials
18 and/or ideas of Palantir [including] anything you learn or discover as a result of exposure to or
19 analysis of any Proprietary Information.” The NDA expressly forbids Abramowitz from using or
20 revealing any of Palantir’s Proprietary Information.

21 **Abramowitz Misappropriation of Business Information and Trade Secrets**

22 26. By 2014, Abramowitz had embarked on an intentional and calculated scheme to
23 discover Palantir trade secrets and convert them to his own use and profit. In furtherance of his
24 scheme, during 2014 alone, Abramowitz was in contact with Palantir employees at least 34 times
25 and visited Palantir facilities at least 20 times. Pursuant to his scheme, Abramowitz violated the
26 trust Palantir put in him on at least three separate occasions.

1 27. The first occasion of which Palantir is aware involves a Palantir idea concerning
2 clinical trials of drugs. Palantir had been working hard since 2011 on the best way to enter the
3 clinical trial space, including using Palantir’s technology and data analytics services to improve
4 the conduct of clinical trials of prescription drugs by pharmaceutical companies and academic
5 institutions.

6 28. Palantir’s work in the field of clinical trials has been extensive, and the processes
7 and systems developed through that work were important company trade secrets. As part of its
8 research and development work, Palantir employees created white papers and presentations
9 describing the ideas and projects they were working on. Palantir also signed on customers to help
10 drive the project from the research side into the market.

11 29. Abramowitz learned from Palantir about Palantir’s work in the area of clinical
12 trials and, in February 2014, sought to broker a deal between Palantir and a customer to take
13 something to market. Through his conversations with Palantir on the subject and the confidential
14 access Palantir granted him to documents describing Palantir’s research and development work,
15 Abramowitz learned the details of the work Palantir had been doing in the area for years.
16 Abramowitz misappropriated Palantir’s inventions in this space and has attempted to patent them
17 as his own.

18 30. On October 29, 2014, without Palantir’s knowledge or consent, Abramowitz filed
19 Provisional Application No. 62/072,368 with the United States Patent and Trademark Office
20 (“USPTO”) seeking to patent the idea developed by Palantir and explained to Abramowitz in
21 confidence. The application falsely identifies Abramowitz as the inventor, includes no mention
22 of Palantir at all, and fails to list a single Palantir employee as an inventor.

23 31. In the second occurrence where Palantir knows Abramowitz abused his position of
24 trust to further his scheme, Abramowitz participated in discussions about an idea for using
25 Palantir’s cyber security technology to improve the ability of insurance companies to provide
26 insurance to retailers and other institutions against the potential harm caused by data breaches and
27 other cybercrimes.

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1 32. In June 2014, a Palantir executive disclosed to Abramowitz during a conversation
2 that Palantir was working on opportunities in the insurance industry. When Abramowitz
3 expressed interest in the concept and requested additional information, the Palantir executive
4 arranged for Abramowitz to speak with another Palantir executive, who sent Abramowitz some
5 information on the idea via email and invited Abramowitz to meet with him at Palantir’s offices
6 to discuss the idea. During his June 2014 meeting with Abramowitz, the second Palantir
7 executive described two related concepts that Palantir had developed relating to cyber security
8 insurance and the use of customer consortia to improve cyber security, as well as the Palantir
9 technology that could be used to implement them.

10 33. When Abramowitz next met with Palantir on the subject, he indicated he was
11 interested in setting up a Palantir subsidiary that he would run to perform the insurance-related
12 function Palantir had revealed to him, further confirming that his participation in the discussions
13 were solely for the benefit and interest of Palantir. Palantir did not pursue Abramowitz’s
14 suggestion.

15 34. Without Palantir’s knowledge, on October 21, 2014, Abramowitz filed Provisional
16 Application No. 62/066,716 at the USPTO attempting to patent the ideas he learned about in
17 confidence through his conversations with Palantir executives and claiming to be the invention’s
18 sole owner and inventor. To read Abramowitz’s application, one would never suspect Palantir
19 had anything to do with the idea at all, as Abramowitz fails to mention Palantir and does not
20 include a single Palantir employee as an inventor.

21 35. However, presumably unbeknownst to Abramowitz, Palantir had already filed its
22 own patent application on the invention in February 2014, months before Abramowitz learned of
23 the idea from Palantir. That application resulted in United States Patent No. 9009827 (the “’827
24 Patent”), owned by Palantir and invented by Palantir employees. The similarities between
25 Palantir’s valid patent and Abramowitz’s application are stunning. Even a cursory reading of the
26 abstract of the ’827 Patent issued to Palantir and the application filed by Abramowitz reveals that
27 they are the same invention—one which Abramowitz misappropriated from Palantir.
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1 36. Abramowitz's scheme is clearly revealed through his filing of two patent
2 applications within ten days of one another seeking to secure sole inventorship over ideas he
3 learned from Palantir in confidence. Abramowitz continued his concerted scheme to
4 misappropriate Palantir's ideas in at least one more, third area. After discussions with Palantir
5 employees concerning Palantir's work on adapting its data analysis technology for use in oil and
6 gas exploration, Abramowitz filed Provisional Application No. 62/094,888 with the USPTO,
7 seeking to patent as sole owner and inventor the ideas he learned from Palantir concerning
8 Palantir's work in this area. As with his other applications described above, Abramowitz filed the
9 application without Palantir's knowledge or consent and failed to credit Palantir or its employees
10 in any way.

11 37. Through his months-long scheme, Abramowitz intentionally abused his status as a
12 trusted investor at Palantir in an attempt to profit at Palantir's expense by taking multiple ideas
13 from Palantir and attempting to patent them as his own. Although, on information and belief,
14 Abramowitz does not have the resources, technology, or experience to market the ideas
15 effectively, he could attempt to use the patent applications or any issued patents to hold Palantir
16 hostage in exchange for royalties. Abramowitz's actions are causing Palantir irreparable harm,
17 and Palantir is therefore separately seeking to have Abramowitz's patent applications denied by
18 the USPTO.

19 38. The patent applications are not the only indication that Abramowitz has
20 misappropriated information and access to attempt to profit at Palantir's expense. Palantir's
21 company name is inspired by the "seeing stones" referenced in The Lord of the Rings. Without
22 Palantir's knowledge, Abramowitz filed for a trademark on the mark "Shire," which is also
23 referenced in The Lord of the Rings as the place where one of the main characters lives. It is
24 clear that Abramowitz has filed this trademark application in an attempt to further improperly
25 associate himself with what he views as the Palantir brand.

26 39. Furthermore, Abramowitz has filed this trademark application with an intent to use
27 the mark in connection with "underwriting and administration of cyber liability insurance;
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1 underwriting and administration of cyber security insurance; insurance brokerage in the field of
2 cyber liability and cyber security insurance.” He has claimed he intends to use the mark for the
3 aforementioned goods and services despite knowing that the aforementioned goods and services
4 are services offered by, or intended to be offered by, Palantir, from whom he misappropriated
5 confidential and proprietary ideas and information in these areas.

6 **Abramowitz Demands Information Under the Investors’ Rights Agreement**

7 40. In furtherance of his scheme, on August 16, 2016, KT4, through counsel at
8 Williams & Connolly LLP, sent Palantir a letter (the “Demand Letter”) demanding information
9 pursuant to the Investors’ Rights Agreement (as amended most recently on September 1, 2016,
10 the “IRA”). Under the February 15, 2008 version of the IRA (the “February IRA”) invoked by
11 Abramowitz in his letter, and the July 8, 2015 version in effect at the time Abramowitz sent his
12 letter (the “July IRA”), the agreement granted certain rights to receive information from Palantir
13 to anyone who was a “Major Investor” in Palantir, defined in Section 2.1 of the IRA as any
14 investor that holds “at least 5,000,000 shares of” certain types of Palantir stock.

15 41. In the Demand Letter, KT4 purports to be a Major Investor of Palantir and
16 demands that Palantir produce documents and provide information to its counsel pursuant to
17 Sections 2.1 and 2.2 of the February IRA. Neither IRA, however, provides any right for counsel
18 or anyone other than a Major Investor to receive the information.

19 **Palantir Scrupulously Protects Its Confidential Information and Trade Secrets**

20 42. Palantir undertakes significant efforts to protect the confidentiality and security of
21 its trade secrets, property (including physical locations, intellectual property, and network
22 security), as well as sensitive and confidential business and financial information. This
23 confidential information is not generally known to the public and provides actual and potential
24 economic value to Palantir from not being generally known to the public or to Palantir’s
25 competitors.

26 43. Palantir employs both technical and physical safety measures to maintain the
27 security of its property and confidential information. Among other things, Palantir restricts
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1 employees' access to sensitive internal information such that individual employees can only
2 access such data after obtaining appropriate authorization and only to the extent necessary to
3 perform their jobs. Additionally, Palantir employs a multitude of technical security measures to
4 protect its systems and networks, including, among other methods: intrusion detection systems,
5 network monitoring tools, anti-malware software, network firewalls, and whole disk encryption
6 of employee computers, among other measures. Palantir's network and security systems are also
7 continually monitored for potential security risks. To secure access to information and data no
8 matter where employees are, Palantir uses and requires complex password requirements and two-
9 factor authentication for access to its hardware and its network.

10 44. In addition to data and network security, physical access to Palantir's facilities is
11 also highly restricted. Palantir employees must use electronic badges to access Palantir facilities.
12 Access to certain sensitive areas of Palantir's facilities is further restricted to a small subset of
13 Palantir employees with a specific need for access (including, for example, Palantir facilities
14 containing network servers and security equipment, among others). Visitors must be invited to
15 Palantir facilities, must sign in and wear a visitor badge and are escorted at all times. In addition,
16 certain areas of Palantir's facilities are off limits to visitors, and Palantir deploys security guards
17 to protect its facilities.

18 45. Palantir also implements numerous measures and policies to ensure that its
19 employees safeguard the confidentiality and security of its trade secrets and sensitive and
20 confidential business information. As part of the hiring process, Palantir requires pre-
21 employment background checks for all new employees and also requires legal training for new
22 hires, covering confidentiality, information and data security, and compliance.

23 **Palantir and Major Investors Amend the IRA to Protect Palantir, its Employees, and**
24 **Shareholders from Malicious Actors**

25 46. Having discovered Abramowitz's actions described above betraying Palantir's
26 trust and misappropriating its trade secrets—and fearing more such betrayals and breaches of
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1 confidence that remain undiscovered—Palantir could no longer trust Abramowitz with its
2 confidential information, including the information demanded by KT4 in the Demand Letter.

3 47. To protect Palantir—as well as its employees, former employees, investors, and
4 other shareholders—from the malicious acts of Defendants, on September 1, 2016, Palantir and a
5 group of its Major Investors holding a majority of the Registrable Securities held by Major
6 Investors invoked their rights under Section 3.7 of the July IRA to amend the agreement (the
7 “Amendment”). Even assuming KT4 was a Major Investor with rights under Sections 2.1 and 2.2
8 of the July IRA, which Palantir does not concede, KT4 has no such rights under the current IRA,
9 and the Amendment is expressly retroactive in its effect, as permitted by Section 3.7.

10 48. Palantir did not take this action lightly, but after receiving the Demand Letter and
11 noting the nefarious activities of Defendants through their access as investors, Palantir determined
12 that it was necessary to act to protect itself and others from the harmful actions of Defendants.
13 Palantir regularly and frequently works with investors, upon request, to provide relevant
14 information corresponding to their status as a shareholder, subject to confidentiality obligations.
15 As it has done in responding to Abramowitz’s reasonable questions in the past, Palantir stands
16 ready to do the same with KT4 upon a showing that such requests are being made in good faith
17 and with no improper purpose.

18 **Harm to Palantir**

19 49. As a result of Defendants’ actions, Palantir has been and will continue to be
20 injured in an amount to be established according to proof.

21 50. As a result of Abramowitz’s unauthorized copying, theft, and misappropriation of
22 Palantir’s confidential and proprietary information and trade secrets as well as his co-opting of
23 Palantir’s work developing technology and ideas and subsequently passing them off as his own,
24 Palantir has been and will continue to be injured absent equitable relief.

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract – Against All Defendants)**

3 51. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 50.

5 52. Defendants’ contracts with Palantir, including, *inter alia*, the Transfer Agreements
6 and the July 2014 NDA (the “Confidentiality Contracts”), imposed a contractual obligation on
7 Defendants to maintain the confidentiality of information learned or accessed as a result of
8 Defendants’ investments in Palantir, Abramowitz’s visits to Palantir’s offices, and his discussions
9 with Palantir employees.

10 53. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
11 contract and all conditions precedent to its enforcement have been performed by Palantir.

12 54. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
13 precedent to its enforcement have been performed by Palantir.

14 55. Under the Confidentiality Contracts, Defendants agreed to hold in strictest
15 confidence, and not to use, except for the benefit of the Company, any information they obtain or
16 access as investors or during visits or discussions.

17 56. Defendants breached the Confidentiality Agreements when Abramowitz used the
18 information and ideas he learned from Palantir employees to file patent applications listing
19 himself as sole inventor of Palantir’s ideas that he learned in confidence, as well as a trademark
20 application on “Shire.”

21 57. As a direct and proximate result of Defendants’ wrongful conduct, Palantir has
22 been harmed and is being forced to take expensive steps to reduce and mitigate that harm,
23 including opposing Abramowitz’s patent and trademark applications.

24 58. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
25 where allowed.

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1 **SECOND CAUSE OF ACTION**

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing– Against All Defendants)**

3 59. Plaintiff repeats and realleges paragraphs 1 through 58 above as though fully set
4 forth herein.

5 60. California law implies a covenant of good faith and fair dealing in all contracts.

6 61. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
7 contract and all conditions precedent to its enforcement have been performed by Palantir.

8 62. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
9 precedent to its enforcement have been performed by Palantir.

10 63. Defendants have unfairly interfered with Plaintiff’s right to receive the benefit of
11 the Transfer Agreements and July 2014 NDA by, among other things, misappropriating and using
12 Plaintiff’s proprietary, confidential, and trade secret information and falsely claiming to have
13 invented Palantir’s inventions.

14 64. Defendants have breached and violated its implied covenant of good faith and fair
15 dealing.

16 65. As a result of that breach by Defendants, Plaintiff has suffered monetary damages
17 in an amount to be quantified at trial.

18 **THIRD CAUSE OF ACTION**

19 **(Violation of Cal. Civ. Code § 3426 et seq. – Against Abramowitz)**

20 66. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
21 through 65.

22 67. Palantir’s confidential and proprietary information pertaining to its projects,
23 including those concerning use of data analysis in the cyber security insurance, clinical trial and
24 natural resources exploration contexts, constitute protectable trade secrets as set forth in
25 California Civil Code § 3426.1(d).

26 68. Palantir’s confidential and proprietary information derives independent economic
27 value, actual or potential, from not being generally known to the public or to other persons who
28

1 can obtain economic value from their disclosure or use as set forth in California Civil Code
2 § 3426.1(d)(1).

3 69. Palantir's confidential and proprietary information is the subject of efforts that are
4 reasonable under the circumstances to maintain their secrecy as set forth in California Civil Code
5 § 3426.1(d)(2).

6 70. Palantir did not consent to the use of any of its trade secrets by anyone other than
7 authorized employees using them for Palantir's business purposes.

8 71. Abramowitz willfully and intentionally misappropriated Palantir's trade secrets
9 when, *inter alia*, he filed patent and trademark applications claiming inventorship and ownership
10 of Palantir's ideas. Palantir is informed and believes that Abramowitz has used Palantir's trade
11 secret, confidential and/or proprietary information to develop a competing business or in
12 furtherance of that goal.

13 72. Palantir is entitled to an injunction of both actual and threatened misappropriation
14 as set forth in California Civil Code § 3426.2(a).

15 73. Palantir also requests that the court take affirmative acts to protect Palantir's trade
16 secrets, as set forth in California Civil Code § 3426.2(c), including ordering an inspection of
17 Abramowitz's personal computer(s), USB drives, email accounts, cloud storage accounts and
18 other sources and equipment by a forensics expert to determine whether Palantir's trade secrets
19 were wrongfully taken and/or disseminated to others, and to ensure that no trade secrets
20 belonging to Palantir remain saved on those systems; and issue a writ of possession, a preliminary
21 injunction, and a permanent injunction ordering the return of Palantir's confidential information
22 and prohibiting Abramowitz from continuing his unlawful actions.

23 74. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
24 where allowed.

25 75. Abramowitz's conduct as alleged herein was willful, malicious and wanton, and
26 undertaken for the purpose of injuring or causing injury to Palantir. Palantir seeks exemplary and
27 punitive damages against Abramowitz.
28

1 **FOURTH CAUSE OF ACTION**

2 **(Declaratory Relief – Against All Defendants)**

3 76. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 75.

5 77. There presently exists a real and actual controversy between Palantir and KT4
6 regarding whether KT4 is entitled under the IRA to the information sought through the Demand
7 Letter.

8 78. KT4 maintains that it is entitled to information under Sections 2.1 and 2.2 of the
9 IRA, and Palantir maintains that KT4 is not a “Major Investor” under the IRA, and therefore has
10 no such right.

11 79. Defendants have acted with unclean hands by, among other things,
12 misappropriated Palantir’s trade secrets.

13 80. A declaratory judgment is necessary and appropriate at this time to resolve the
14 controversy between the parties. Palantir therefore specifically requests a judgment declaring that
15 KT4 has no right to any information pursuant to Sections 2.1 or 2.2 of the IRA.

16 **FIFTH CAUSE OF ACTION**

17 **(Violation of California’s Unfair Competition Law,**

18 **Cal. Bus. & Prof. Code Section 17200 *et seq.* – Against All Defendants)**

19 81. Plaintiff Palantir repeats and realleges paragraphs 1 through 80 above as though
20 fully set forth herein.

21 82. Defendants have engaged in (and continues to engage in) the unlawful, fraudulent,
22 and unfair business acts and practices described throughout this Complaint in violation of
23 California’s Unfair Competition Law (the “UCL”), California Business and Professions Code,
24 Section 17200, *et seq.*

25 83. Defendants’ business acts and practices were unlawful under the UCL because
26 they resulted in the violations of state common law described herein, including breach of contract
27 and breach of the implied covenant of good faith and fair dealing.
28

1 84. Defendants' business acts and practices were fraudulent because a reasonable
2 person would likely be deceived by Defendant's false statements and claims, including that they
3 invented and own Palantir's inventions.

4 85. Defendants' business acts and practices are unfair because the harm suffered by
5 Palantir described herein outweighs any justification that Defendants may assert for engaging in
6 those acts and practices. Moreover, Palantir could not have avoided the harm it suffered as a
7 result of Defendants' unfair acts and practices because Defendants made every effort to obscure
8 and conceal from Palantir the existence and extent of its harmful acts and practices.

9 86. Defendants' unlawful, unfair and fraudulent business acts and practices were
10 carried out and effectuated in California and injured Plaintiff in California.

11 87. Plaintiff suffered harm as herein alleged as a direct and proximate result of
12 Defendants' unlawful, unfair and fraudulent business acts and practices.

13 88. Plaintiff is entitled to an injunction enjoining Defendants from such further
14 violations of the UCL. Any such injunction will benefit Plaintiff and the general public.

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Palantir respectfully requests the following relief:

18 1. Judgment in favor of Palantir and against all Defendants on all of Palantir's claims
19 asserted in the Complaint;

20 2. For a preliminary injunction and permanent injunction restraining Defendants,
21 their officers, agents, servants, employees, and all persons acting in concert or participation with
22 them from:

- 23 a. perpetuating the wrongful acts and conduct as set forth above;
 - 24 b. directly or indirectly retaining, using or disclosing Palantir's trade secret,
25 confidential and/or proprietary information, and derivatives thereof;
 - 26 c. destroying any property, emails, documents or materials that are relevant or
27 potentially relevant to this action;
- 28

- 1 d. moving or transferring outside the United States Palantir's property,
2 emails, documents or materials that are relevant or potentially relevant to this action;
- 3 3. For an Order requiring that Palantir's confidential, proprietary and trade secret
4 information be returned to Palantir;
- 5 4. For an Order requiring all Defendants to divulge the identity of the individuals,
6 groups and companies to whom they have disclosed Palantir's confidential, proprietary and trade
7 secret information;
- 8 5. For an Order requiring all Defendants to account for and pay to Palantir all ill-
9 gotten gains, profits, and savings obtained or derived from their improper conduct;
- 10 6. For damages to be proven at trial;
- 11 7. For an Order awarding Palantir punitive damages in a sum to be determined at
12 trial, on the basis of Defendants' willful and deliberate tortious conduct;
- 13 8. For restitution and disgorgement of all ill-gotten gains unjustly obtained and
14 retained by Defendants through the acts complained of herein;
- 15 9. For prejudgment interest;
- 16 10. For an Order awarding Palantir its attorney's fees and all costs of suit incurred
17 herein; and
- 18 11. For such other and further relief as the Court deems just and proper.
- 19
20

21 Dated: September 1, 2016

BOIES, SCHILLER & FLEXNER LLP

22
23
24 By: 

David Zifkin (SBN232845)
(dzifkin@bsflp.com)
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,
Telephone: (310) 752-2400
Facsimile: (310) 752-2490

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John T. Zach (*Pro Hac Vice* to be filed)
(jzach@bsflp.com)
575 Lexington Avenue, 7th Floor
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401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022
Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: September 1, 2016

BOIES, SCHILLER & FLEXNER LLP

By: 
David Zifkin (SBN232845)
(dzifkin@bsflp.com)
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Telephone: (954) 356-0011
Facsimile: (954) 356-0022
Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Additional Parties Attachment form is attached.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PALANTIR TECHNOLOGIES INC., a Delaware corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California

CASE NUMBER: 16CV299476
(Número del Caso)

County of Santa Clara
191 North First Street, San Jose, California

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David L. Zifkin, 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401, Tel: (310) 752-2400

DATE: 9/1/2016 (Fecha) David H. Yamaski Clerk, by /s/ Rowena Walker Deputy Chief executive Officer (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

SHORT TITLE: PALANTIR TECHNOLOGIES INC. v. ABRAMOWITZ, et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

MARC L. ABRAMOWITZ, in his individual capacity and as trustee of the MARC ABRAMOWITZ CHARITABLE TRUST NO. 2, KT4 PARTNERS LLC, a Delaware limited liability company, and DOES 1 through 50, inclusive,

Page _____ of _____

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David L. Zifkin (SBN 232845) BOIES, SCHILLER & FLEXNER LLP 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401 TELEPHONE NO.: (310) 752-2400 FAX NO.: (310) 752-2490 ATTORNEY FOR (Name): Palantir Technologies Inc.	FOR COURT USE ONLY E-FILED 9/1/2016 11:20:57 AM David H. Yamasaki Chief Executive Officer/Clerk Superior Court of CA, County of Santa Clara 16CV299476 Reviewed By: Rowena Walker
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N 1st Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court	CASE NUMBER: 16CV299476 JUDGE: Peter H. Kirwan DEPT: 1 / Complex
CASE NAME: PALANTIR TECHNOLOGIES INC. v. MARC ABRAMOWITZ, et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 5

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 1, 2016
 David L. Zifkin


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: 16CV299476**READ THIS ENTIRE FORM**

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANTS (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, in the Clerk's Office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>
- Rose Printing: 408-293-8177 or becky@rose-printing.com (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Hon. Peter H. Kirwan Department: 1

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 1/6/2017 Time: 10:00am in Department 1

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- *The parties have a continuing business or personal relationship*
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)
3 (dzifkin@bsflp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401
6 Telephone: (310) 752-2400
7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED
9/19/2016 12:00:00 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By: Rowena Walker

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 PALANTIR TECHNOLOGIES INC., a
14 Delaware corporation,

15 *Plaintiff,*

16 v.

17 MARC L. ABRAMOWITZ, in his individual
18 capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
20 2, KT4 PARTNERS LLC, a Delaware limited
21 liability company, and DOES 1 through 50,
22 inclusive,

23 *Defendants.*

) Case No. 16CV299476

) **NOTICE AND VERIFIED APPLICATION**
) **OF DAVID BOIES TO APPEAR AS**
) **COUNSEL PRO HAC VICE FOR**
) **PLAINTIFF PALANTIR**
) **TECHNOLOGIES, INC.**

) Date: October 21, 2016

) Time: 9:00 a.m.

) Dept.: 1

) Judge: Hon. Peter H. Kirwan

) Complaint Filed: September 1, 2016

) Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on October 21, 2016, in
3 Department 1 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Peter H. Kirwan, presiding, Plaintiff Palantir Technologies, Inc.
5 (“Palantir”) will apply for an order permitting David Boies of the law firm of Boies, Schiller &
6 Flexner LLP to appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 The application is made pursuant to Rule 9.40 of the California Rules of Court and is
8 based on this Notice and the attached Application. Rule 9.40 provides that a person “who is not a
9 member of the State Bar of California but who is a member in good standing of and eligible to
10 practice before the Bar of any United States Court or the highest court in any state,” and “who has
11 been retained to appear in a particular cause pending in a court of this state, may in the discretion
12 of the court be permitted upon written application to appear as counsel *pro hac vice*, provided that
13 an active member of the State Bar of California is associated as counsel of record.”

14 This application is necessary because Palantir anticipates that the participation and
15 appearance of David Boies of Boies, Schiller & Flexner LLP will be required on its behalf. As
16 set forth in the attached Application of David Boies, all requirements of Rule 9.40 have been met.
17 Proper and timely notice of this application will be given to the Defendants and to the State Bar
18 of California at its San Francisco address. A copy of the letter to the State Bar of California
19 attaching this application and payment of the requisite fee to the State Bar of California is
20 attached to the Declaration of David L. Zifkin.

21 Accordingly, David Boies respectfully requests permission to appear as counsel *pro hac*
22 *vice* in the above-captioned matter on behalf of Palantir.

23
24 Dated: September 17, 2016

BOIES, SCHILLER & FLEXNER LLP

25
26 

27 By: _____
David Zifkin (SBN232845)
28 (dzifkin@bsfllp.com)

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401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,
Telephone: (310) 752-2400
Facsimile: (310) 752-2490

John T. Zach (*Pro Hac Vice* to be filed)
(jzach@bsflp.com)
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

Carlos M. Sires (*Pro Hac Vice* to be filed)
(csires@bsflp.com)
401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022
Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

1 VERIFIED APPLICATION TO APPEAR PRO HAC VICE

2 I, David Boies, apply for admission to practice before this Court *pro hac vice*, in order to
3 represent Plaintiff Palantir Technologies, Inc. ("Palantir") in this action. In support of this
4 application, I state the following:

5 1. I have been retained by Palantir to appear in this action as an attorney on its behalf.

6 2. I am not a resident of the State of California. I do not regularly practice law in the
7 State of California. I am not regularly employed in the State of California or engaged in any
8 substantial business, professional, or other activities in the State of California.

9 3. My residential address is 2 Middle Patent Road, Armonk, New York 10504.

10 4. My business address is Boies, Schiller & Flexner LLP, 333 Main Street, Armonk,
11 New York 10504.

12 5. I was admitted to the Bar of the State of New York on March 27, 1967. I have
13 also been admitted to the bars of numerous federal courts. (See Attachment 1.)

14 6. I am a member in good standing of the bars of all courts to which I have been
15 admitted.

16 7. I am not suspended or disbarred in any court.

17 8. In the preceding two years, I have applied to appear *pro hac vice* in the following
18 matters pending in California state courts: (a) *William H. Gross*, Case No. 30-2015-00813636,
19 pending in the Superior Court of the State of California for the County of Orange (application
20 granted March 4, 2016); (b) *Mission Bay Alliance v. Hawgood*, Superior Court of California,
21 Alameda County, Case No. RG15797095 (application granted February 24, 2016).

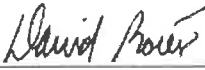
22 9. In the preceding two years, I have applied to appear *pro hac vice* in the following
23 action pending in federal district courts located in California: *In re: Volkswagen "Clean Diesel"*
24 *Marketing, Sales Practices, and Products Liability Litigation*, N.D. Cal., Case No. 3:15-md-
25 02672-CRB (application granted December 11, 2015).

26 10. David L. Zifkin (State Bar No. 232845) of Boies, Schiller & Flexner LLP is an
27 attorney of record for Palantir in this action. His business address and telephone number are as
28

1 follows: 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401; 310-752-2400.

2 11. The matters stated herein are true based on my own personal knowledge. I declare
3 under penalty of perjury under the laws of the State of California and the United States of
4 America that the foregoing is true and correct.

5 Executed on September 17, 2016, at Armonk, New York.

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8 _____
9 David Boies

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Attachment 1

COURT	ADMITTED
State of New York	March 27, 1967
United States Supreme Court	October 29, 1974
United States District Court, Eastern District of New York	June 5, 1981
United States District Court, Southern District of New York	September 6, 1991
United States District Court, District of Colorado	September 1, 2000
United States District Court, Eastern District of Wisconsin	December 5, 2011
United States Court of Appeals, First Circuit	July 7, 2006
United States Court of Appeals, Second Circuit	April 17, 1967
United States Court of Appeals, Third Circuit	September 8, 1995
United States Court of Appeals, Fourth Circuit	January 16, 2001
United States Court of Appeals, Fifth Circuit	January 20, 2009
United States Court of Appeals, Sixth Circuit	August 26, 2003
United States Court of Appeals, Seventh Circuit	March 22, 2002
United States Court of Appeals, Ninth Circuit	November 13, 1972
United States Court of Appeals, Tenth Circuit	November 20, 1973
United States Court of Appeals, Eleventh Circuit	April 8, 2009
United States Court of Appeals, Federal Circuit	February 9, 2001
United States Court of Appeals, D.C. Circuit	February 6, 1985
United States Court of International Trade	January 5, 1982
United States Court of Federal Claims	November 16, 2011

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)
3 (dzifkin@bsflp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401,
6 Telephone: (310) 752-2400
7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED
9/19/2016 12:00:00 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 PALANTIR TECHNOLOGIES INC., a
14 Delaware corporation,

15 *Plaintiff,*

16 v.

17 MARC L. ABRAMOWITZ, in his individual
18 capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
20 2, KT4 PARTNERS LLC, a Delaware limited
21 liability company, and DOES 1 through 50,
22 inclusive,

23 *Defendants.*

) Case No. 16CV299476

)
) **DECLARATION OF DAVID L. ZIFKIN**
) **IN SUPPORT OF VERIFIED**
) **APPLICATION OF DAVID BOIES TO**
) **APPEAR *PRO HAC VICE***

) Date: October 21, 2016

) Time: 9:00 a.m.

) Dept.: 1

) Judge: Hon. Peter H. Kirwan

) Complaint Filed: September 1, 2016

) Trial Date: Not set

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I, David L. Zifkin, declare and state as follows:

I am an attorney duly admitted to practice law in the State of California and am a partner with the law firm Boies, Schiller & Flexner, LLP, counsel for Plaintiff Palantir Technologies, Inc. (“Palantir”). I make this declaration in support of the Verified Application of David Boies to Appear *Pro Hac Vice*. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently with respect thereto.

2. I am a member in good standing of the State Bar of California.

3. Copies of the Verified Application of David Boies to Appear *Pro Hac Vice*, as well as the Notice of the Application, and this Declaration are being timely served upon Defendants and on the State Bar of California’s San Francisco office. Additionally, I am causing all applicable fees to be paid. Attached hereto as Exhibit A is a copy of the letter to the State Bar of California attaching this application and payment of the requisite fee to the State Bar of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of September, 2016, at Santa Monica, California.



David L. Zifkin

EXHIBIT A

September 16, 2016

VIA FEDERAL EXPRESS

The State Bar of California
Office of Certification
180 Howard Street
San Francisco, CA 94105

Re: Palantir Technologies Inc. v. Marc L. Abramowitz, et al.
Santa Clara Superior Court Case No. 16CV299476

Dear Sir or Madam:

Enclosed please find the following documents for the Verified Application of David Boies of the law firm Boies, Schiller & Flexner LLP to appear *pro hac vice* on behalf of Palantir Technologies, Inc., in the above-entitled action, along with a check for \$50.00.

1. Notice of Hearing and Verified Application of David Boies to Appear *Pro Hac Vice*;
2. [Proposed] Order Granting Application of David Boies to Appear *Pro Hac Vice*;
and
3. Proof of Service.

Sincerely,

David L. Zifkin/anh

David L. Zifkin

Enclosures

BOIES SCHILLER & FLEXNER LLP
LA EXPENSE ACCOUNT
401 WILSHIRE BLVD STE 850
SANTA MONICA, CA 90401-1453

5006

51-110/211 7796
3520711635

DATE SEPTEMBER 16, 2016

PAY
TO THE
ORDER OF

THE STATE BAR OF CALIFORNIA

\$ 50

FIFTY DOLLARS ONLY

DOLLARS



Wells Fargo Bank, N.A.
Connecticut
wellsfargo.com

FOR

D BOIES PRO HAC VICE

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1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)
3 (dzifkin@bsflp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401,
6 Telephone: (310) 752-2400
7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED

9/19/2016 12:00:00 AM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476

Reviewed By: Rowena Walker

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 PALANTIR TECHNOLOGIES INC., a
14 Delaware corporation,

15 *Plaintiff,*

16 v.

17 MARC L. ABRAMOWITZ, in his individual
18 capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
20 2, KT4 PARTNERS LLC, a Delaware limited
21 liability company, and DOES 1 through 50,
22 inclusive,

23 *Defendants.*

Case No. 16CV299476

**DECLARATION OF DAVID L. ZIFKIN
IN SUPPORT OF VERIFIED
APPLICATION OF JOHN T. ZACH TO
APPEAR PRO HAC VICE**

Date: October 21, 2016

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Peter H. Kirwan

Complaint Filed: September 1, 2016

Trial Date: Not set

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I, David L. Zifkin, declare and state as follows:

I am an attorney duly admitted to practice law in the State of California and am a partner with the law firm Boies, Schiller & Flexner, LLP, counsel for Plaintiff Palantir Technologies, Inc. (“Palantir”). I make this declaration in support of the Verified Application of John T. Zach to Appear *Pro Hac Vice*. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently with respect thereto.

2. I am a member in good standing of the State Bar of California.

3. Copies of the Verified Application of John T. Zach to Appear *Pro Hac Vice*, as well as the Notice of the Application, and this Declaration are being timely served upon Defendants and on the State Bar of California’s San Francisco office. Additionally, I am causing all applicable fees to be paid. Attached hereto as Exhibit A is a copy of the letter to the State Bar of California attaching this application and payment of the requisite fee to the State Bar of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of September, 2016, at Santa Monica, California.



David L. Zifkin

EXHIBIT A

September 16, 2016

VIA FEDERAL EXPRESS

The State Bar of California
Office of Certification
180 Howard Street
San Francisco, CA 94105

Re: Palantir Technologies Inc. v. Marc L. Abramowitz, et al.
Santa Clara Superior Court Case No. 16CV299476

Dear Sir or Madam:

Enclosed please find the following documents for the Verified Application of John T. Zach of the law firm Boies, Schiller & Flexner LLP to appear *pro hac vice* on behalf of Plaintiff Palantir Technologies Inc., in the above-entitled action, along with a check for \$50.00.

1. Notice of Hearing and Verified Application of John T. Zach to Appear *Pro Hac Vice*;
2. [Proposed] Order Granting Application of John T. Zach to Appear *Pro Hac Vice*;
and
3. Proof of Service.

Sincerely,

David J. Zifkin/anh

David L. Zifkin

Enclosures

BOIES SCHILLER & FLEXNER LLP
LA EXPENSE ACCOUNT
401 WILSHIRE BLVD STE 850
SANTA MONICA, CA 90401-1453

5007

57-110/211 7796
0520711635

DATE 9/16/18

PAY
TO THE
ORDER OF

The State Bar of California
F. PLY 00/100

\$ 50,00

DOLLARS

 See the
signature
strip on
back

WELLS FARGO Wells Fargo Bank, N.A.
Connecticut
wellsfargo.com

FOR J. Tech pro linc vial



⑈0000005007⑈ ⑆021101108⑆ 3520711635⑈

1 **BOIES, SCHILLER & FLEXNER LLP**
David Zifkin (SBN232845)
2 (dzifkin@bsflp.com)
3 401 Wilshire Boulevard, Suite 850
4 Santa Monica, CA 90401
Telephone: (310) 752-2400
5 Facsimile: (310) 752-2490

6 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 PALANTIR TECHNOLOGIES INC., a)
12 Delaware corporation,)

13 *Plaintiff,*)

14 v.)

15 MARC L. ABRAMOWITZ, in his individual)
16 capacity and as trustee of the MARC)
17 ABRAMOWITZ CHARITABLE TRUST NO.)
18 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
19 inclusive,)

20 *Defendants.*)
21)
22)

Case No. 16CV299476

PROOF OF SERVICE BY U.S. MAIL

Complaint Filed: September 1, 2016
Trial Date: Not set

PROOF OF SERVICE

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I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401. On September 19, 2016 I served the following document(s):

1. **NOTICE AND VERIFIED APPLICATION OF DAVID BOIES TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**
2. **DECLARATION OF DAVID L. ZIFKIN IN SUPPORT OF VERIFIED APPLICATION OF DAVID BOIES TO APPEAR *PRO HAC VICE***
3. **[PROPOSED] ORDER PERMITTED DAVID BOIES TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**
4. **NOTICE AND VERIFIED APPLICATION OF JOHN T. ZACH TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**
5. **DECLARATION OF DAVID L. ZIFKIN IN SUPPORT OF VERIFIED APPLICATION OF JOHN T. ZACH TO APPEAR *PRO HAC VICE***
6. **[PROPOSED] ORDER PERMITTED JOHN T. ZACH TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**

I personally served the documents on the persons below, as follows:

MARC L. ABRAMOWITZ
3455 WASHINGTON STREET
SAN FRANCISCO, CA 94118

KT4 PARTNERS LLC
C/O AGENT FOR SERVICE:
INCORP SERVICES, INC.
919 NORTH MARKET STREET,
SUITE 425
WILMINGTON, DE 19801

The documents were served by the following means:

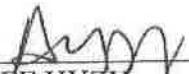
<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input checked="" type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or

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	<p>package addressed to the persons at the addresses listed above and:</p> <p><input checked="" type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.</p> <p><input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.</p>
<input type="checkbox"/>	<p>By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on September 19, 2016 at Santa Monica, California.



AIMEE HYZY

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)

3 (dzifkin@bsfllp.com)

4 401 Wilshire Boulevard, Suite 850

5 Santa Monica, CA 90401,

6 Telephone: (310) 752-2400

7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 PALANTIR TECHNOLOGIES INC., a
14 Delaware corporation,

15 *Plaintiff,*

16 v.

17 MARC L. ABRAMOWITZ, in his individual
18 capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
20 2, KT4 PARTNERS LLC, a Delaware limited
21 liability company, and DOES 1 through 50,
22 inclusive,

23 *Defendants.*

) Case No. 16CV299476

) **[PROPOSED] ORDER PERMITTED**
) **DAVID BOIES TO APPEAR AS**
) **COUNSEL *PRO HAC VICE* FOR**
) **PLAINTIFF PALANTIR**
) **TECHNOLOGIES, INC.**

) Date: October 21, 2016

) Time: 9:00 a.m.

) Dept.: 1

) Judge: Hon. Peter H. Kirwan

) Complaint Filed: September 1, 2016

) Trial Date: Not set

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The verified application of David Boies of Boies, Schiller & Flexner LLP to appear as counsel *pro hac vice* for Plaintiff Palantir Technologies, Inc. (“Palantir”) was filed on September 17, 2016.

Having considered the papers submitted in support of the verified application of David Boies to appear *pro hac vice* and good cause appearing,

IT IS HEREBY ORDERED that the verified application of David Boies of Boies, Schiller & Flexner LLP to appear in the above-captioned matter as counsel *pro hac vice* for Palantir, pursuant to Rule 9.40 of the California Rules of Court, is GRANTED.

IT IS SO ORDERED.

DATED: _____, 2016

Honorable Peter H. Kirwan
Judge of the Superior Court for the State of California

1 **BOIES, SCHILLER & FLEXNER LLP**
2 David Zifkin (SBN232845)
3 (dzifkin@bsfllp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401,
6 Telephone: (310) 752-2400
7 Facsimile: (310) 752-2490
8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13	PALANTIR TECHNOLOGIES INC., a	)	Case No. 16CV299476
14	Delaware corporation,)	
15	<i>Plaintiff,</i>	)	[PROPOSED] ORDER PERMITTED
16	v.	)	JOHN T. ZACH TO APPEAR AS
17		)	COUNSEL <i>PRO HAC VICE</i> FOR
18		)	PLAINTIFF PALANTIR
19		)	TECHNOLOGIES, INC.
20	MARC L. ABRAMOWITZ, in his individual)	
21	capacity and as trustee of the MARC	)	Date: October 21, 2016
22	ABRAMOWITZ CHARITABLE TRUST NO.	)	Time: 9:00 a.m.
23	2, KT4 PARTNERS LLC, a Delaware limited	)	Dept.: 1
24	liability company, and DOES 1 through 50,	)	Judge: Hon. Peter H. Kirwan
25	inclusive,)	
26	<i>Defendants.</i>)	Complaint Filed: September 1, 2016
27)	Trial Date: Not set
28)	

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The verified application of John T. Zach of Boies, Schiller & Flexner LLP to appear as counsel *pro hac vice* for Plaintiff Palantir Technologies, Inc. (“Palantir”) was filed on September 17, 2016.

Having considered the papers submitted in support of the verified application of John T. Zach to appear *pro hac vice* and good cause appearing,

IT IS HEREBY ORDERED that the verified application of John T. Zach of Boies, Schiller & Flexner LLP to appear in the above-captioned matter as counsel *pro hac vice* for Palantir, pursuant to Rule 9.40 of the California Rules of Court, is GRANTED.

IT IS SO ORDERED.

DATED: _____, 2016

Honorable Peter H. Kirwan
Judge of the Superior Court for the State of California

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): none, none Boies, Schiller & Flexner, LLP 1999 Harrison Street, Suite 900 Oakland, CA 94612		TELEPHONE NO.: 510) 874-1000 Ext 100	FOR COURT USE ONLY	
ATTORNEY FOR (Name): Plaintiff		Ref. No. or File No. None	OCT -4 2016	
Insert name of court, judicial district or branch court, if any: Superior Court of California, Santa Clara County Santa Clara - First Street 191 N. First Street San Jose, CA 95113-1090		David By: [Signature] County of Santa Clara, California		
PLAINTIFF: PALANTIR TECHNOLOGIES INC				
DEPENDANT: MARC L. ABRAMOWITZ				
PROOF OF SERVICE	DATE: 10/21/2016	TIME: 9:00AM	DEPT/DIV: 1	CASE NUMBER: 16cv299476

1. At the time of service I was a citizen of the United States, over 18 years of age and not a party to this action, and I served copies of: Notice & Verified Application of David Boies to Appear as Counsel Pro Hac Vice for Palantir Technologies, Inc., Declaration of David L. Zifkin, Proposed Order, Notice & Verified Application of John T. Zach to Appear as Counsel Pro Hac Vice for Plaintiff Palantir Technologies, Inc., Declaration of David L. Zifkin, Proposed Order

2. Party Served: KT4 PARTNERS, LLC

3. Person Served: Dawn Hunter, Processor - INCORP SERVICES, INC.
Person Authorized to Accept Service of Process

4. Date & Time of Delivery: 09/19/2016 3:45PM

5. Address, City and State: 919 NORTH MARKET STREET, SUITE 425
WILMINGTON, DE 19801

6. Manner of Service: Personal Service - By personally delivering copies.

BY FAX

Fee for Service: \$ 249.95

Not a registered California process server.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Michelle L. McLean
One Legal - 194-Marin
504 Redwood Blvd #223
Novato, CA 94947
415-491-0606

Signature: Michelle L. McLean
Michelle L. McLean

OL# 10553924

ATTORNEY OR BY WITHOUT ATTORNEY (Name and Address) David Zilkkin, SBN232845 Boies, Schiller & Flexner, LLP 1999 Harrison Street, Suite 900 Oakland, CA 94612		TELEPHONE NUMBER (510) 874-1000 Ext 1009	FOR COURT USE ONLY FILED OCT - 4 2016 David L. Zilkkin, Clerk of Superior Court County of Santa Clara, California By: _____ State Seal	
ATTORNEY FOR (Name): Plaintiff		Ref. No. or File No. None		
Insert name of court, judicial district or branch court, if any: Superior Court of California, Santa Clara County 191 N. First Street San Jose, CA 95113-1090				
PLAINTIFF: PALANTIR TECHNOLOGIES INC				
DEFENDANT: MARC L. ABRAMOWITZ				
MANNER OF SERVICE PROOF OF HAND DELIVERY	DATE: 10/21/2016	TIME: 9:00AM	DEPT/DIV: 1	CASE NUMBER: 16cv299476

At the time of service I was a citizen of the United States, over 18 years of age and not a party to this action, and I served copies of the following:

Notice and Verified Application of David Boies to Appear as Counsel Pro Hac Vice for Plaintiff Palantir Technologies, Inc, Declaration of David L. Zilkkin In support of Verified Application of David Boies To Appear Pro Hac Vice, [Proposed] Order Permitt David Boies to Appear as Counsel Pro Hac Vice For Plaintiff Palantir Technologies, Inc. Notice and Verified Application of John T

NAME OF PARTY: Marc Abramowitz

DELIVERED TO: Anita-Wife - Co-Occupant

DATE & TIME OF DELIVERY: 09/19/2016 3:08PM

BY FAX

ADDRESS, CITY, AND STATE: 3455 WASHINGTON STREET
 San Francisco, CA 94118

MANNER OF SERVICE:

Service was made by leaving a copy of the documents at the residence or business with a person over the age of 18 between the hours of eight in the morning and six in the afternoon; or if no one over the age of 18 was found, service was made by mail to the party at their address. [CCP 1011(b)]

Fee for Service: \$ 115.95

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 09/21/2016

Nate Freed

Registered California Process Server: SAN FRANCISCO

Registration No. 2014-0001180

One Legal - 194-Marin

504 Redwood Blvd #223

Novato, CA 94947

415-491-0606

182(a)(23)(New July 1, 1987)

Signature

NATE FREED

1 **BOIES, SCHILLER & FLEXNER LLP**
David Zifkin (SBN232845)
2 (dzifkin@bsflp.com)
3 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401
4 Telephone: (310) 752-2400
Facsimile: (310) 752-2490
5 *Additional counsel identified on signature page*

E-FILED
9/19/2016 12:00:00 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

6 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 PALANTIR TECHNOLOGIES INC., a)
12 Delaware corporation,)
13 *Plaintiff,*)
14 v.)
15 MARC L. ABRAMOWITZ, in his individual)
16 capacity and as trustee of the MARC)
17 ABRAMOWITZ CHARITABLE TRUST NO.)
18 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
19 inclusive,)
20 *Defendants.*)

Case No. 16CV299476
**NOTICE AND VERIFIED APPLICATION
OF JOHN T. ZACH TO APPEAR AS
COUNSEL PRO HAC VICE FOR
PLAINTIFF PALANTIR
TECHNOLOGIES, INC.**
Date: October 21, 2016
Time: 9:00 a.m.
Dept.: 1
Judge: Hon. Peter H. Kirwan
Complaint Filed: September 1, 2016
Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on October 21, 2016, in
3 Department 1 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Peter H. Kirwan, presiding, Plaintiff Palantir Technologies, Inc.
5 (“Palantir”) will apply for an order permitting John T. Zach of the law firm of Boies, Schiller &
6 Flexner LLP to appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 The application is made pursuant to Rule 9.40 of the California Rules of Court and is
8 based on this Notice and the attached Application. Rule 9.40 provides that a person “who is not a
9 member of the State Bar of California but who is a member in good standing of and eligible to
10 practice before the Bar of any United States Court or the highest court in any state,” and “who has
11 been retained to appear in a particular cause pending in a court of this state, may in the discretion
12 of the court be permitted upon written application to appear as counsel *pro hac vice*, provided that
13 an active member of the State Bar of California is associated as counsel of record.”

14 This application is necessary because Palantir anticipates that the participation and
15 appearance of John T. Zach of Boies, Schiller & Flexner LLP will be required on its behalf. As
16 set forth in the attached Application of John T. Zach, all requirements of Rule 9.40 have been
17 met. Proper and timely notice of this application will be given to the Defendants and to the State
18 Bar of California at its San Francisco address. A copy of the letter to the State Bar of California
19 attaching this application and payment of the requisite fee to the State Bar of California is
20 attached to the Declaration of David L. Zifkin.

21 Accordingly, John T. Zach respectfully requests permission to appear as counsel *pro hac*
22 *vice* in the above-captioned matter on behalf of Palantir.

23
24 Dated: September 16, 2016

BOIES, SCHILLER & FLEXNER LLP

25
26 

27 By: _____
David Zifkin (SBN232845)
28 (dzifkin@bsflp.com)

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John T. Zach (*Pro Hac Vice* to be filed)
(jzach@bsflp.com)
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

Carlos M. Sires (*Pro Hac Vice* to be filed)
(csires@bsflp.com)
401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022
Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

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VERIFIED APPLICATION TO APPEAR PRO HAC VICE

I, John T. Zach, apply for admission to practice before this Court *pro hac vice*, in order to represent Plaintiff Palantir Technologies, Inc. (“Palantir”) in this action. In support of this application, I state the following:

1. I have been retained by Palantir to appear in this action as an attorney on its behalf.

2. I am not a resident of the State of California. I do not regularly practice law in the State of California. I am not regularly employed in the State of California or engaged in any substantial business, professional, or other activities in the State of California.

3. My residential address is 100 West 119th Street, Apt. 4D, New York, NY 10026.

4. My business address is Boies, Schiller & Flexner LLP, 575 Lexington Ave, 7th Floor, New York, NY 10022.

5. I was admitted to the Bar of the State of New York on June 10, 2002 (State Bar No. 4064390).

6. I am a member in good standing of the bars of all courts to which I have been admitted.

7. I am not suspended or disbarred in any court.

8. In the preceding two years, I have applied to appear *pro hac vice* in the following matter pending in California state court: *Monster et al. v. Beats, et al.*, Case No. BC595235 (application granted July 7, 2016).

9. In the preceding two years, I have not applied to appear *pro hac vice* in any matters pending in federal district courts located in California.

10. David L. Zifkin (State Bar No. 232845) of Boies, Schiller & Flexner LLP is an attorney of record for Palantir in this action. His business address and telephone number are as follows: 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401; 310-752-2400.

11. The matters stated herein are true based on my own personal knowledge. I declare under penalty of perjury under the laws of the State of California and the United States

1 of America that the foregoing is true and correct.

2 Executed on September 16, 2016, at NY, NY.

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6 John T. Zach

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1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Boies (*Pro Hac Vice* appl. pending)
3 (dboies@bsfllp.com)
4 333 Main Street
5 Armonk, NY 10504
6 Telephone: (914) 749-8200
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8 David Zifkin (SBN 232845)
9 (dzifkin@bsfllp.com)
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12 401 Wilshire Boulevard, Suite 850
13 Santa Monica, CA 90401,
14 Telephone: (310) 752-2400
15 Facsimile: (310) 752-2490

16 *Additional counsel identified on signature page*

17 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED
9/23/2016 5:04:54 PM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SANTA CLARA**

20 **UNLIMITED JURISDICTION**

21 PALANTIR TECHNOLOGIES INC., a
22 Delaware corporation,

23 *Plaintiff,*

24 v.

25 MARC L. ABRAMOWITZ, in his individual
26 capacity and as trustee of the MARC
27 ABRAMOWITZ CHARITABLE TRUST NO.
28 2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

) Case No. 16CV299476
)
) **FIRST AMENDED COMPLAINT FOR:**
) (1) Breach of Contract
) (2) Breach of the Implied Covenant of Good
) Faith and Fair Dealing
) (3) Violation of Cal. Civ. Code § 3426 et seq.
) (4) Declaratory Relief
) (5) Violation of California’s Unfair
) Competition Law, Cal. Bus. & Prof. Code §
) 17200 et seq.
) **JURY TRIAL DEMAND**
)
) Complaint Filed: September 1, 2016
) Trial Date: Not set

1 Plaintiff Palantir Technologies Inc. (“Palantir”), for its First Amended Complaint against
2 defendants Marc L. Abramowitz (“Abramowitz”), both in his individual capacity and as trustee of
3 the Marc Abramowitz Charitable Trust No. 2 (the “Trust”), KT4 Partners LLC (“KT4”), and
4 Does 1 through 50 (collectively with Abramowitz, KT4, and the Trust, “Defendants”), alleges as
5 follows:

6 **NATURE OF THE ACTION**

7 1. This is an action to stop Defendants from misappropriating Palantir’s confidential
8 information and proprietary trade secrets for their own benefit and to prevent them from receiving
9 any additional confidential or proprietary information from Palantir pursuant to an Investors’
10 Rights Agreement.

11 2. Abramowitz was a respected confidant and advisor to Palantir and its senior
12 executives until he betrayed the trust they bestowed upon him for his own personal gain. He was,
13 through KT4 and other entities, an early equity investor in Palantir who personally engaged in
14 regular discussions with executives about some of the company’s most sensitive business
15 strategies and trade secrets. Those discussions were highly confidential, as was made clear by
16 express written agreements among the parties at the time and a course of dealing based on the
17 most basic principles of fairness and honesty between a trusted shareholder and advisor and
18 Palantir’s management and business personnel.

19 3. Nonetheless, as part of brazen scheme to claim Palantir’s own highly confidential
20 information and trade secrets as his own, Abramowitz stole those secrets, engaged in methodical
21 deception of Palantir’s senior executives, and made false claims to the United States Patent and
22 Trademark Office (USPTO). Abramowitz’s claim to be a patent innovator is directly
23 contradicted by the facts surrounding his professional career and his interactions with Palantir.

24 4. To start, Abramowitz has no notable history as an inventor or patent innovator in
25 the data analysis area. He has made most of his career and fortune in real estate and buyout
26 investing. Yet, beginning in 2014, Abramowitz suddenly filed five patent applications with the
27 USPTO, all of them based on trade secrets he stole from Palantir. This was plainly illegal and
28 highly unethical conduct, and it was a betrayal of his trusted relationship with Palantir and its

1 executives.

2 5. But Abramowitz's scheme did not end there. After stealing from Palantir, he hired
3 lawyers to demand from Palantir sensitive and confidential information about the company,
4 including its finances and business dealings, which Palantir considers to be, and treats as, highly
5 sensitive and confidential. Having uncovered Abramowitz's breach of Palantir's trust (and of his
6 contractual obligations to Palantir under multiple agreements), it is apparent that Abramowitz is
7 not seeking this information in good faith or for a proper purpose. In fact, unlike Palantir's other
8 investors, history has shown that Abramowitz has and will misuse any information provided to
9 him in breach of confidence, causing Palantir irreparable harm in the process.

10 6. Palantir now has been forced to protect itself, both through amendments to its
11 corporate documents, through actions before the USPTO, and through this action, by which
12 Palantir seeks redress for Abramowitz's breaches of contract, breaches of confidence, and misuse
13 of Palantir's confidential and proprietary information and trade secrets. Further, to protect
14 Palantir and its shareholders—including employees, former employees and other investors—from
15 continued breaches of confidence in the future, Palantir seeks a declaratory judgment that
16 Abramowitz has no right to the information he has demanded under the Investors' Rights
17 Agreement.

18 **PARTIES, JURISDICTION, AND VENUE**

19 7. The Court has jurisdiction over this action by virtue of Article VI § 10 of the
20 California Constitution and California Code of Civil Procedure § 410.10.

21 8. Palantir is a Delaware corporation with its principal place of business at 100
22 Hamilton Avenue, Palo Alto, California, 94301. Palantir has suffered, and continues to suffer,
23 injury in this jurisdiction by reason of Defendants' actions.

24 9. Palantir is informed and believes and on that basis alleges that defendant Marc L.
25 Abramowitz is an individual residing in San Francisco, California. Palantir is informed and
26 believes and on that basis alleges that Abramowitz is the trustee of the Marc Abramowitz
27 Charitable Trust No. 2. The wrongful actions of Abramowitz occurred in, were targeted to, and
28 caused damage in, California.

1 10. Palantir is informed and believes and on that basis alleges that defendant KT4
2 Partners LLC is a Delaware limited liability company with its principal place of business in San
3 Francisco, California. On information and belief, KT4 does business in California and has
4 committed acts that submit it to the jurisdiction of California's courts. Upon information and
5 belief, Abramowitz is the sole member of KT4 and controls and directs the activities of KT4. The
6 wrongful actions of KT4 occurred in, were targeted to, and caused damage in, California.

7 11. Palantir is ignorant of the true names of Does 1 through 50 and such names are
8 fictitious. Such defendants are legally responsible for the events and happenings described herein
9 and for the damages proximately caused thereby. Once Palantir learns of the true names of Does
10 1 through 50, Palantir will amend the complaint to include the real name(s) of such party or
11 parties.

12 12. This action is founded on injuries and damages suffered by Palantir in Santa Clara
13 County by virtue of the Defendants' misappropriation of trade secrets, breach of contract, breach
14 of confidence and other illegal and wrongful acts as alleged in this Complaint. Venue is proper in
15 this Court because Plaintiff resides in this County, the harm caused by Defendants occurred in
16 this County, and the events that form the basis for this Complaint largely took place in this
17 County.

18 **FACTUAL BACKGROUND**

19 **Palantir's Business and the Trade Secrets at Issue**

20 13. Palantir is a software and services company that specializes in data analytics. In
21 2004, Palantir was founded on a vision: to provide solutions not only to problems then faced by
22 business and government, but also solutions to problems that did not yet exist, but that would
23 surely come to be as part of our rapidly-evolving world. It sought to make this vision a reality by
24 the use of technology. And it embarked on an ambitious, time-consuming, and costly endeavor to
25 create a viable, successful business. As a result of hard work and investment, Palantir has
26 succeeded and is now a leader in its industry. Today, Palantir's products are deployed at the most
27 critical government, commercial, and non-profit institutions in the world to solve problems the
28 company's founders had not even dreamed of back in 2004.

1 14. In particular, at its founding Palantir set out to create products that would
2 transform the way organizations use, perhaps their most important asset in today's business
3 world, data. Palantir's mission has been and remains to develop flexible tools and services to
4 provide human-driven analysis of real-world data, with a focus on creating the world's best user
5 experience for working with data. To achieve this, Palantir builds platforms for integrating,
6 managing, and securing data, on top of which it layers applications for fully interactive, human-
7 driven, machine-assisted analysis. This means that Palantir develops programs and provides
8 services that allow businesses, governments and other entities to run their operations in a way that
9 corresponds with the reality of their marketplace and consumers.

10 15. Businesses and governments use Palantir's software to interpret and visualize large
11 quantities of information from various sources. For example, businesses use Palantir's software
12 to analyze their internal and externally available data to better assess cyber risks, and government
13 agencies use Palantir's software to analyze intelligence data to better understand emerging
14 threats.

15 16. Palantir's success is due in part to its early recognition that many organizations are
16 traditionally unable to identify problems and leverage insights from their internal data because the
17 data is held in separate silos that are often disconnected and have different access, security
18 controls, and privacy requirements. When information is siloed—that is, when important
19 information is stored in containerized, unrelated units—businesses and governments cannot fully
20 realize the potential of that data. Palantir provides software solutions that avoid this problem,
21 allowing users to run their businesses consistent with the actual environment in which they
22 operate. Thus, Palantir's products are used to fuse and analyze customer data across platforms
23 and sources and enable secure collaboration among analysts, while protecting data privacy and
24 security.

25 17. As is expected in this type of work, Palantir is also heavily involved in research
26 and development. Palantir spends millions of dollars each year to expand its business and seek
27 out new opportunities—and to stay ahead of the curve and atop the industry. This research and
28 development investment involves both creating new software, technologies and processes and

1 adapting existing products and technologies to new applications and uses.

2 18. As described in more detail below, this litigation concerns, among other things,
3 Defendants' misappropriation of Palantir's proprietary trade secret and business information
4 concerning Palantir's technologies and/or use cases for (i) interpreting and analyzing data in the
5 healthcare space for clinical drug trials and for health insurance risk assessments (the "Healthcare
6 Technology"); (ii) cyber insurance technology and related cybersecurity technology for use of
7 customer consortia to improve cybersecurity; (the "Cyber Insurance and Cybersecurity
8 Technology"); and (iii) interpreting and analyzing data in connection with natural resources
9 exploration and management (the "Natural Resources Exploration Technology"). It also concerns
10 Defendants' misappropriation of Palantir's trade secret business plans and customer lists related
11 to these technologies. Palantir employed reasonable efforts to maintain the secrecy of these trade
12 secrets, which have had substantial economic value because they were not generally known to the
13 public or others in the industry at the time of Defendants' misappropriation.

14 **Palantir Scrupulously Protects Its Confidential Information and Trade Secrets**

15 19. Palantir undertakes significant efforts to protect the confidentiality and security of
16 its trade secrets, property (including physical locations, intellectual property, and network
17 security), as well as sensitive and confidential business and financial information.

18 20. Palantir employs both technical and physical safety measures to maintain the
19 security of its property and confidential information. Among other things, Palantir restricts
20 employees' access to sensitive internal information such that individual employees can only
21 access such data after obtaining appropriate authorization and only to the extent necessary to
22 perform their jobs. Additionally, Palantir employs a multitude of technical security measures to
23 protect its systems and networks, including, among other methods: intrusion detection systems,
24 network monitoring tools, anti-malware software, network firewalls, and whole disk encryption
25 of employee computers. Palantir's network and security systems are also continually monitored
26 for potential security risks. To secure access to information and data no matter where employees
27 are, Palantir uses and requires complex password requirements and two-factor authentication for
28 access to its hardware and its network.

1 21. In addition to data and network security, physical access to Palantir's facilities is
2 also highly restricted. Palantir employees must use electronic badges to access Palantir facilities.
3 Access to certain sensitive areas of Palantir's facilities is further restricted to a small subset of
4 Palantir employees with a specific need for access (including, for example, Palantir facilities
5 containing network servers and security equipment, among others). Visitors must be invited to
6 Palantir facilities, must sign in and wear a visitor badge and are escorted at all times. In addition,
7 certain areas of Palantir's facilities are off limits to visitors, and Palantir deploys security guards
8 to protect its facilities.

9 22. Palantir also implements numerous measures and policies to ensure that its
10 employees safeguard the confidentiality and security of its trade secrets and sensitive and
11 confidential business information. As part of the hiring process, Palantir requires pre-
12 employment background checks for all new employees and also requires legal training for new
13 hires, covering confidentiality, information and data security, and compliance.

14 **Abramowitz's Relationship with Palantir**

15 23. Initial funding for Palantir came from a variety of sources, including the
16 company's founders who remain with Palantir today as shareholders of common shares of
17 Palantir stock. Abramowitz, through KT4 and other entities he controls, was an early investor in
18 Palantir, first investing in the company in 2005.

19 24. Through the years, Abramowitz was involved with the business of Palantir.
20 Rather than acting as a passive investor, he became a regular fixture at Palantir. Between 2010
21 and 2015, Abramowitz visited Palantir offices over thirty times. Indeed, Abramowitz spent so
22 much time at Palantir that in 2014 he requested an office at the company.

23 25. Abramowitz established relationships with the company's founders, officers, and
24 employees. As a result, he was viewed as a trusted investor and advisor by the company,
25 including several founders and senior employees. Abramowitz fostered these relationships of
26 confidence and held himself out as a friend of, advisor to, and investor in Palantir, whose interests
27 were completely aligned with the company. He made clear that he could be trusted to keep
28 confidences and act in the company's best interests. When Abramowitz had questions about

1 Palantir's business, including financial information, that were relevant to his status as a
2 shareholder and trusted advisor to the company, he was provided with the information.

3 26. In this context, Abramowitz often inquired about specific Palantir projects. On
4 several occasions, Palantir provided information to Abramowitz in his capacity as a shareholder
5 and advisor about concepts for new technology and use cases for technology that Palantir had
6 spent significant time and resources researching, developing and testing, including the Healthcare
7 Technology, Cyber Insurance and Cybersecurity Technology, and Natural Resources Exploration
8 Technology. At Abramowitz's request, Palantir also provided him with information about
9 proprietary business plans and customer lists for these technologies. Palantir always provided
10 any such information to Abramowitz with the express and reasonable expectation that
11 Abramowitz would maintain its confidentiality, that he would never pass Palantir's concepts and
12 trade secrets off as his own, and that he would never use the information to Palantir's detriment or
13 without Palantir's permission.

14 27. Consistent with the confidential nature of these communications, Palantir and
15 Abramowitz entered into confidentiality agreements.

16 28. For example, in a Preferred Stock Transfer Agreement, dated August 14, 2012,
17 Abramowitz agreed "to keep confidential and refrain from using or disclosing all agreements,
18 documents and other information regarding the Company or its securityholders provided or made
19 available to [Abramowitz]...in [his] capacity as a stockholder of the Company...." Abramowitz
20 renewed that confidentiality agreement in a Preferred Stock Transfer Agreement, dated June 17,
21 2015.

22 29. Similarly, in a Preferred Stock Transfer Agreement also dated June 17, 2015, KT4
23 agreed "to keep confidential and refrain from using or disclosing all agreements, documents and
24 other information regarding the Company or its securityholders provided or made available to
25 [Abramowitz]...in [his] capacity as a stockholder of the Company...."

26 30. Abramowitz also executed an NDA, dated July 12, 2014 (the "July 2014 NDA"),
27 covering "Proprietary Information," which is defined in the NDA as "non-public business,
28 technical or other information, materials and/or ideas of Palantir [including] anything you learn or

1 discover as a result of exposure to or analysis of any Proprietary Information.” The NDA
2 expressly forbids Abramowitz from using or revealing any of Palantir’s Proprietary Information.

3 **Abramowitz Misappropriation of Business Information and Trade Secrets**

4 31. By 2014, Abramowitz had embarked on an intentional and calculated scheme to
5 discover Palantir trade secrets and convert them for his own use and profit. Abramowitz violated
6 the trust Palantir put in him by, at a minimum, misappropriating the above-described trade secrets
7 related to the Healthcare Technology, the Cyber Insurance and Cybersecurity Technology, and
8 the Natural Resources Exploration Technology.

9 32. **The Healthcare Technology.** Since 2010, Palantir worked extensively to identify
10 the most effective way to enter and advance the clinical trial space. As a result of this work,
11 Palantir developed proprietary and trade secret technology and data analytics services to improve
12 the design of clinical trials of prescription drugs by pharmaceutical companies and academic
13 institutions. For example, this proprietary technology and data analytics services can interpret
14 and analyze various data for purposes of patient recruitment in clinical trial. In conjunction with
15 developing this technology, Palantir developed proprietary business plans, customer lists and use
16 cases that are also trade secrets. Palantir has made reasonable efforts to maintain the
17 confidentiality of these trade secrets.

18 33. In the healthcare space, Palantir also worked extensively to develop proprietary
19 technology and data analytic services to perform insurance risk assessments, including, for
20 example, patient diagnoses not accounted for by health insurance companies and healthcare fraud
21 risks. In conjunction with developing this technology, Palantir developed proprietary business
22 plans, customer lists and use cases that are also trade secrets. Palantir has made reasonable
23 efforts to maintain the confidentiality of these trade secrets.

24 34. As a trusted investor and advisor, Abramowitz learned proprietary trade secret
25 information concerning the Healthcare Technology through his communications with Palantir
26 about Palantir’s research and development work, technology, business plans, use cases, and
27 customer lists in this area.

28 35. At all times, Abramowitz knew that this information was confidential and

1 proprietary, and that he needed Palantir's permission before disclosing any of it. As described
2 above, Abramowitz entered into confidentiality agreements with Palantir. Moreover, in his
3 communications with Palantir, Abramowitz made clear that he understood the information
4 Palantir provided to him was confidential.

5 36. In February 2014, Abramowitz sought to broker a deal between Palantir and a
6 customer. Had the introduction resulted in a finalized deal, Abramowitz would have received a
7 fee for the introduction. Consistent with the confidential nature of their communications, the
8 draft agreement between Abramowitz and Palantir for this fee contains a confidentiality
9 provision. Even though this potential customer understood that it was also obligated to maintain
10 the confidentiality of any information received, Palantir advised Abramowitz that he could
11 provide this potential customer only with limited information.

12 37. After it was clear that the introduction would not result in a finalized deal – and
13 despite knowing that Palantir invented the Healthcare Technology and that it was confidential
14 trade secret information – Abramowitz misappropriated Palantir's inventions and trade secrets in
15 this space, has improperly disclosed them in an effort to profit from them, and has attempted to
16 patent them as his own.

17 38. On October 29, 2014, without Palantir's knowledge or consent, Abramowitz filed
18 Provisional Application No. 62/072,368 with the United States Patent and Trademark Office
19 ("USPTO") seeking to patent systems, methods and concepts concerning the Healthcare
20 Technology that were developed by Palantir and explained to Abramowitz in confidence. The
21 application falsely identifies Abramowitz as the sole inventor of the Healthcare Technology,
22 includes no mention of Palantir at all, and fails to list a single Palantir employee as an inventor.

23 39. On information and belief, in his effort to market the Healthcare Technology as his
24 own and to profit from it, Abramowitz has also improperly disclosed trade secret information
25 related to the Healthcare Technology to others.

26 40. In addition to misappropriating Palantir's trade secret Healthcare Technology,
27 Defendants breached their confidentiality agreements when they filed the patent application and
28 disclosed Palantir's confidential information to others.

1 41. **The Cyber Insurance and Cybersecurity Technology.** Palantir engaged in
2 research and development to build technology to assist companies in the cyber insurance and
3 cybersecurity space. Beginning in 2013, Palantir began developing trade secret systems and
4 methods for companies to better defend themselves against cyberattacks to their networks by
5 sharing cyberattack data among various participants in Palantir’s system. Palantir developed
6 trade secret technology, business plans, use cases, and customer lists to implement these
7 cybersecurity systems and methods. Palantir often referred to this project as “CyberMesh” or
8 “Cyber Consortium.” Additionally, Palantir developed related systems, methods, technologies,
9 business plans, uses cases, and customer lists that were specific to improving cyber insurance.
10 For example, Palantir expanded upon its existing cyber security technologies to develop
11 technology to more accurately measure the risk of a cyberattack and thus enable insurers to
12 provide products to protect customers against the risk of cyberattacks. Palantir has made
13 reasonable efforts to maintain the confidentiality of these trade secrets.

14 42. Abramowitz requested information and participated in discussions about Palantir’s
15 Cyber Insurance and Cybersecurity Technology trade secrets.

16 43. In June 2014, a Palantir executive disclosed to Abramowitz during a conversation
17 that Palantir was working on opportunities in the insurance industry, including opportunities
18 related to cyber insurance. When Abramowitz expressed interest in these concepts and requested
19 additional information, the Palantir executive arranged for Abramowitz to speak with another
20 Palantir executive, who sent Abramowitz trade secret information on these concepts via email and
21 invited Abramowitz to meet with him at Palantir’s offices to discuss them. During his June 2014
22 meeting with Abramowitz, this Palantir executive further described the two related concepts that
23 Palantir had developed relating to cyber insurance and the use of customer consortia to improve
24 cyber security.

25 44. When Abramowitz next met with Palantir on the subject, he indicated he was
26 interested in setting up a Palantir subsidiary that he would run to perform the insurance-related
27 function Palantir had revealed to him. This once again reflects that Abramowitz’s participation in
28 the discussions in June 2014 were confidential communications made solely for the benefit and

1 interest of Palantir. Palantir ultimately decided not pursue the subsidiary Abramowitz suggested.

2 45. After Palantir decided not to pursue the subsidiary Abramowitz desired – and
3 despite knowing that Palantir invented the Cyber Insurance and Cybersecurity Technology and
4 that it was confidential trade secret information – Abramowitz misappropriated Palantir’s
5 inventions and trade secrets in this space, has improperly disclosed them in an effort to profit
6 from them, and has attempted to patent them as his own.

7 46. Without Palantir’s knowledge, on October 21, 2014, Abramowitz filed Provisional
8 Application No. 62/066,716 at the USPTO attempting to patent systems, methods and concepts
9 related to Palantir’s Cyber Insurance and Cybersecurity Technology as his own, claiming to be
10 the invention’s sole owner and inventor. Once again, Abramowitz’s application fails to mention
11 Palantir and does not include a single Palantir employee as an inventor.

12 47. Presumably unbeknownst to Abramowitz, Palantir had filed its own patent
13 application on certain inventions related to the Cyber Insurance and Cybersecurity Technologies,
14 on May 16, 2014, months before Abramowitz learned of the systems, methods, techniques and
15 concepts from Palantir; that application resulted in United States Patent No. 9,009,827, dated
16 April 14, 2015, which is owned by Palantir and was invented by Palantir employees. During the
17 pendency of that application, the information contained in it remained confidential trade secret
18 information. Moreover, that patent application and patent does not disclose other trade secret
19 information related to the Cyber Insurance and Cybersecurity Technology (e.g., business plans,
20 use cases), which was disclosed to Abramowitz in confidence.

21 48. On information and belief, in his effort to market the Cyber Insurance and
22 Cybersecurity Technology as his own and to profit from it, Abramowitz has also improperly
23 disclosed trade secret information related to the Cyber Insurance and Cybersecurity Technology
24 to others.

25 49. In addition to misappropriating Palantir’s trade secret Cyber Insurance and
26 Cybersecurity Technology, Defendants breached their confidentiality agreements when
27 Abramowitz filed the patent application and disclosed Palantir’s confidential information to
28 others.

1 50. **The Natural Resources Exploration Technology.** Palantir engaged in research
2 and development to create a more effective way for natural resources exploration companies to
3 mine data. Palantir was able to adapt its existing data analysis technologies to develop this new
4 proprietary and trade secret technology. In conjunction with developing this valuable technology,
5 Palantir also developed proprietary business plans, use cases and customer lists that are also trade
6 secret. Palantir has made reasonable efforts to maintain the confidentiality of these trade secrets.

7 51. After discussions with Palantir employees concerning Palantir's work on adapting
8 its data analysis technology for use in oil and gas exploration, Abramowitz again sought to patent
9 Palantir's systems, methods and concepts by filing Provisional Application No. 62/094,888 with
10 the USPTO on December 19, 2014, and falsely claiming to be the sole owner and inventor. As
11 with his other applications described above, Abramowitz filed the application without Palantir's
12 knowledge or consent and failed to credit Palantir or its employees in any way.

13 52. On information and belief, in his effort to market the Natural Resources
14 Exploration Technology as his own and to profit from it, Abramowitz has also improperly
15 disclosed trade secret information related to the Natural Resources Exploration Technology to
16 others.

17 53. In addition to misappropriating Palantir's trade secret Natural Resources
18 Exploration Technology, Defendants breached their confidentiality agreements when they filed
19 the patent application and disclosed Palantir's confidential information to others.

20 54. After Palantir learned of one of Abramowitz's improper patent applications, a
21 Palantir employee asked him about it. At that time, Abramowitz claimed that he filed the patent
22 application for Palantir's benefit. That statement was plainly false, and was presumably designed
23 to induce Palantir to delay challenging Abramowitz's patent application and filing suit for
24 misappropriation of trade secrets and breach of contract. Indeed, Abramowitz has neither
25 withdrawn any of his improper patent applications nor amended them to indicate that Palantir is
26 the inventor and owner of the systems, methods and concepts described therein.

27 55. Through his scheme, Abramowitz intentionally abused his status as an investor
28 and trusted advisor in an attempt to profit at Palantir's expense by improperly using and

1 disclosing multiple Palantir trade secrets and improperly attempting to patent them as his own.
2 On information and belief, despite Abramowitz's lack of experience in these areas, he is
3 attempting to market them as his own. Additionally, he could, for example, attempt to use
4 Palantir's trade secrets to hold Palantir hostage in exchange for royalties. Abramowitz's actions
5 are causing Palantir irreparable harm, and Palantir is therefore separately seeking to have
6 Abramowitz's patent applications denied by the USPTO.

7 56. The foregoing facts are not the only indications that Abramowitz has sought to
8 profit from Palantir's trade secrets. As Abramowitz knows, Palantir's company name is inspired
9 by the "seeing stones" referenced in The Lord of the Rings. Without Palantir's knowledge,
10 Abramowitz filed for a trademark on the mark "Shire," which is also referenced in The Lord of
11 the Rings as the place where one of the main characters lives. It is clear that Abramowitz has
12 filed this trademark application in an attempt to further improperly associate himself with what he
13 views as the Palantir brand.

14 57. Significantly, Abramowitz filed this trademark application with an intent to use the
15 mark in connection with "underwriting and administration of cyber liability insurance;
16 underwriting and administration of cyber security insurance; insurance brokerage in the field of
17 cyber liability and cyber security insurance." This further reflects that Abramowitz is using, and
18 intends to continue to use, Palantir's trade secrets in these areas.

19 **Abramowitz Demands Information Under the Investors' Rights Agreement**

20 58. In furtherance of his scheme, on August 16, 2016, KT4, through counsel at
21 Williams & Connolly LLP, sent Palantir letter (the Demand Letter") demanding information
22 pursuant to the Investors' Rights Agreement (as amended most recently on September 1, 2016,
23 the "IRA"). Under the February 15, 2008 version of the IRA (the "February IRA") invoked by
24 Abramowitz in his letter, and the July 8, 2015 version in effect at the time Abramowitz sent his
25 letter (the "July IRA"), the agreement granted certain rights to receive information from Palantir
26 to anyone who was a "Major Investor" in Palantir, defined in Section 2.1 of the IRA as any
27 investor that holds "at least 5,000,000 shares of" certain types of Palantir stock.

28 59. In the Demand Letter, KT4 purports to be a Major Investor of Palantir and

1 demands that Palantir produce documents and provide information to its counsel pursuant to
2 Sections 2.1 and 2.2 of the February IRA. Neither IRA, however, provides any right for counsel
3 or anyone other than a Major Investor to receive the information.

4 60. Even if KT4 were a Major Investor (which Palantir does not concede) and even if
5 the IRA had not been amended as described below, Abramowitz’s breaches of his confidentiality
6 agreements and misappropriation of trade secrets – namely, his unclean hands – preclude him
7 from obtaining confidential and proprietary information through the IRA.

8 **Palantir and Major Investors Amend the IRA to Protect Palantir, its Employees, and**
9 **Shareholders from Malicious Actors**

10 61. Having discovered Abramowitz’s actions, his betrayal of Palantir’s trust, and his
11 misappropriation of its trade secrets—and fearing more such betrayals and breaches of confidence
12 that remain undiscovered—Palantir could no longer trust Abramowitz with its confidential
13 information, including the information demanded by KT4 in the Demand Letter.

14 62. To further protect Palantir—as well as its employees, former employees, investors,
15 and other shareholders—from the malicious acts of Defendants, on September 1, 2016, Palantir
16 and a group of its Major Investors holding a majority of the Registrable Securities held by Major
17 Investors invoked their rights under Section 3.7 of the July IRA to amend the agreement (the
18 “Amendment”). Even assuming KT4 was a Major Investor with rights under Sections 2.1 and 2.2
19 of the July IRA and even assuming that Defendants’ unclean hands did not preclude them from
20 receiving any confidential information through the IRA, KT4 has no such rights under the current
21 IRA; the Amendment is expressly retroactive in its effect, as permitted by Section 3.7 of the IRA.

22 63. Palantir did not take this action lightly, but after receiving the Demand Letter
23 following the nefarious activities of Defendants through their access as investors and
24 Abramowitz’s former status as an advisor, Palantir determined that it was necessary to act to
25 protect itself and others from the harmful actions of Defendants.

26 64. Palantir regularly and frequently works with investors, upon request, to provide
27 relevant information corresponding to their status as a shareholder, subject to confidentiality
28 obligations. As it has done in responding to Abramowitz’s reasonable questions in the past,

1 Palantir stands ready to do the same with KT4 upon a showing that such requests are being made
2 in good faith and with no improper purpose.

3 **Harm to Palantir**

4 65. As a result of Defendants' actions, Palantir has been and will continue to be
5 injured in an amount to be established according to proof.

6 66. As a result of Abramowitz's unauthorized copying, theft, and misappropriation of
7 Palantir's confidential and proprietary information and trade secrets, as well as his co-opting of
8 Palantir's work developing technology, systems, methods, and concepts and subsequently passing
9 them off as his own, Palantir has been and will continue to be injured absent equitable relief.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Contract – Against All Defendants)**

12 67. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
13 through 66.

14 68. Defendants' contracts with Palantir, including, *inter alia*, the Transfer Agreements
15 and the July 2014 NDA (the "Confidentiality Contracts"), imposed a contractual obligation on
16 Defendants to maintain the confidentiality of information learned or accessed as a result of
17 Defendants' investments in Palantir, Abramowitz's visits to Palantir's offices, and his discussions
18 with Palantir employees.

19 69. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
20 contract and all conditions precedent to its enforcement have been performed by Palantir.

21 70. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
22 precedent to its enforcement have been performed by Palantir.

23 71. Under the Confidentiality Contracts, Defendants agreed to hold in strictest
24 confidence, and not to use, except for the benefit of the company, any information they obtain or
25 access as investors or during visits or discussions.

26 72. As described above, Defendants breached the Confidentiality Agreements when
27 Abramowitz used the information he learned from Palantir employees to file patent applications
28 listing himself as sole inventor of Palantir's systems, methods and concepts that he learned in

1 confidence, as well as a trademark application on “Shire” that they intend to use in the cyber
2 insurance space. Defendants further breached their confidentiality obligations when they
3 disclosed confidential information to others in an improper effort to profit from Palantir’s
4 confidential information and trade secrets.

5 73. As a direct and proximate result of Defendants’ wrongful conduct, Palantir has
6 been harmed and is being forced to take expensive steps to reduce and mitigate that harm.

7 74. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
8 where allowed.

9 **SECOND CAUSE OF ACTION**

10 **(Breach of the Implied Covenant of Good Faith and Fair Dealing– Against All Defendants)**

11 75. Plaintiff repeats and realleges paragraphs 1 through 74 above as though fully set
12 forth herein.

13 76. California law implies a covenant of good faith and fair dealing in all contracts.

14 77. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
15 contract and all conditions precedent to its enforcement have been performed by Palantir.

16 78. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
17 precedent to its enforcement have been performed by Palantir.

18 79. Defendants have unfairly interfered with Plaintiff’s right to receive the benefit of
19 the Transfer Agreements and July 2014 NDA by, among other things, misappropriating and using
20 Plaintiff’s proprietary, confidential, and trade secret information and falsely claiming to have
21 invented Palantir’s inventions.

22 80. In addition, the IRA, as amended, is a valid contract and all conditions precedent
23 to its enforcement have been performed by Palantir.

24 81. Defendants have unfairly interfered with Plaintiff’s right to receive the benefit of
25 the IRA by, among other things, using it to seek confidential information for improper purposes.
26 As a result, Palantir is being forced to take expensive steps to reduce and mitigate that harm.

27 82. Defendants have breached and violated its implied covenant of good faith and fair
28 dealing.

1 83. As a result of that breach by Defendants, Plaintiff has suffered monetary damages
2 in an amount to be quantified at trial.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of California's Unfair Competition Law,**

5 **Cal. Bus. & Prof. Code Section 17200 *et seq.* – Against All Defendants)**

6 84. Plaintiff Palantir repeats and realleges paragraphs 1 through 83 above as though
7 fully set forth herein.

8 85. Defendants have engaged in (and continues to engage in) the unlawful, fraudulent,
9 and unfair business acts and practices described throughout this Complaint in violation of
10 California's Unfair Competition Law (the "UCL"), California Business and Professions Code,
11 Section 17200, *et seq.*

12 86. Defendants' business acts and practices were unlawful under the UCL because
13 they resulted in the violations of state common law described herein, including breach of contract
14 and breach of the implied covenant of good faith and fair dealing.

15 87. Defendants' business acts and practices were fraudulent because a reasonable
16 person would likely be deceived by Defendant's false statements and claims, including that they
17 invented and own Palantir's inventions.

18 88. Defendants' business acts and practices are unfair because the harm suffered by
19 Palantir described herein outweighs any justification that Defendants may assert for engaging in
20 those acts and practices. Moreover, Palantir could not have avoided the harm it suffered as a
21 result of Defendants' unfair acts and practices because Defendants made every effort to obscure
22 and conceal from Palantir the existence and extent of its harmful acts and practices.

23 89. Defendants' unlawful, unfair and fraudulent business acts and practices were
24 carried out and effectuated in California and injured Plaintiff in California.

25 90. Plaintiff suffered harm as herein alleged as a direct and proximate result of
26 Defendants' unlawful, unfair and fraudulent business acts and practices.

27 91. Plaintiff is entitled to an injunction enjoining Defendants from such further
28 violations of the UCL. Any such injunction will benefit Plaintiff and the general public.

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of Cal. Civ. Code § 3426 et seq. – Against All Defendants)**

3 92. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 91.

5 93. Palantir’s confidential and proprietary information pertaining to its projects,
6 including those concerning use of data analysis in the Healthcare Technology, Cyber Insurance
7 and Cybersecurity Technology, and Natural Resources Exploration Technology, constitute
8 protectable trade secrets as set forth in California Civil Code § 3426.1(d).

9 94. Palantir’s confidential and proprietary information derives independent economic
10 value, actual or potential, from not being generally known to the public or to other persons who
11 can obtain economic value from their disclosure or use as set forth in California Civil Code
12 § 3426.1(d)(1).

13 95. Palantir’s confidential and proprietary information is the subject of efforts that are
14 reasonable under the circumstances to maintain their secrecy as set forth in California Civil Code
15 § 3426.1(d)(2).

16 96. Palantir did not consent to the use of any of its trade secrets by anyone other than
17 authorized employees using them for Palantir’s business purposes and customers bound by
18 confidentiality obligations.

19 97. Defendants willfully and intentionally misappropriated Palantir’s trade secrets
20 when, *inter alia*, he used them to develop patent and trademark applications claiming
21 inventorship and ownership of Palantir’s systems, methods and concepts. Palantir is informed
22 and believes that Defendants have used, and continues to use, Palantir’s trade secret, confidential,
23 and proprietary information to develop a competing business or in furtherance of that goal,
24 including those described in his trademark and patent applications.

25 98. Palantir is entitled to an injunction of both actual and threatened misappropriation
26 as set forth in California Civil Code § 3426.2(a).

27 99. Palantir also requests that the court take affirmative acts to protect Palantir’s trade
28 secrets, as set forth in California Civil Code § 3426.2(c), including ordering an inspection of

1 Defendants' computer(s), USB drives, email accounts, cloud storage accounts and other sources
2 and equipment by a forensics expert to determine the extent to which Palantir's trade secrets were
3 wrongfully taken and/or disseminated to others, and to ensure that no trade secrets belonging to
4 Palantir remain saved on those systems; and issue a writ of possession, a preliminary injunction,
5 and a permanent injunction ordering the return of Palantir's confidential information and
6 prohibiting Defendants from continuing his unlawful actions.

7 100. In addition to equitable relief, Palantir demands monetary damages, fees, and
8 costs, where allowed.

9 101. Defendants' conduct as alleged herein was willful, malicious and wanton, and
10 undertaken for the purpose of injuring or causing injury to Palantir. Palantir seeks exemplary and
11 punitive damages against Defendants.

12 **FIFTH CAUSE OF ACTION**

13 **(Declaratory Relief – Against All Defendants)**

14 102. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
15 through 101.

16 103. There presently exists a real and actual controversy between Palantir and KT4
17 regarding whether KT4 is entitled under the IRA to the information sought through the Demand
18 Letter.

19 104. KT4 maintains that it is entitled to information under Sections 2.1 and 2.2 of the
20 IRA, and Palantir maintains that KT4 is neither a "Major Investor" under the IRA nor otherwise
21 entitled to such information under the IRA, as amended.

22 105. Additionally, Defendants have acted with unclean hands by, among other things,
23 misappropriating Palantir's trade secrets. For this independent reason, KT4 is not entitled to
24 information under Sections 2.1 and 2.2 of the IRA.

25 106. A declaratory judgment is necessary and appropriate at this time to resolve the
26 controversy between the parties. Palantir therefore specifically requests a judgment declaring that
27 KT4 has no right to any information pursuant to Sections 2.1 or 2.2 of the IRA.
28

PRAYER FOR RELIEF

WHEREFORE, Palantir respectfully requests the following relief:

1. Judgment in favor of Palantir and against all Defendants on all of Palantir’s claims asserted in the Complaint;

2. For a preliminary injunction and permanent injunction restraining Defendants, their officers, agents, servants, employees, and all persons acting in concert or participation with them from:

- a. perpetuating the wrongful acts and conduct as set forth above;
- b. continuing to pursue Defendants’ patent applications set forth above;
- c. directly or indirectly retaining, using or disclosing Palantir’s trade secret, confidential and/or proprietary information, and derivatives thereof;
- d. destroying any property, emails, documents or materials that are relevant or potentially relevant to this action;
- e. moving or transferring outside the United States Palantir’s property, emails, documents or materials that are relevant or potentially relevant to this action;

3. For an Order requiring that Palantir’s confidential, proprietary and trade secret information be returned to Palantir;

4. For an Order requiring all Defendants to divulge the identity of the individuals, groups and companies to whom they have disclosed Palantir’s confidential, proprietary and trade secret information;

5. For an Order requiring all Defendants to account for and pay to Palantir all ill-gotten gains, profits, and savings obtained or derived from their improper conduct;

6. For damages, unjust enrichment, and/or reasonable royalties in amounts to be proven at trial;

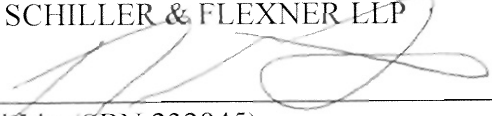
7. For an Order awarding Palantir punitive and/or exemplary damages in a sum to be determined at trial, on the basis of Defendants’ willful, deliberate, and malicious tortious conduct;

8. For restitution and disgorgement of all ill-gotten gains unjustly obtained and retained by Defendants through the acts complained of herein;

- 1 9. For prejudgment interest;
2 10. For an Order awarding Palantir its attorney's fees and all costs of suit incurred
3 herein; and
4 11. For such other and further relief as the Court deems just and proper.

5 Dated: September 23, 2016

BOIES, SCHILLER & FLEXNER LLP

6 By: 

7 David Zifkin (SBN 232845)
(dzifkin@bsflp.com)

8 Shira Liu (SBN 274158)
(sliu@bsflp.com)

9 401 Wilshire Boulevard, Suite 850
10 Santa Monica, CA 90401,
11 Telephone: (310) 752-2400
12 Facsimile: (310) 752-2490

13 David Boies (*Pro Hac Vice* appl. pending)
(dboies@bsflp.com)

14 333 Main Street
15 Armonk, NY 10504
16 Telephone: (914) 749-8200
17 Facsimile: (914) 749-8300

18 John T. Zach (*Pro Hac Vice* appl. pending)
(jzach@bsflp.com)

19 575 Lexington Avenue, 7th Floor
20 New York, NY 10022
21 Telephone: (212) 446-2300
22 Facsimile: (212) 446-2350

23 Carlos M. Sires (*Pro Hac Vice* to be filed)
(csires@bsflp.com)

24 401 East Las Olas Blvd., Suite 1200
25 Fort Lauderdale, FL 33301
26 Telephone: (954) 356-0011
27 Facsimile: (954) 356-0022

28 Kaitlyn Murphy (SBN 293309)
(kmurphy@bsflp.com)

1999 Harrison Street, Suite 900
Oakland, CA 94612
Telephone: (510) 874-1000
Facsimile: (510) 874-1460

Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury.

3 Dated: September 23, 2016

BOIES, SCHILLER & FLEXNER LLP

4
5 By: 

David Zitkin (SBN 232845)

(dzifkin@bsflp.com)

Shira Liu (SBN 274158)

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401 Wilshire Boulevard, Suite 850

Santa Monica, CA 90401,

Telephone: (310) 752-2400

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333 Main Street

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Telephone: (914) 749-8200

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1999 Harrison Street, Suite 900

Oakland, CA 94612

Telephone: (510) 874-1000

Facsimile: (510) 874-1460

23
24
25
26 *Attorneys for Plaintiff* PALANTIR

TECHNOLOGIES INC.

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Boies (*Pro Hac Vice* appl. pending)

3 (dboies@bsflp.com)

4 333 Main Street

5 Armonk, NY 10504

6 Telephone: (914) 749-8200

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8 David Zifkin (SBN 232845)

9 (dzifkin@bsflp.com)

10 Shira Liu (SBN 274158)

11 (sliu@bsflp.com)

12 401 Wilshire Boulevard, Suite 850

13 Santa Monica, CA 90401,

14 Telephone: (310) 752-2400

15 Facsimile: (310) 752-2490

16 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED

9/23/2016 5:04:54 PM

David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA,

County of Santa Clara

16CV299476

Reviewed By:Rowena Walker

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF SANTA CLARA**

19 **UNLIMITED JURISDICTION**

20 PALANTIR TECHNOLOGIES INC., a)

21 Delaware corporation,)

22 *Plaintiff,*)

23 v.)

24 MARC L. ABRAMOWITZ, in his individual)

25 capacity and as trustee of the MARC)

26 ABRAMOWITZ CHARITABLE TRUST NO.)

27 2, KT4 PARTNERS LLC, a Delaware limited)

28 liability company, and DOES 1 through 50,)

)

Defendants.)

Case No. 16CV299476

PROOF OF SERVICE

Complaint Filed: September 1, 2016

Trial Date: Not set

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401. On September 23, 2016 I served the following document(s):

- 1. FIRST AMENDED COMPLAINT FOR: (1) Breach of Contract (2) Breach of the Implied Covenant of Good Faith and Fair Dealing (3) Violation of Cal. Civ. Code § 3426 et seq. (4) Declaratory Relief (5) Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.**

I personally served the documents on the **persons** below, as follows:

MARC L. ABRAMOWITZ
3455 WASHINGTON STREET
SAN FRANCISCO, CA 94118

KT4 PARTNERS LLC
C/O AGENT FOR SERVICE:
INCorp SERVICES, INC.
919 NORTH MARKET STREET,
SUITE 425
WILMINGTON, DE 19801

The documents were served by the following means:

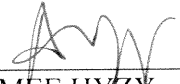
<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <ul style="list-style-type: none"> <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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	I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.
<input checked="" type="checkbox"/>	By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input type="checkbox"/>	By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i>
<input type="checkbox"/>	By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on September 23, 2016 at Santa Monica, California.



AIMEE HYZY

E-FILED
9/30/2016 10:43:28 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

PALANTIR TECHNOLOGIES, INC., a
Delaware corporation,

Plaintiff,

vs.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 16CV299476

**ORDER: CASE IS DEEMED
NOT COMPLEX AND COMPLEX
FEE REFUNDED TO PLAINTIFF**

WHEREAS the Complaint was filed by Plaintiff PALANTIR TECHNOLOGIES, INC.
in the Superior Court of California, County of Santa Clara, on September 1, 2016 and the
matter was assigned to Department 1, the Honorable Peter H. Kirwan presiding, pending a
ruling on the complexity issue;

///

///

1 IT IS HEREBY ORDERED that:

2 The Court determines that the above-referenced case is **NOT COMPLEX** within the
3 meaning of California Rules of Court 3.400.
4

5 The matter shall be, and is, reassigned to Department 9, the Hon. Mary E. Arand
6 presiding.

7 The Pro Hac Vice Application by John T. Zach, on behalf of Plaintiff, set for hearing on
8 October 21, 2016 is vacated and shall be reset on the Court's next available date.

9 The Pro Hac Vice Application by David Boies, on behalf of Plaintiff, set for hearing on
10 October 21, 2016 is vacated and shall be reset on the Court's next available date.
11

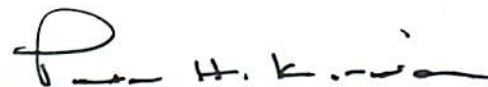
12 The Case Management Conference set for January 6, 2017 at 10:00 a.m. in Department
13 1 is vacated and shall be reset by the Court upon reassignment of the matter.

14 The Clerk of the Court shall refund the \$1,000 complex fee paid by Plaintiff Palantir
15 Technologies, Inc. on September 1, 2016, payable to the Law Office of Boies, Schiller &
16 Flexner, LLP, 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401, c/o
17 Attorney David Zifkin.
18

19 Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

20 SO ORDERED.
21

22
23 Dated: 9/29/16



Honorable Peter H. Kirwan
Judge of the Superior Court

PROOF OF SERVICE

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I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Superior Court, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113. On 9/30/16, I served the document entitled "Order: Case is Deemed Not Complex and Complex Fee Refunded to Plaintiff."

By placing a copy of the document(s) listed above for collection and mailing following the Court's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Jose, California addressed as set forth below.

David Zifkin
BOIES, SCHILLER & FLEXNER, LLP
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401

dzifkin@bsflp.com

By pdf transmission. These documents were transmitted via e-mail to the following e-mail address(es) as set forth above.

I am readily familiar with the Court's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party service, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, executed on 9/30/16, in San Jose, California.

David H. Yamasaki
Chief Executive Office, Clerk



Rowena Walker, Deputy Clerk

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): none , none Boies, Schiller & Flexner, LLP 1999 Harrison Street, Suite 900 Oakland, CA 94612 TELEPHONE NO.: (510) 874-1000 Ext 1009 ATTORNEY FOR (Name): Plaintiff</p>	<p>FOR COURT USE ONLY FILED OCT - 4 2016 David H. Winters, Clerk of the Superior Court County of Santa Clara, California By: _____ _____</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Santa Clara County 191 N. First Street San Jose, CA 95113-1090</p>	
<p>PLAINTIFF/PETITIONER: PALANTIR TECHNOLOGIES INC DEFENDANT/RESPONDENT: MARC L. ABRAMOWITZ</p>	<p>CASE NUMBER: 16cv299476</p>
<p>PROOF OF SERVICE OF SUMMONS</p>	<p>Ref. No. or File No.: None</p>

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet, Complaint, Summons

3. a. Party served: KT4 Partners LLC, a Delaware limited liability company

b. Person Served: Dawn Hunter - Incorp Services, Inc. - Person Authorized to Accept Service of Process

4. Address where the party was served: 919 North Market Street, Suite 425
 Wilmington, DE 19801

5. I served the party

a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 09/09/2016 (2) at (time): 1:20PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

KT4 Partners LLC, a Delaware limited liability company
 under: Other: Limited Liability Company

7. Person who served papers

a. Name: Michelle L. McLean
 b. Address: One Legal - 194-Marin
 504 Redwood Blvd #223
 Novato, CA 94947

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 249.95

e I am:

(1) Not a registered California process server.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 09/09/2016

BY FAX

Michelle L. McLean
 (NAME OF PERSON WHO SERVED PAPERS)

Michelle L. McLean

(SIGNATURE)

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Zifkin , 232845 Boies, Schiller & Flexner, LLP 1999 Harrison Street, Suite 900 Oakland, CA 94612 TELEPHONE NO.: (510) 874-1000 Ext 1009 ATTORNEY FOR (Name): Plaintiff</p>	<p>FOR COURT USE ONLY</p> <p>FILED</p> <p>OCT -4 2016</p> <p>David H. Yarnall, Clerk of the Superior Court County of Santa Clara, California</p> <p>By: _____</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Santa Clara County 191 N. First Street San Jose, CA 95113-1090</p>	
<p>PLAINTIFF/PETITIONER: PALANTIR TECHNOLOGIES INC DEFENDANT/RESPONDENT: Marc L. Abramowitz</p>	<p>CASE NUMBER: 16CV299476</p>
<p>PROOF OF SERVICE OF SUMMONS</p>	<p>Ref. No. or File No.: None</p>

BY FAX

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet; Complaint; Civil Lawsuit Notice; ADR Information; Summons
3. a. Party served: Marc L. Abramowitz, in his individual capacity and as trustee of the MARC ABRAMOWITZ CHARITABLE TRUST NO. 2, KT4 PARTNERS LLC, a Delaware limited liability company
 b. Person Served: party in item 3a
4. Address where the party was served: 3455 Washington Street
 San Francisco, CA 94118
5. I served the party
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 09/11/2016 (2) at (time): 8:35PM
6. The "Notice to the Person Served" (on the summons) was completed as follows:
 d. on behalf of:
 Marc L. Abramowitz, in his individual capacity and as trustee of the MARC ABRAMOWITZ CHARITABLE TRUST NO. 2, KT4 PARTNERS LLC. a Delaware limited liability company
 under: Other: Trustee
7. Person who served papers
 a. Name: Nate Freed
 b. Address: One Legal - 194-Marin
 504 Redwood Blvd #223
 Novato, CA 94947
 c. Telephone 415-491-0606
 d. The fee for service was: \$ 430.70
 e. I am:
 (3) registered California process server.
 (i) Employee or independent contractor.
 (ii) Registration No.: 2014-0001180
 (iii) County: SAN FRANCISCO
8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.
 Date: 09/13/2016

Nate Freed

Nate Freed

(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

1 **BOIES, SCHILLER & FLEXNER LLP**
David Boies (*Pro Hac Vice* appl. pending)
2 (dboies@bsfllp.com)
3 333 Main Street
Armonk, NY 10504
Telephone: (914) 749-8200
4 Facsimile: (914) 749-8300

5 David Zifkin (SBN 232845)
6 (dzifkin@bsfllp.com)
Shira Liu (SBN 274158)
7 (sliu@bsfllp.com)
8 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,
9 Telephone: (310) 752-2400
Facsimile: (310) 752-2490

10 *Additional counsel identified on signature page*

11 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SANTA CLARA**

15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **AMENDED NOTICE OF HEARING RE:**
19 v.) **VERIFIED APPLICATION OF DAVID**
20) **BOIES AND JOHN T. ZACH TO APPEAR**
21) **AS COUNSEL *PRO HAC VICE* FOR**
22) **PLAINTIFF PALANTIR**
23) **TECHNOLOGIES, INC.**
24)
25) Date: November 8, 2016
26) Time: 9:00 a.m.
27) Dept.: 9
28) Judge: Hon. Mary E. Arand
)
)
) Complaint Filed: September 1, 2016
) Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on November 8, 2016, in
3 Department 9 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Mary E. Arand, presiding, Plaintiff Palantir Technologies, Inc. ("Palantir")
5 will apply for an order permitting David Boies and John T. Zach of the law firm of Boies, Schiller
6 & Flexner LLP to appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 The Application is made pursuant to Rule 9.40 of the California Rules of Court and is
8 based on this Amended Notice and the Verified Applications filed by David Boies and John T.
9 Zach on September 19, 2016.

10 Dated: October 4, 2016

BOIES, SCHILLER & FLEXNER LLP

11 By: *H David Zifkin / FT*

12 David Zifkin (SBN232845)

(dzifkin@bsfllp.com)

13 Shira Liu (SBN 274158)

(sliu@bsfllp.com)

14 401 Wilshire Boulevard, Suite 850

Santa Monica, CA 90401,

15 Telephone: (310) 752-2400

16 Facsimile: (310) 752-2490

17 David Boies (*Pro Hac Vice* appl. pending)

(dboies@bsfllp.com)

18 333 Main Street

Armonk, NY 10504

19 Telephone: (914) 749-8200

20 Facsimile: (914) 749-8300

21 John T. Zach (*Pro Hac Vice* appl. pending)

(jzach@bsfllp.com)

22 575 Lexington Avenue, 7th Floor

New York, NY 10022

23 Telephone: (212) 446-2300

24 Facsimile: (212) 446-2350

25 Carlos M. Sires (*Pro Hac Vice* to be filed)

(csires@bsfllp.com)

26 401 East Las Olas Blvd., Suite 1200

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Fort Lauderdale, FL 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

Kaitlyn Murphy (SBN 293309)
(kmurphy@bsfllp.com)
1999 Harrison St., Suite 900
Oakland, CA 94612
Telephone: (510) 874-1108
Facsimile: (510) 874-1460

Attorneys for Plaintiff PALANTIR TECHNOLOGIES INC.

1 **BOIES, SCHILLER & FLEXNER LLP**
David Boies (*Pro Hac Vice* appl. pending)
2 (dboies@bsflp.com)
3 333 Main Street
Armonk, NY 10504
4 Telephone: (914) 749-8200
Facsimile: (914) 749-8300

5 David Zifkin (SBN 232845)
6 (dzifkin@bsflp.com)
Shira Liu (SBN 274158)
7 (sliu@bsflp.com)
8 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,
9 Telephone: (310) 752-2400
Facsimile: (310) 752-2490

10 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.
11

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**

19 v.)

20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
24 inclusive,)

25 *Defendants.*)
26)
27)
28)

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401. On September 19, 2016 I served the following document(s):

**AMENDED NOTICE OF HEARING RE: VERIFIED APPLICATION OF
DAVID BOIES AND JOHN T. ZACH TO APPEAR AS COUNSEL *PRO HAC*
VICE FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**

I personally served the documents on the **persons** below, as follows:

Marc L. Abramowitz
3455 Washington Street
SAN FRANCISCO, CA 94118

KT4 Partners LLC
c/o Agent For Service:
INCORP SERVICES, INC.
919 North Market Street,
Suite 425
Wilmington, DE 19801

Barry S. Simon
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005

Attorneys for KT4 Partners LLC

The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <ul style="list-style-type: none"> <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's

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	<p>practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.</p>
<input checked="" type="checkbox"/>	<p>By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on October 4, 2016 at Santa Monica, California.


Elena Colle

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Boies (*Pro Hac Vice* appl. pending)

3 (dboies@bsflp.com)

4 333 Main Street

5 Armonk, NY 10504

6 Telephone: (914) 749-8200

7 Facsimile: (914) 749-8300

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15 Facsimile: (310) 752-2490

16 *Additional counsel identified on signature page*

17 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SANTA CLARA**

20 **UNLIMITED JURISDICTION**

21 PALANTIR TECHNOLOGIES INC., a)

22 Delaware corporation,)

23 *Plaintiff,*)

24 v.)

25 MARC L. ABRAMOWITZ, in his individual)

26 capacity and as trustee of the MARC)

27 ABRAMOWITZ CHARITABLE TRUST NO.)

28 2, KT4 PARTNERS LLC, a Delaware limited)

liability company, and DOES 1 through 50,)

inclusive,)

Defendants.)

) Case No. 16CV299476

) [*Assigned to the Honorable Mary E. Arand*]

) **NOTICE OF ENTRY OF ORDER**

) Complaint Filed: September 1, 2016

) Trial Date: Not set

) Dept: 9

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD IN THIS ACTION:**

2 PLEASE TAKE NOTICE that on September 30, 2016, the Honorable Peter H. Kirwan
3 issued an Order, attached hereto as Exhibit A, deeming the above entitled case not complex and
4 vacating all hearings until further notice.

5 Dated: October 4, 2016

BOIES, SCHILLER & FLEXNER LLP

6 By: 

7 David Zifkin (SBN 232845)
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26 Facsimile: (510) 874-1460

27 *Attorneys for Plaintiff* PALANTIR
28 TECHNOLOGIES INC.

EXHIBIT A

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E-FILED
9/30/2016 10:43:28 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

PALANTIR TECHNOLOGIES, INC., a
Delaware corporation,

Plaintiff,

vs.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive.

Defendants.

Case No.: 16CV299476

**ORDER: CASE IS DEEMED
NOT COMPLEX AND COMPLEX
FEE REFUNDED TO PLAINTIFF**

WHEREAS the Complaint was filed by Plaintiff PALANTIR TECHNOLOGIES, INC.
in the Superior Court of California, County of Santa Clara, on September 1, 2016 and the
matter was assigned to Department 1. the Honorable Peter H. Kirwan presiding, pending a
ruling on the complexity issue;

///

///

1 IT IS HEREBY ORDERED that:

2 The Court determines that the above-referenced case is **NOT COMPLEX** within the
3 meaning of California Rules of Court 3.400.

4 The matter shall be, and is, reassigned to Department 9, the Hon. Mary E. Arand
5 presiding.

6 The Pro Hac Vice Application by John T. Zach, on behalf of Plaintiff, set for hearing on
7 October 21, 2016 is vacated and shall be reset on the Court's next available date.
8

9 The Pro Hac Vice Application by David Boies, on behalf of Plaintiff, set for hearing on
10 October 21, 2016 is vacated and shall be reset on the Court's next available date.
11

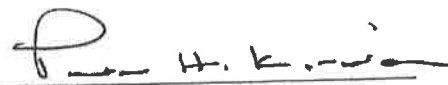
12 The Case Management Conference set for January 6, 2017 at 10:00 a.m. in Department
13 1 is vacated and shall be reset by the Court upon reassignment of the matter.

14 The Clerk of the Court shall refund the \$1,000 complex fee paid by Plaintiff Palantir
15 Technologies, Inc. on September 1, 2016, payable to the Law Office of Boies, Schiller &
16 Flexner, LLP, 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401, c/o
17 Attorney David Zifkin.
18

19 Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

20 SO ORDERED.
21

22
23 Dated: 9/29/16

24 
25 Honorable Peter H. Kirwan
26 Judge of the Superior Court
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PROOF OF SERVICE

E-FILED
9/30/2016 10:43:28 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA
County of Santa Clara
16CV299476
Reviewed By: Rowena Walker
Order: Case is

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Superior Court, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113. On 9/30/16, I served the document entitled "Deemed Not Complex and Complex Fee Refunded to Plaintiff."

By placing a copy of the document(s) listed above for collection and mailing following the Court's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Jose, California addressed as set forth below.


David Zifkin
BOIES, SCHILLER & FLEXNER, LLP
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401
dzifkin@bsflp.com

By pdf transmission. These documents were transmitted via e-mail to the following e-mail address(es) as set forth above.

I am readily familiar with the Court's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party service, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, executed on 9/30/16, in San Jose, California.

David H. Yamasaki
Chief Executive Office, Clerk



Rowena Walker, Deputy Clerk

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Boies (*Pro Hac Vice* appl. pending)

3 (dboies@bsflp.com)

4 333 Main Street

5 Armonk, NY 10504

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16 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF SANTA CLARA**

19 **UNLIMITED JURISDICTION**

20 PALANTIR TECHNOLOGIES INC., a)

21 Delaware corporation,)

22 *Plaintiff,*)

23 v.)

24 MARC L. ABRAMOWITZ, in his individual)

25 capacity and as trustee of the MARC)

26 ABRAMOWITZ CHARITABLE TRUST NO.)

27 2, KT4 PARTNERS LLC, a Delaware limited)

28 liability company, and DOES 1 through 50,)

inclusive,)

Defendants.)

) Case No. 16CV299476

) **PROOF OF SERVICE**

) Complaint Filed: September 1, 2016

) Trial Date: Not set

PROOF OF SERVICE

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I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401. On September 19, 2016 I served the following document(s):

NOTICE OF ENTRY OF ORDER

I personally served the documents on the **persons** below, as follows:

Marc L. Abramowitz
3455 Washington Street
SAN FRANCISCO, CA 94118

KT4 Partners LLC
c/o Agent For Service:
INCORP SERVICES, INC.
919 North Market Street,
Suite 425
Wilmington, DE 19801

Barry S. Simon
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005

Attorneys for KT4 Partners LLC

The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <ul style="list-style-type: none"> <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's

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	<p>practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.</p>
<input checked="" type="checkbox"/>	<p>By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on October 4, 2016 at Santa Monica, California.



 Elena Colle

1 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

2 Jack P. DiCanio (SBN 138782)

3 525 University Avenue

4 Palo Alto, California 94301

5 Telephone: (650) 470-4660

6 E-mail: jack.dicanio@skadden.com

7 *Attorneys for Defendants*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10 **UNLIMITED CIVIL JURISDICTION**

11 PALANTIR TECHNOLOGIES INC.,

12 Plaintiff,

13 v.

14 MARC L. ABRAMOWITZ, in his individual
15 capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
17 2, KT4 PARTNERS LLC, and DOES 1 through
18 50, inclusive,

19 Defendants.

Case No. 16CV299476

**NOTICE OF FILING NOTICE OF
REMOVAL**

2016 OCT 11 P 3:12
A. Ramirez

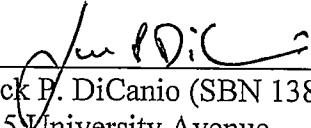
1 Please take notice that on October 11, 2016, Defendants Marc L. Abramowitz, Marc
2 Abramowitz Charitable Trust No. 2, KT4 Partners LLC (collectively, "Defendants"), by their
3 undersigned attorney, removed this case to the United States District Court for the Northern District
4 of California. A true and correct copy of Defendants' Notice of Removal is attached hereto as
5 Exhibit 1.

6 Please take further notice that the filing of this Notice removes this action to the federal
7 court, and this Court may "proceed no further unless and until the case is remanded." 28 U.S.C. §
8 1446(d).

9
10 Dated: October 11, 2016

**SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP**

11
12 By: _____


13 Jack P. DiCanio (SBN 138782)
14 525 University Avenue
15 Palo Alto, California 94301
16 Telephone: (650) 470-4660
17 E-mail: jack.dicanio@skadden.com

Attorneys for Defendants

Exhibit 1

1 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**
2 Jack P. DiCano (SBN 138782)
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4 Palo Alto, California 94301
5 Telephone: (650) 470-4660
6 E-mail: jack.dicano@skadden.com

7 *Attorneys for Defendants*

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 **PALANTIR TECHNOLOGIES INC.,**

12 Plaintiff,

13 v.

14 **MARC L. ABRAMOWITZ, in his individual**
15 **capacity and as trustee of the MARC**
16 **ABRAMOWITZ CHARITABLE TRUST NO.**
17 **2, KT4 PARTNERS LLC, and DOES 1 through**
18 **50, inclusive,**

19 Defendants.

Case No. 16-cv-5857

NOTICE OF REMOVAL

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NOTICE OF REMOVAL

Case No. 16-cv-5857

1 1. Pursuant to 28 U.S.C. §§ 1331, 1441, 1446, and 1454, Defendants Marc L.
2 Abramowitz, Marc Abramowitz Charitable Trust No. 2, KT4 Partners LLC (collectively,
3 “Defendants”), by their undersigned attorneys, hereby give notice of the removal of this action to the
4 United States District Court for the Northern District of California on the grounds that this Court has
5 subject matter jurisdiction under 28 U.S.C. §§ 1331 & 1338(a). As required by 28 U.S.C. § 1446(a),
6 all process, pleadings, and orders served on Defendants in the action to date are attached hereto as
7 Exhibit A. As the requisite “short and plain statement of the grounds for removal,” 28 U.S.C.
8 § 1446, Defendants state as follows:

9 **SUMMARY OF GROUNDS FOR REMOVAL**

10 2. Though artfully pled as a series of putative state-law claims, the operative
11 complaint seeks to have Plaintiff Palantir Technologies, Inc. (“Palantir”) declared the sole
12 inventor of three separate technologies that were in fact invented and developed by Mr.
13 Abramowitz as the sole or joint inventor, and that involve no inventive contribution by Palantir,
14 its employees, its contractors, or anyone working on Palantir’s behalf. The complaint demands
15 that the California Superior Court enjoin Mr. Abramowitz from continuing to pursue three
16 separate patent applications filed with the Patent and Trademark Office (“PTO”), and it premises
17 such relief, and several purported state-law causes of action, upon the assertion—vigorously
18 disputed by Defendants and completely contradicted by the facts—that it was Palantir, and not
19 Mr. Abramowitz, who invented the technologies at issue, and that Mr. Abramowitz’s alleged
20 contrary representations to the PTO were somehow false. Palantir’s claims necessarily raise
21 substantial questions of federal patent law that can be resolved only by a federal court.

22 **BACKGROUND**

23 3. Palantir filed this action in the Superior Court of the State of California, County
24 of Santa Clara, on September 1, 2016, Compl. (Ex. A), but did not serve Defendants until
25 September 9 and 10, 2016, Declaration of Marc L. Abramowitz (Ex. B) (“Abramowitz Decl.”) at
26 ¶ 2. Palantir filed a First Amended Complaint on September 23, 2016, First Am. Compl (Ex. A),
27 which it served upon Defendants on September 26, 2016, Abramowitz Decl. (Ex. B) at ¶ 3.

28 4. Palantir’s Amended Complaint alleges Mr. Abramowitz “made false claims to the

1 United States Patent and Trademark Office” by “claim[ing] to be a patent innovator” with
2 respect to three patent applications he filed with the PTO, all of which remain pending. First
3 Am. Compl. (Ex. A) ¶¶ 3, 54. According to Palantir, those patent applications cover
4 technologies supposedly invented by Palantir rather than Mr. Abramowitz, which fall into the
5 categories of: (1) “Healthcare Technology”; (2) “Cyber Insurance and Cybersecurity
6 Technology”; and (3) “Natural Resources Exploration Technology.” First Am. Compl. (Ex. A)
7 ¶¶ 38, 46, 51. Palantir alleges that, in each patent application, Mr. Abramowitz “falsely
8 identifies [himself] as the sole inventor.” Ex. A, First Am. Compl. ¶ 38; *see also id.* ¶¶ 46, 51.

9 5. Based on these allegations, Palantir brings four causes of action: (1) breach of
10 contract; (2) breach of covenant of good faith and fair dealing, (3) unfair competition pursuant to
11 California’s Business and Professions Code § 17200, *et seq.*, and (4) misappropriation of trade
12 secrets.¹ First Am. Compl. (Ex. A) ¶ 67–101.

13 6. Palantir’s original complaint sought money damages and broad injunctive relief.
14 Compl. (Ex. A), Prayer for Relief. While the Amended Complaint did the same, it also added a
15 new demand for an injunction that would enjoin Defendants from “continuing to pursue [their]
16 patent applications” in the PTO. First Am. Compl. (Ex. A), Prayer for Relief.

17 **THE REMOVAL IS TIMELY**

18 7. Defendants were served with the summons and original Complaint on September
19 9-10, 2016. Abramowitz Decl. (Ex. B) at ¶ 2. They were served with the First Amended
20 Complaint on September 26, 2016. *Id.* at ¶ 3. This Notice of Removal is therefore timely, as it
21 is filed within thirty days of service, as calculated under Federal Rule of Civil Procedure 6. *See*
22 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354
23 (1999) (thirty-day period to remove commences upon service of summons and complaint); Fed.

24 _____
25 ¹ Palantir also asserted a claim seeking declaratory relief with respect to a demand by KT4 Partners
26 LLC for financial information pursuant to an Investors’ Rights Agreement. First Am. Compl.
27 (Ex. A) ¶¶ 102-106. That claim has been mooted by subsequent events: In part because Palantir
28 claims to have amended that agreement retroactively to eliminate Defendants’ contractual right to
financial information about the company in which KT4 Partners, LLC is a substantial shareholder,
KT4 Partners LLC has withdrawn the request. Abramowitz Decl. (Ex. B) ¶ 4 & Ex. 1.

1 R. Civ. P. 6(a)(1).

2 **VENUE IN THE NORTHERN DISTRICT IS PROPER**

3 8. The Superior Court of the State of California, Santa Clara County, is within the
4 U.S. District Court for the Northern District of California, San Jose Division. Venue in the
5 Northern District of California, San Jose Division, is therefore proper under 28 U.S.C. §§ 84 and
6 1441(a) and Local Rule 3-2.

7 **REMOVAL IS PROPER BECAUSE PALANTIR**
8 **BRINGS CLAIMS THAT ARISE UNDER FEDERAL PATENT LAW**

9 9. This Court has “original jurisdiction” over all civil actions involving claims
10 “arising under” federal law, including patent law. 28 U.S.C. §§ 1331 & 1338(a). A claim may
11 arise under “the patent laws even where patent law did not create the cause of action.” *Forrester*
12 *Envtl. Servs., Inc. v. Wheelabrator Techs., Inc.*, 715 F.3d 1329, 1333 (Fed. Cir. 2013) (citing
13 *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 808–09 (1988)). Thus, a
14 putatively state-law claim “arises under” federal patent law when a patent law issue is
15 “(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in
16 federal court without disrupting the federal-state balance approved by Congress.” *Gunn v.*
17 *Minton*, 133 S. Ct. 1059, 1065 (2013).²

18 10. Because the claims in Palantir’s Amended Complaint satisfy these four elements,
19 Defendants may remove this case under 28 U.S.C. §§ 1441 & 1454.

20 **The Amended Complaint Necessarily Raises Federal Patent Issues**

21 11. When deciding whether a complaint necessarily raises federal patent law issues,
22 courts examine the claims raised in the complaint and their basis, but also must pay “special

23 ² The plaintiff in *Gunn* argued that the state court lacked jurisdiction because the legal malpractice
24 claim there at issue was premised upon an attorney’s alleged error in failing to assert an argument in
25 the course of the underlying patent-infringement lawsuit. 133 S. Ct. at 1063. The Supreme Court
26 disagreed because, although a federal patent issue was necessarily raised, it was not a substantial
27 one: given the necessarily backward-looking nature of a legal malpractice claim, there could be no
28 difference in the “real-world result of the prior federal patent litigation. [The plaintiff]’s patent will
remain invalid.” *Id.* at 1066-67. Here, the opposite is true: Palantir is seeking to enjoin the
Defendants from pursuing their still-pending patent applications in the PTO, on the basis that
Palantir, not Mr. Abramowitz, supposedly was the inventor of the technologies.

1 attention . . . to the relief requested by the plaintiff.” *Air Prod. & Chem., Inc. v. Reichhold*
2 *Chem., Inc.*, 755 F.2d 1559, 1562 (Fed. Cir. 1985); *see also Christianson*, 486 U.S. at 808–09
3 (plaintiff’s complaint arises under federal law if “right to relief” depends on patent law issues).
4 Here, both the claims and requests for relief in the First Amended Complaint necessarily raise
5 the issue whether Mr. Abramowitz is the true inventor of the patent applications. That issue is
6 one of federal patent law. *HIF Bio, Inc. v. Yung Shin Pharm. Indus. Co.*, 600 F.3d 1347, 1353
7 (Fed. Cir. 2010). The Amended Complaint necessarily raises this issue in two ways.

8 12. First, the Amended Complaint seeks an injunction enjoining Defendants from
9 pursuing Mr. Abramowitz’s still-pending patent applications before the PTO. First Am. Compl.
10 (Ex. A), Prayer for Relief. Palantir’s sole theory for why it could possibly be entitled to this
11 relief is its claim that it, not Mr. Abramowitz, is the true inventor of the technologies that are the
12 subject of the pending patent applications. First Am. Compl. (Ex. A) ¶ 38 (alleging that Mr.
13 Abramowitz’s patent applications “falsely identif[y]” himself “as the sole inventor”); *see also id.*
14 ¶ 3 (alleging that Mr. Abramowitz “made false claims to the [PTO]”); *id.* ¶ 46 (“Once again,
15 Abramowitz’s application fails to mention Palantir and does not include a single Palantir
16 employee as an inventor.”); *id.* ¶ 51 (alleging that Mr. Abramowitz’s patent application “falsely
17 claim[ed]” that he was “the sole owner and inventor”). Palantir identifies no other conceivable
18 grounds for the injunction it seeks.

19 13. Under Palantir’s theory, to prove its entitlement to the relief it seeks, it must prove
20 it is the true inventor of patent applications.³ Because “the only possible theory upon which”
21 Palantir could seek the relief to which it claims entitlement “would be one in which determining
22 the true inventor(s)” of the patent applications is “essential,” this case arises under federal patent
23 law and is therefore removable under §§ 1441 & 1454. *HIF Bio*, 600 F.3d at 1353.

24 14. Second, Palantir brings a claim for violation of California’s Unfair Competition
25

26 ³ To be clear, Defendants dispute fully Palantir’s rendition of the “facts” in its Complaints and will
27 demonstrate it was Mr. Abramowitz, not Palantir, that invented each of the technologies at issue.
28 Nor do Defendants concede the relief sought by Palantir would be proper even under the distorted
version of the “facts” that appears in Palantir’s Complaints.

1 Law, California’s Business and Professions Code § 17200, *et seq.* See Ex. A, First Am. Compl.
2 ¶¶ 84–91. This claim is premised upon Palantir’s allegation that Defendants’ business acts and
3 practices were “fraudulent because a reasonable person would likely be deceived by [Mr.
4 Abramowitz’s] false statements and claims.” First Am. Compl. (Ex. A) ¶ 87. But the only
5 allegedly “false statements” explicitly mentioned anywhere in the Amended Complaint are Mr.
6 Abramowitz’s alleged representations to the PTO, in his patent applications, that he is the sole
7 inventor of the technologies for which he seeks patents. *See id.*

8 15. For the Court to find those statements were indeed “false,” it would have to
9 determine that Mr. Abramowitz was not the true inventor of the technologies that are the subjects
10 of the patent applications. Again, “the only possible theory upon which relief could be granted
11 to [Palantir] would be one in which determining the true inventor(s)” of the patent application is
12 “essential,” and so this case arises under federal patent law and is therefore removable under
13 §§ 1441 and 1454. *HIF Bio, Inc.*, 600 F.3d at 1353.

14 **The Issue of Inventorship Is Actually Disputed**

15 16. The issue of inventorship is “actually disputed.” “[I]ndeed, on the merits, it is the
16 central point of dispute” between Palantir and Defendants. *Gunn*, 133 S. Ct. at 1066. At trial,
17 Defendants will prove that Mr. Abramowitz was the sole or joint inventor with respect to each of
18 these patent applications, and that the technologies as to which Mr. Abramowitz seeks patents
19 involve no inventive contribution by Palantir, its employees, its contractors, or anyone working
20 on Palantir’s behalf.

21 **The Issue of Inventorship Is Substantial**

22 17. Issues of inventorship like the ones presented in this case are “substantial
23 questions of federal patent law.” *HIF Bio, Inc.*, 600 F.3d at 1353 (quoting *Bd. of Regents, Univ.*
24 *of Tex. Sys.*, 414 F.3d at 1363). Here, unlike in *Gunn*, litigation of the inventorship issue will
25 determine the forward-looking, “real-world” patent rights of Mr. Abramowitz. *Gunn*, 133 S. Ct.
26 at 1067.

27 18. If the California Superior Court were to issue an injunction restraining Defendants
28 from pursuing the patent applications before the PTO, the applications might never be approved

1 and Mr. Abramowitz would lose his rights as an inventor—rights bestowed by federal patent
2 law. And Palantir, for its part, would have been able to use the state courts to conjure up federal
3 patent rights out of whole cloth. These types of cases clearly raise “substantial issues of federal
4 patent law”—for if any self-proclaimed “inventor” could leverage state courts to gain unearned
5 federal patent rights, “the federal [patent] system as a whole” would be undermined. *Gunn*, 133
6 S. Ct. at 1066.

7 19. “[D]irect questions of inventorship, whether an already-issued patent or a pending
8 patent application, present sufficiently substantial questions of federal law to support jurisdiction
9 under section 1338(a).” *MD Matrix Health, L.L.C. v. Kasle*, No. No. 4:12-cv-00476, 2012 WL
10 6161941, at *2 (E.D. Tex. Nov. 5, 2012).

11 20. Moreover, allowing a state court to decide these issues of inventorship opens the
12 possibility of “inconsistent judgments between state and federal courts.” *Forrester*, 715 F.3d
13 1329, 1334 (Fed. Cir. 2013). A federal court (or the PTO) could determine that Mr. Abramowitz
14 is the true inventor of the patent applications, while a state court could conclude otherwise. *See*
15 *id.* Mr. Abramowitz could then find himself enjoined by a state court for not being the true
16 inventor despite a federal determination to the opposite effect. *See id.*⁴

17 **The Issue of Inventorship Must Be Resolved in Federal Court**

18 21. Fourth, and finally, the issue of inventorship can be resolved “in federal court
19 without disrupting the federal-state balance approved by Congress.” *Gunn*, 133 S. Ct. at 1065.
20 Indeed, the issue of inventorship *must* be resolved by a federal court in order to avoid *disrupting*
21 the federal-state balance approved by Congress:

22 An independent inventorship standard under state law would likely have different
23 requirements and give rise to different remedies than federal patent law. A different
24 state inventorship standard might grant property rights to an individual who would

25 ⁴ The Federal Circuit in *Forrester* recognized that state-law claims alleging false statements about
26 U.S. patent rights can raise federal issues substantial enough to warrant removal because they “could
27 result in inconsistent judgments between state and federal courts.” 715 F.3d at 1334. That court
28 nevertheless held that under the particular facts of that case, “this possibility of future conflict d[id]
not arise,” because the statements regarding patent rights there at issue “concerned conduct taking
place entirely in Taiwan,” and thus did not implicate U.S. patent rights. *Id.*

1 not qualify as an inventor under federal patent law, or might grant greater relief to
2 inventors than is afforded by federal patent law. Either situation might frustrate the
3 dual federal objectives of rewarding inventors and supplying uniform national patent
law standards.

4 *HIF Bio*, 600 F. 3d at 1353 (quoting *Univ. of Colo. Found. v. Am. Cyanamid Co.*, 196 F.3d 1366,
5 1372 (Fed. Cir. 1999)). For these reasons, cases that necessarily raise inventorship issues belong
6 in federal court. *Id.*⁵

7 **DEFENDANTS CONSENT TO REMOVAL**

8 22. Undersigned counsel represent all named Defendants in this case, and all
9 Defendants jointly file this Notice of Removal. The consent of unnamed Doe Defendants 1
10 through 50, inclusive, is not required. *See Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213
11 (9th Cir. 1980) (unnamed defendants not required to join in removal petition).

12 **NOTICE OF FILING NOTICE OF REMOVAL**

13 23. Defendants will promptly provide written notice of this Notice of Removal to
14 Palantir's counsel and will file a copy of this Notice of Removal with the Clerk of the Superior
15 Court of the State of California, Santa Clara County. Attached as Exhibit C hereto is a copy of
16 the "Notice of Filing Notice of Removal" along with the accompanying Certificate of Service,
17 which Defendants will serve on Palantir and file in the state court.

18 **WHEREFORE**, Defendants, pursuant to 28 U.S.C. §§ 1331, 1441, 1446, and 1454, hereby
19 remove the above-captioned action from the Superior Court of the State of California, Santa Clara
20 County, and request that further proceedings be conducted in this Court as provided by law.

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22
23
24 ⁵ In *Board of Regents, University of Texas System, ex rel. University of Texas at Austin v. Nippon*
25 *Telephone & Telegraph Corp.*, 414 F.3d 1358 (Fed. Cir. 2005), the Federal Circuit recognized there
26 were many cases in which "issues of inventorship, infringement, validity and enforceability present
27 sufficiently substantial questions of federal patent law to support jurisdiction under section 1338(a)." *Id.*
28 *Id.* at 1363. The Federal Circuit held remand was appropriate because there, unlike here, the
plaintiffs did not need to prove inventorship as to the patents to prevail on any of their state-law
claims or their demand for relief. *Id.* at 1363-65.

1 Dated: October 11, 2016

**SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP**

2

3

By: /s/ Jack. P. DiCanio
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Exhibit A

1 **BOIES, SCHILLER & FLEXNER LLP**
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2 (dzifkin@bsflp.com)
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David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

6 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**

10 **UNLIMITED JURISDICTION**

11 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
12 Delaware corporation,)
13 *Plaintiff,*) **COMPLAINT FOR:**
14 v.) (1) Breach of Contract
15) (2) Breach of the Implied Covenant of Good
16 MARC L. ABRAMOWITZ, in his individual) Faith and Fair Dealing
17 capacity and as trustee of the MARC) (3) Violation of Cal. Civ. Code § 3426 et seq.
18 ABRAMOWITZ CHARITABLE TRUST NO.) (4) Declaratory Relief
19 2, KT4 PARTNERS LLC, a Delaware limited) (5) Violation of California's Unfair
20 liability company, and DOES 1 through 50,) Competition Law, Cal. Bus. & Prof. Code §
inclusive,) 17200 et seq.
21 *Defendants.*) **JURY TRIAL DEMAND**
22)
23)
24)
25)
26)
27)
28)
_____) Complaint Filed: September 1, 2016
Trial Date: Not set

1 Plaintiff Palantir Technologies Inc. (“Palantir”) sues defendants Marc L. Abramowitz
2 (“Abramowitz”), both in his individual capacity and as trustee of the Marc Abramowitz
3 Charitable Trust No. 2 (the “Trust”), KT4 Partners LLC (“KT4”), and Does 1 through 50
4 (collectively with Abramowitz, KT4, and the Trust, “Defendants”) as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action to stop Defendants from misappropriating Palantir’s confidential
7 information and proprietary trade secrets for their own benefit and to prevent them from receiving
8 any additional confidential or proprietary information from Palantir pursuant to their Investors’
9 Rights Agreement.

10 2. Abramowitz was a respected confidant and advisor to Palantir and its senior
11 executives until he betrayed the trust they bestowed upon him for his own personal gain. He was,
12 through KT4 and other entities, an early equity investor in Palantir who personally engaged in
13 regular discussions with executives about some of the company’s most sensitive business
14 strategies and trade secrets. Those discussions were highly confidential, as was made clear by
15 express written agreements among the parties at the time and a course of dealing based on the
16 most basic principles of fairness and honesty between a trusted shareholder and advisor and
17 management.

18 3. Nonetheless, as part of brazen scheme to claim Palantir’s own highly confidential
19 information and trade secrets as his own, Abramowitz stole those secrets, engaged in methodical
20 deception of Palantir’s senior executives, and made false claims to the United States Patent and
21 Trademark Office. Abramowitz’s claim to be a patent innovator is directly contradicted by the
22 facts surrounding his professional career.

23 4. To start, Abramowitz has no notable history as an inventor or patent innovator in
24 the data analysis area. He has made most of his career and fortune in real estate and buyout
25 investing. Yet, beginning in 2014, Abramowitz suddenly filed three patents, all of them based on
26 ideas and trade secrets he stole from Palantir. This was plainly illegal and highly unethical
27 conduct, and it was a betrayal of his trusted relationship with Palantir and its executives.
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1 5. But Abramowitz’s scheme did not end there. After stealing from Palantir, he hired
2 lawyers to demand from Palantir sensitive and confidential information about the company,
3 including the Company’s finances and business dealings, which Palantir considers to be, and
4 treats as, highly sensitive and confidential. Having uncovered Abramowitz’s breach of Palantir’s
5 trust (and of his contractual obligations to Palantir under multiple agreements), it is apparent that
6 Abramowitz is not seeking this information in good faith for a proper purpose. In fact, history
7 has shown that Abramowitz has and will misuse any information provided to him in breach of
8 confidence, causing Palantir irreparable harm in the process.

9 6. Palantir now has been forced to protect itself, both through amendments to its
10 corporate documents and through this action, by which Palantir seeks redress for Abramowitz’s
11 breaches of contract, breaches of confidence, and misuse of Palantir’s confidential and
12 proprietary information and trade secrets. Further, to protect Palantir and its shareholders—
13 including employees, former employees and other investors—from continued breaches of
14 confidence in the future, Palantir seeks a declaratory judgment that Abramowitz has no right to
15 the information he has demanded under the Investors’ Rights Agreement.

16 **PARTIES, JURISDICTION, AND VENUE**

17 7. The Court has jurisdiction over this action by virtue of Article VI § 10 of the
18 California Constitution and California Code of Civil Procedure § 410.10.

19 8. Palantir is a Delaware corporation with its principal place of business at 100
20 Hamilton Avenue, Palo Alto, California, 94301. Palantir has suffered, and continues to suffer,
21 injury in this jurisdiction by reason of Defendants’ actions.

22 9. Palantir is informed and believes and on that basis alleges that defendant Marc L.
23 Abramowitz is an individual residing in California at 1029 Ramona Street, Palo Alto, California,
24 94301. Palantir is informed and believes and on that basis alleges that Abramowitz is the trustee
25 of the Marc Abramowitz Charitable Trust No. 2. The wrongful actions of Abramowitz occurred
26 in, were targeted to, and caused damage in, California.

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1 10. Palantir is informed and believes and on that basis alleges that defendant KT4
2 Partners LLC is a Delaware limited liability company with its principal place of business at 1029
3 Ramona Street, Palo Alto, California, 94301. On information and belief, KT4 does business in
4 California and has committed acts that submit it to the jurisdiction of California’s courts. Upon
5 information and belief, Abramowitz is the sole member of KT4 and controls and directs the
6 activities of KT4. The wrongful actions of KT4 occurred in, were targeted to, and caused damage
7 in, California.

8 11. Palantir is ignorant of the true names of Does 1 through 50 and such names are
9 fictitious. Such defendants are legally responsible for the events and happenings described herein
10 and for the damages proximately caused thereby. Once Palantir learns of the true names of Does
11 1 through 50, Palantir will amend the complaint to include the real name(s) of such party or
12 parties.

13 12. This action is founded on injuries and damages suffered by Palantir in Santa Clara
14 County by virtue of the Defendants’ misappropriation of trade secrets, breach of contract, breach
15 of confidence and other illegal and wrongful acts as alleged in this Complaint. Venue is proper in
16 this Court because the parties reside in this County and the events that form the basis for this
17 Complaint largely took place in this County.

18 **FACTUAL BACKGROUND**

19 **Palantir’s Business**

20 13. Palantir is a software and services company that specializes in data analytics. In
21 2004, Palantir was founded on a vision: to provide solutions not only to problems then faced by
22 business and government, but also solutions to problems that did not yet exist, but that would
23 surely come to be as part of our rapidly-evolving world. It sought to make this vision a reality by
24 the use of technology. And it embarked on an ambitious, time-consuming, and costly endeavor to
25 create a viable, successful business. As a result of hard work, Palantir has succeeded and is now a
26 leader in its industry. Today, Palantir’s products are deployed at the most critical government,
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1 commercial, and non-profit institutions in the world to solve problems the company's founders
2 had not even dreamed of back in 2004.

3 14. In particular, at its founding Palantir set out to create products that would
4 transform the way organizations use perhaps their most important asset in today's business world:
5 data. Palantir's mission has been and remains to develop flexible tools and services to provide
6 human-driven analysis of real-world data, with a focus on creating the world's best user
7 experience for working with data. To achieve this, Palantir builds platforms for integrating,
8 managing, and securing data, on top of which it layers applications for fully interactive, human-
9 driven, machine-assisted analysis. This means that Palantir develops programs and provides
10 services that allow businesses and government to run their businesses in a way that corresponds
11 with the reality of their marketplace and consumers.

12 15. Businesses and government use Palantir's software to interpret and visualize large
13 quantities of information from various sources. For example, businesses use Palantir's software
14 to analyze their internal and market data to better understand consumer trends, and government
15 agencies use Palantir's software to analyze intelligence data to better understand emerging
16 threats.

17 16. Palantir's success is due in part to its early recognition that many organizations are
18 traditionally unable to leverage insights from their internal data because the data is held in
19 separate silos that are often disconnected and have different access, security controls, and privacy
20 requirements. When information is siloed—that is, when important information is stored in
21 containerized, unrelated units—businesses and government cannot fully realize the potential of
22 that data. Palantir provides software solutions that avoid this problem, allowing users to run their
23 businesses consistent with the actual environment in which they operate. Thus, Palantir's
24 products are used to fuse and analyze customer data across platforms and sources and enable
25 secure collaboration among analysts, while protecting data privacy and security.

26 17. As is expected in this type of work, Palantir is also heavily involved in research
27 and development. Palantir spends millions of dollars each year to expand its business and seek
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1 out new opportunities—and to stay ahead of the curve and atop the industry. This research and
2 development investment involves both creating new software, technologies and processes as well
3 as adapting existing products and technologies to new applications and uses.

4 **Abramowitz’s Relationship with Palantir**

5 18. Initial funding for Palantir came from a variety of sources, including the
6 company’s founders who remain with Palantir today as shareholders of common shares of
7 Palantir stock. Abramowitz, through KT4 and other entities he controls, was an early investor in
8 Palantir, first investing in the company in 2005.

9 19. Through the years, Abramowitz was involved with the business of Palantir.
10 Rather than acting as a passive investor, he became a regular fixture at Palantir. He established
11 relationships with the company’s founders, officers, and employees. As a result, he was viewed
12 as a trusted figure by the company, including its several founders and senior employees.
13 Abramowitz fostered these relationships of confidence and held himself out as a friend of Palantir
14 whose interests were completely aligned with the company. He made clear that he could be
15 trusted to keep confidences and act in the company’s best interests.

16 20. Indeed, Abramowitz spent so much time at Palantir that in 2014 he asked for an
17 office. Between 2010 and 2015, Abramowitz visited Palantir offices over thirty times. When
18 Abramowitz had questions about Palantir’s business, including financial information, that were
19 relevant to his status as a shareholder and trusted advisor to the company, he was provided with
20 the information.

21 21. In this context, Abramowitz often inquired about specific Palantir projects. On
22 several occasions, Palantir provided information to Abramowitz about concepts for new
23 technology and/or new use cases for existing technology that Palantir had spent significant time
24 and resources researching, developing and testing. Palantir always provided any information to
25 Abramowitz with the express and reasonable expectation that Abramowitz would maintain its
26 confidentiality and would never pass Palantir’s ideas off as his own or use the information to
27 Palantir’s detriment without Palantir’s knowledge or permission.

1 **Abramowitz’s Agreements Not to Violate Confidentiality**

2 22. In addition to relying on the confidential nature of its communications with
3 Abramowitz, Palantir also protected its confidential information and trade secrets through written
4 agreements.

5 23. In an August 14, 2012 Preferred Stock Transfer Agreement,
6 Abramowitz agreed “to keep confidential and refrain from using or disclosing all agreements,
7 documents and other information regarding the Company or its securityholders provided or made
8 available to [Abramowitz]...in [his] capacity as a stockholder of the Company...” (2012 PSTA
9 at ¶ 7.) Abramowitz renewed that agreement in a June 17, 2015 Preferred Stock Transfer
10 Agreement. (2017 PSTA at 7.)

11 24. In a June 17, 2015 Preferred Stock Transfer Agreement, KT4 similarly agreed “to
12 keep confidential and refrain from using or disclosing all agreements, documents and other
13 information regarding the Company or its securityholders provided or made available to
14 [Abramowitz]...in [his] capacity as a stockholder of the Company...” (2015 PSTA at ¶ 7.)

15 25. In addition, during at least one of his visits to Palantir, on July 12, 2014,
16 Abramowitz executed an NDA (the “July 2014 NDA”) covering “Proprietary Information,”
17 which is defined in the NDA as “non-public business, technical or other information, materials
18 and/or ideas of Palantir [including] anything you learn or discover as a result of exposure to or
19 analysis of any Proprietary Information.” The NDA expressly forbids Abramowitz from using or
20 revealing any of Palantir’s Proprietary Information.

21 **Abramowitz Misappropriation of Business Information and Trade Secrets**

22 26. By 2014, Abramowitz had embarked on an intentional and calculated scheme to
23 discover Palantir trade secrets and convert them to his own use and profit. In furtherance of his
24 scheme, during 2014 alone, Abramowitz was in contact with Palantir employees at least 34 times
25 and visited Palantir facilities at least 20 times. Pursuant to his scheme, Abramowitz violated the
26 trust Palantir put in him on at least three separate occasions.

1 27. The first occasion of which Palantir is aware involves a Palantir idea concerning
2 clinical trials of drugs. Palantir had been working hard since 2011 on the best way to enter the
3 clinical trial space, including using Palantir’s technology and data analytics services to improve
4 the conduct of clinical trials of prescription drugs by pharmaceutical companies and academic
5 institutions.

6 28. Palantir’s work in the field of clinical trials has been extensive, and the processes
7 and systems developed through that work were important company trade secrets. As part of its
8 research and development work, Palantir employees created white papers and presentations
9 describing the ideas and projects they were working on. Palantir also signed on customers to help
10 drive the project from the research side into the market.

11 29. Abramowitz learned from Palantir about Palantir’s work in the area of clinical
12 trials and, in February 2014, sought to broker a deal between Palantir and a customer to take
13 something to market. Through his conversations with Palantir on the subject and the confidential
14 access Palantir granted him to documents describing Palantir’s research and development work,
15 Abramowitz learned the details of the work Palantir had been doing in the area for years.
16 Abramowitz misappropriated Palantir’s inventions in this space and has attempted to patent them
17 as his own.

18 30. On October 29, 2014, without Palantir’s knowledge or consent, Abramowitz filed
19 Provisional Application No. 62/072,368 with the United States Patent and Trademark Office
20 (“USPTO”) seeking to patent the idea developed by Palantir and explained to Abramowitz in
21 confidence. The application falsely identifies Abramowitz as the inventor, includes no mention
22 of Palantir at all, and fails to list a single Palantir employee as an inventor.

23 31. In the second occurrence where Palantir knows Abramowitz abused his position of
24 trust to further his scheme, Abramowitz participated in discussions about an idea for using
25 Palantir’s cyber security technology to improve the ability of insurance companies to provide
26 insurance to retailers and other institutions against the potential harm caused by data breaches and
27 other cybercrimes.

28

1 32. In June 2014, a Palantir executive disclosed to Abramowitz during a conversation
2 that Palantir was working on opportunities in the insurance industry. When Abramowitz
3 expressed interest in the concept and requested additional information, the Palantir executive
4 arranged for Abramowitz to speak with another Palantir executive, who sent Abramowitz some
5 information on the idea via email and invited Abramowitz to meet with him at Palantir’s offices
6 to discuss the idea. During his June 2014 meeting with Abramowitz, the second Palantir
7 executive described two related concepts that Palantir had developed relating to cyber security
8 insurance and the use of customer consortia to improve cyber security, as well as the Palantir
9 technology that could be used to implement them.

10 33. When Abramowitz next met with Palantir on the subject, he indicated he was
11 interested in setting up a Palantir subsidiary that he would run to perform the insurance-related
12 function Palantir had revealed to him, further confirming that his participation in the discussions
13 were solely for the benefit and interest of Palantir. Palantir did not pursue Abramowitz’s
14 suggestion.

15 34. Without Palantir’s knowledge, on October 21, 2014, Abramowitz filed Provisional
16 Application No. 62/066,716 at the USPTO attempting to patent the ideas he learned about in
17 confidence through his conversations with Palantir executives and claiming to be the invention’s
18 sole owner and inventor. To read Abramowitz’s application, one would never suspect Palantir
19 had anything to do with the idea at all, as Abramowitz fails to mention Palantir and does not
20 include a single Palantir employee as an inventor.

21 35. However, presumably unbeknownst to Abramowitz, Palantir had already filed its
22 own patent application on the invention in February 2014, months before Abramowitz learned of
23 the idea from Palantir. That application resulted in United States Patent No. 9009827 (the “’827
24 Patent”), owned by Palantir and invented by Palantir employees. The similarities between
25 Palantir’s valid patent and Abramowitz’s application are stunning. Even a cursory reading of the
26 abstract of the ’827 Patent issued to Palantir and the application filed by Abramowitz reveals that
27 they are the same invention—one which Abramowitz misappropriated from Palantir.
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1 36. Abramowitz's scheme is clearly revealed through his filing of two patent
2 applications within ten days of one another seeking to secure sole inventorship over ideas he
3 learned from Palantir in confidence. Abramowitz continued his concerted scheme to
4 misappropriate Palantir's ideas in at least one more, third area. After discussions with Palantir
5 employees concerning Palantir's work on adapting its data analysis technology for use in oil and
6 gas exploration, Abramowitz filed Provisional Application No. 62/094,888 with the USPTO,
7 seeking to patent as sole owner and inventor the ideas he learned from Palantir concerning
8 Palantir's work in this area. As with his other applications described above, Abramowitz filed the
9 application without Palantir's knowledge or consent and failed to credit Palantir or its employees
10 in any way.

11 37. Through his months-long scheme, Abramowitz intentionally abused his status as a
12 trusted investor at Palantir in an attempt to profit at Palantir's expense by taking multiple ideas
13 from Palantir and attempting to patent them as his own. Although, on information and belief,
14 Abramowitz does not have the resources, technology, or experience to market the ideas
15 effectively, he could attempt to use the patent applications or any issued patents to hold Palantir
16 hostage in exchange for royalties. Abramowitz's actions are causing Palantir irreparable harm,
17 and Palantir is therefore separately seeking to have Abramowitz's patent applications denied by
18 the USPTO.

19 38. The patent applications are not the only indication that Abramowitz has
20 misappropriated information and access to attempt to profit at Palantir's expense. Palantir's
21 company name is inspired by the "seeing stones" referenced in The Lord of the Rings. Without
22 Palantir's knowledge, Abramowitz filed for a trademark on the mark "Shire," which is also
23 referenced in The Lord of the Rings as the place where one of the main characters lives. It is
24 clear that Abramowitz has filed this trademark application in an attempt to further improperly
25 associate himself with what he views as the Palantir brand.

26 39. Furthermore, Abramowitz has filed this trademark application with an intent to use
27 the mark in connection with "underwriting and administration of cyber liability insurance;
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1 underwriting and administration of cyber security insurance; insurance brokerage in the field of
2 cyber liability and cyber security insurance.” He has claimed he intends to use the mark for the
3 aforementioned goods and services despite knowing that the aforementioned goods and services
4 are services offered by, or intended to be offered by, Palantir, from whom he misappropriated
5 confidential and proprietary ideas and information in these areas.

6 **Abramowitz Demands Information Under the Investors’ Rights Agreement**

7 40. In furtherance of his scheme, on August 16, 2016, KT4, through counsel at
8 Williams & Connolly LLP, sent Palantir a letter (the “Demand Letter”) demanding information
9 pursuant to the Investors’ Rights Agreement (as amended most recently on September 1, 2016,
10 the “IRA”). Under the February 15, 2008 version of the IRA (the “February IRA”) invoked by
11 Abramowitz in his letter, and the July 8, 2015 version in effect at the time Abramowitz sent his
12 letter (the “July IRA”), the agreement granted certain rights to receive information from Palantir
13 to anyone who was a “Major Investor” in Palantir, defined in Section 2.1 of the IRA as any
14 investor that holds “at least 5,000,000 shares of” certain types of Palantir stock.

15 41. In the Demand Letter, KT4 purports to be a Major Investor of Palantir and
16 demands that Palantir produce documents and provide information to its counsel pursuant to
17 Sections 2.1 and 2.2 of the February IRA. Neither IRA, however, provides any right for counsel
18 or anyone other than a Major Investor to receive the information.

19 **Palantir Scrupulously Protects Its Confidential Information and Trade Secrets**

20 42. Palantir undertakes significant efforts to protect the confidentiality and security of
21 its trade secrets, property (including physical locations, intellectual property, and network
22 security), as well as sensitive and confidential business and financial information. This
23 confidential information is not generally known to the public and provides actual and potential
24 economic value to Palantir from not being generally known to the public or to Palantir’s
25 competitors.

26 43. Palantir employs both technical and physical safety measures to maintain the
27 security of its property and confidential information. Among other things, Palantir restricts
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1 employees' access to sensitive internal information such that individual employees can only
2 access such data after obtaining appropriate authorization and only to the extent necessary to
3 perform their jobs. Additionally, Palantir employs a multitude of technical security measures to
4 protect its systems and networks, including, among other methods: intrusion detection systems,
5 network monitoring tools, anti-malware software, network firewalls, and whole disk encryption
6 of employee computers, among other measures. Palantir's network and security systems are also
7 continually monitored for potential security risks. To secure access to information and data no
8 matter where employees are, Palantir uses and requires complex password requirements and two-
9 factor authentication for access to its hardware and its network.

10 44. In addition to data and network security, physical access to Palantir's facilities is
11 also highly restricted. Palantir employees must use electronic badges to access Palantir facilities.
12 Access to certain sensitive areas of Palantir's facilities is further restricted to a small subset of
13 Palantir employees with a specific need for access (including, for example, Palantir facilities
14 containing network servers and security equipment, among others). Visitors must be invited to
15 Palantir facilities, must sign in and wear a visitor badge and are escorted at all times. In addition,
16 certain areas of Palantir's facilities are off limits to visitors, and Palantir deploys security guards
17 to protect its facilities.

18 45. Palantir also implements numerous measures and policies to ensure that its
19 employees safeguard the confidentiality and security of its trade secrets and sensitive and
20 confidential business information. As part of the hiring process, Palantir requires pre-
21 employment background checks for all new employees and also requires legal training for new
22 hires, covering confidentiality, information and data security, and compliance.

23 **Palantir and Major Investors Amend the IRA to Protect Palantir, its Employees, and**
24 **Shareholders from Malicious Actors**

25 46. Having discovered Abramowitz's actions described above betraying Palantir's
26 trust and misappropriating its trade secrets—and fearing more such betrayals and breaches of
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1 confidence that remain undiscovered—Palantir could no longer trust Abramowitz with its
2 confidential information, including the information demanded by KT4 in the Demand Letter.

3 47. To protect Palantir—as well as its employees, former employees, investors, and
4 other shareholders—from the malicious acts of Defendants, on September 1, 2016, Palantir and a
5 group of its Major Investors holding a majority of the Registrable Securities held by Major
6 Investors invoked their rights under Section 3.7 of the July IRA to amend the agreement (the
7 “Amendment”). Even assuming KT4 was a Major Investor with rights under Sections 2.1 and 2.2
8 of the July IRA, which Palantir does not concede, KT4 has no such rights under the current IRA,
9 and the Amendment is expressly retroactive in its effect, as permitted by Section 3.7.

10 48. Palantir did not take this action lightly, but after receiving the Demand Letter and
11 noting the nefarious activities of Defendants through their access as investors, Palantir determined
12 that it was necessary to act to protect itself and others from the harmful actions of Defendants.
13 Palantir regularly and frequently works with investors, upon request, to provide relevant
14 information corresponding to their status as a shareholder, subject to confidentiality obligations.
15 As it has done in responding to Abramowitz’s reasonable questions in the past, Palantir stands
16 ready to do the same with KT4 upon a showing that such requests are being made in good faith
17 and with no improper purpose.

18 **Harm to Palantir**

19 49. As a result of Defendants’ actions, Palantir has been and will continue to be
20 injured in an amount to be established according to proof.

21 50. As a result of Abramowitz’s unauthorized copying, theft, and misappropriation of
22 Palantir’s confidential and proprietary information and trade secrets as well as his co-opting of
23 Palantir’s work developing technology and ideas and subsequently passing them off as his own,
24 Palantir has been and will continue to be injured absent equitable relief.

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract – Against All Defendants)**

3 51. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 50.

5 52. Defendants’ contracts with Palantir, including, *inter alia*, the Transfer Agreements
6 and the July 2014 NDA (the “Confidentiality Contracts”), imposed a contractual obligation on
7 Defendants to maintain the confidentiality of information learned or accessed as a result of
8 Defendants’ investments in Palantir, Abramowitz’s visits to Palantir’s offices, and his discussions
9 with Palantir employees.

10 53. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
11 contract and all conditions precedent to its enforcement have been performed by Palantir.

12 54. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
13 precedent to its enforcement have been performed by Palantir.

14 55. Under the Confidentiality Contracts, Defendants agreed to hold in strictest
15 confidence, and not to use, except for the benefit of the Company, any information they obtain or
16 access as investors or during visits or discussions.

17 56. Defendants breached the Confidentiality Agreements when Abramowitz used the
18 information and ideas he learned from Palantir employees to file patent applications listing
19 himself as sole inventor of Palantir’s ideas that he learned in confidence, as well as a trademark
20 application on “Shire.”

21 57. As a direct and proximate result of Defendants’ wrongful conduct, Palantir has
22 been harmed and is being forced to take expensive steps to reduce and mitigate that harm,
23 including opposing Abramowitz’s patent and trademark applications.

24 58. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
25 where allowed.

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1 **SECOND CAUSE OF ACTION**

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing– Against All Defendants)**

3 59. Plaintiff repeats and realleges paragraphs 1 through 58 above as though fully set
4 forth herein.

5 60. California law implies a covenant of good faith and fair dealing in all contracts.

6 61. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
7 contract and all conditions precedent to its enforcement have been performed by Palantir.

8 62. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
9 precedent to its enforcement have been performed by Palantir.

10 63. Defendants have unfairly interfered with Plaintiff’s right to receive the benefit of
11 the Transfer Agreements and July 2014 NDA by, among other things, misappropriating and using
12 Plaintiff’s proprietary, confidential, and trade secret information and falsely claiming to have
13 invented Palantir’s inventions.

14 64. Defendants have breached and violated its implied covenant of good faith and fair
15 dealing.

16 65. As a result of that breach by Defendants, Plaintiff has suffered monetary damages
17 in an amount to be quantified at trial.

18 **THIRD CAUSE OF ACTION**

19 **(Violation of Cal. Civ. Code § 3426 et seq. – Against Abramowitz)**

20 66. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
21 through 65.

22 67. Palantir’s confidential and proprietary information pertaining to its projects,
23 including those concerning use of data analysis in the cyber security insurance, clinical trial and
24 natural resources exploration contexts, constitute protectable trade secrets as set forth in
25 California Civil Code § 3426.1(d).

26 68. Palantir’s confidential and proprietary information derives independent economic
27 value, actual or potential, from not being generally known to the public or to other persons who
28

1 can obtain economic value from their disclosure or use as set forth in California Civil Code
2 § 3426.1(d)(1).

3 69. Palantir's confidential and proprietary information is the subject of efforts that are
4 reasonable under the circumstances to maintain their secrecy as set forth in California Civil Code
5 § 3426.1(d)(2).

6 70. Palantir did not consent to the use of any of its trade secrets by anyone other than
7 authorized employees using them for Palantir's business purposes.

8 71. Abramowitz willfully and intentionally misappropriated Palantir's trade secrets
9 when, *inter alia*, he filed patent and trademark applications claiming inventorship and ownership
10 of Palantir's ideas. Palantir is informed and believes that Abramowitz has used Palantir's trade
11 secret, confidential and/or proprietary information to develop a competing business or in
12 furtherance of that goal.

13 72. Palantir is entitled to an injunction of both actual and threatened misappropriation
14 as set forth in California Civil Code § 3426.2(a).

15 73. Palantir also requests that the court take affirmative acts to protect Palantir's trade
16 secrets, as set forth in California Civil Code § 3426.2(c), including ordering an inspection of
17 Abramowitz's personal computer(s), USB drives, email accounts, cloud storage accounts and
18 other sources and equipment by a forensics expert to determine whether Palantir's trade secrets
19 were wrongfully taken and/or disseminated to others, and to ensure that no trade secrets
20 belonging to Palantir remain saved on those systems; and issue a writ of possession, a preliminary
21 injunction, and a permanent injunction ordering the return of Palantir's confidential information
22 and prohibiting Abramowitz from continuing his unlawful actions.

23 74. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
24 where allowed.

25 75. Abramowitz's conduct as alleged herein was willful, malicious and wanton, and
26 undertaken for the purpose of injuring or causing injury to Palantir. Palantir seeks exemplary and
27 punitive damages against Abramowitz.
28

1 **FOURTH CAUSE OF ACTION**

2 **(Declaratory Relief – Against All Defendants)**

3 76. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 75.

5 77. There presently exists a real and actual controversy between Palantir and KT4
6 regarding whether KT4 is entitled under the IRA to the information sought through the Demand
7 Letter.

8 78. KT4 maintains that it is entitled to information under Sections 2.1 and 2.2 of the
9 IRA, and Palantir maintains that KT4 is not a “Major Investor” under the IRA, and therefore has
10 no such right.

11 79. Defendants have acted with unclean hands by, among other things,
12 misappropriated Palantir’s trade secrets.

13 80. A declaratory judgment is necessary and appropriate at this time to resolve the
14 controversy between the parties. Palantir therefore specifically requests a judgment declaring that
15 KT4 has no right to any information pursuant to Sections 2.1 or 2.2 of the IRA.

16 **FIFTH CAUSE OF ACTION**

17 **(Violation of California’s Unfair Competition Law,**

18 **Cal. Bus. & Prof. Code Section 17200 *et seq.* – Against All Defendants)**

19 81. Plaintiff Palantir repeats and realleges paragraphs 1 through 80 above as though
20 fully set forth herein.

21 82. Defendants have engaged in (and continues to engage in) the unlawful, fraudulent,
22 and unfair business acts and practices described throughout this Complaint in violation of
23 California’s Unfair Competition Law (the “UCL”), California Business and Professions Code,
24 Section 17200, *et seq.*

25 83. Defendants’ business acts and practices were unlawful under the UCL because
26 they resulted in the violations of state common law described herein, including breach of contract
27 and breach of the implied covenant of good faith and fair dealing.
28

1 84. Defendants' business acts and practices were fraudulent because a reasonable
2 person would likely be deceived by Defendant's false statements and claims, including that they
3 invented and own Palantir's inventions.

4 85. Defendants' business acts and practices are unfair because the harm suffered by
5 Palantir described herein outweighs any justification that Defendants may assert for engaging in
6 those acts and practices. Moreover, Palantir could not have avoided the harm it suffered as a
7 result of Defendants' unfair acts and practices because Defendants made every effort to obscure
8 and conceal from Palantir the existence and extent of its harmful acts and practices.

9 86. Defendants' unlawful, unfair and fraudulent business acts and practices were
10 carried out and effectuated in California and injured Plaintiff in California.

11 87. Plaintiff suffered harm as herein alleged as a direct and proximate result of
12 Defendants' unlawful, unfair and fraudulent business acts and practices.

13 88. Plaintiff is entitled to an injunction enjoining Defendants from such further
14 violations of the UCL. Any such injunction will benefit Plaintiff and the general public.
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Palantir respectfully requests the following relief:

18 1. Judgment in favor of Palantir and against all Defendants on all of Palantir's claims
19 asserted in the Complaint;

20 2. For a preliminary injunction and permanent injunction restraining Defendants,
21 their officers, agents, servants, employees, and all persons acting in concert or participation with
22 them from:

- 23 a. perpetuating the wrongful acts and conduct as set forth above;
- 24 b. directly or indirectly retaining, using or disclosing Palantir's trade secret,
25 confidential and/or proprietary information, and derivatives thereof;
- 26 c. destroying any property, emails, documents or materials that are relevant or
27 potentially relevant to this action;
- 28

1 d. moving or transferring outside the United States Palantir's property,
2 emails, documents or materials that are relevant or potentially relevant to this action;

3 3. For an Order requiring that Palantir's confidential, proprietary and trade secret
4 information be returned to Palantir;

5 4. For an Order requiring all Defendants to divulge the identity of the individuals,
6 groups and companies to whom they have disclosed Palantir's confidential, proprietary and trade
7 secret information;

8 5. For an Order requiring all Defendants to account for and pay to Palantir all ill-
9 gotten gains, profits, and savings obtained or derived from their improper conduct;

10 6. For damages to be proven at trial;

11 7. For an Order awarding Palantir punitive damages in a sum to be determined at
12 trial, on the basis of Defendants' willful and deliberate tortious conduct;

13 8. For restitution and disgorgement of all ill-gotten gains unjustly obtained and
14 retained by Defendants through the acts complained of herein;

15 9. For prejudgment interest;

16 10. For an Order awarding Palantir its attorney's fees and all costs of suit incurred
17 herein; and

18 11. For such other and further relief as the Court deems just and proper.
19
20

21 Dated: September 1, 2016

BOIES, SCHILLER & FLEXNER LLP

22
23
24 By: 

David Zifkin (SBN232845)

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Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: September 1, 2016

BOIES, SCHILLER & FLEXNER LLP

By: 
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TECHNOLOGIES INC.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David L. Zifkin (SBN 232845) BOIES, SCHILLER & FLEXNER LLP 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401 TELEPHONE NO.: (310) 752-2400 FAX NO.: (310) 752-2490 ATTORNEY FOR (Name): Palantir Technologies Inc.	FOR COURT USE ONLY E-FILED 9/1/2016 11:20:57 AM David H. Yamasaki Chief Executive Officer/Clerk Superior Court of CA, County of Santa Clara 16CV299476 Reviewed By: Rowena Walker
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N 1st Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court	CASE NUMBER: 16CV299476 JUDGE: Peter H. Kirwan DEPT: 1 / Complex
CASE NAME: PALANTIR TECHNOLOGIES INC. v. MARC ABRAMOWITZ, et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

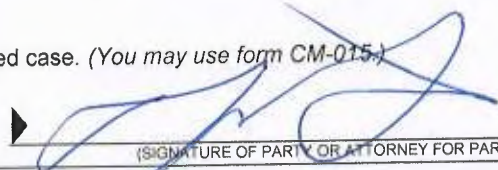
1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **5**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 1, 2016
 David L. Zifkin

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Additional Parties Attachment form is attached.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PALANTIR TECHNOLOGIES INC., a Delaware corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pída al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California

CASE NUMBER: 16CV299476
(Número del Caso)

County of Santa Clara
191 North First Street, San Jose, California

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David L. Zilkin, 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401, Tel: (310) 752-2400

DATE: 9/1/2016 (Fecha)
David H. Yamaski, Chief executive Officer
Clerk, by /s/ Rowena Walker, Deputy (Adjunto)
(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): **KT4 Partners LLC, a Delaware limited liability company**
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): **limited liability company**
4. by personal delivery on (date)

SHORT TITLE:

CASE NUMBER:

BALANTIR, TECHNOLOGIES INC. vs. ABRAMOWITZ, et al.

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if a case does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each box of party):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

MARCO L. ABRAMOWITZ, in his individual capacity and as trustee of the MARCO ABRAMOWITZ CHARITABLE TRUST NO. 2, K74 PARTNERS LLC, a Delaware Limited Liability company, and DCS 1 through 50, inclusive,

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLC PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Additional Parties Attachment form is attached.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PALANTIR TECHNOLOGIES INC., a Delaware corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California

CASE NUMBER: 16CV299476
(Número del Caso)

County of Santa Clara
191 North First Street, San Jose, California

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David L. Zifkin, 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401, Tel: (310) 752-2400

DATE: 9/1/2016 David H. Yamaski Clerk, by /s/ Rowena Walker , Deputy
(Fecha) Chief executive Officer (Secretario)

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<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

SHORT TITLE: PALANTIR TECHNOLOGIES INC. v. ABRAMOWITZ, et al.	CASE NUMBER:
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List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

MARC L. ABRAMOWITZ, in his individual capacity and as trustee of the MARC ABRAMOWITZ CHARITABLE TRUST NO. 2, KT4 PARTNERS LLC, a Delaware limited liability company, and DOES 1 through 50, inclusive,

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David L. Zifkin (SBN 232845) BOIES, SCHILLER & FLEXNER LLP 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401 TELEPHONE NO.: (310) 752-2400 FAX NO.: (310) 752-2490 ATTORNEY FOR (Name): Palantir Technologies Inc.		FOR COURT USE ONLY E-FILED 9/1/2016 11:20:57 AM David H. Yamasaki Chief Executive Officer/Clerk Superior Court of CA, County of Santa Clara 16CV299476 Reviewed By: Rowena Walker
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N 1st Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court		CASE NUMBER 16CV299476 JUDGE: Peter H. Kirwan DEPT: 1 / Complex
CASE NAME: PALANTIR TECHNOLOGIES INC. v. MARC ABRAMOWITZ, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 5

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date September 1, 2016
 David L. Zifkin
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)

3 (dzifkin@bsflp.com)

4 401 Wilshire Boulevard, Suite 850

5 Santa Monica, CA 90401,

6 Telephone: (310) 752-2400

7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED

9/1/2016 11:20:57 AM

David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA,

County of Santa Clara

16CV299476

Reviewed By: Rowena Walker

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 PALANTIR TECHNOLOGIES INC., a)

14 Delaware corporation,)

15 *Plaintiff,*)

16 v.)

17 MARC L. ABRAMOWITZ, in his individual)

18 capacity and as trustee of the MARC)

19 ABRAMOWITZ CHARITABLE TRUST NO.)

20 2, KT4 PARTNERS LLC, a Delaware limited)

21 liability company, and DOES 1 through 50,)

22 inclusive,)

23 *Defendants.*)

Case No. 16CV299476

COMPLAINT FOR:

(1) Breach of Contract

(2) Breach of the Implied Covenant of Good

Faith and Fair Dealing

(3) Violation of Cal. Civ. Code § 3426 et seq.

(4) Declaratory Relief

(5) Violation of California's Unfair

Competition Law, Cal. Bus. & Prof. Code §

17200 et seq.

JURY TRIAL DEMAND

Complaint Filed: September 1, 2016

Trial Date: Not set

1 Plaintiff Palantir Technologies Inc. ("Palantir") sues defendants Marc L. Abramowitz
2 ("Abramowitz"), both in his individual capacity and as trustee of the Marc Abramowitz
3 Charitable Trust No. 2 (the "Trust"), KT4 Partners LLC ("KT4"), and Does 1 through 50
4 (collectively with Abramowitz, KT4, and the Trust, "Defendants") as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action to stop Defendants from misappropriating Palantir's confidential
7 information and proprietary trade secrets for their own benefit and to prevent them from receiving
8 any additional confidential or proprietary information from Palantir pursuant to their Investors'
9 Rights Agreement.

10 2. Abramowitz was a respected confidant and advisor to Palantir and its senior
11 executives until he betrayed the trust they bestowed upon him for his own personal gain. He was,
12 through KT4 and other entities, an early equity investor in Palantir who personally engaged in
13 regular discussions with executives about some of the company's most sensitive business
14 strategies and trade secrets. Those discussions were highly confidential, as was made clear by
15 express written agreements among the parties at the time and a course of dealing based on the
16 most basic principles of fairness and honesty between a trusted shareholder and advisor and
17 management.

18 3. Nonetheless, as part of brazen scheme to claim Palantir's own highly confidential
19 information and trade secrets as his own, Abramowitz stole those secrets, engaged in methodical
20 deception of Palantir's senior executives, and made false claims to the United States Patent and
21 Trademark Office. Abramowitz's claim to be a patent innovator is directly contradicted by the
22 facts surrounding his professional career.

23 4. To start, Abramowitz has no notable history as an inventor or patent innovator in
24 the data analysis area. He has made most of his career and fortune in real estate and buyout
25 investing. Yet, beginning in 2014, Abramowitz suddenly filed three patents, all of them based on
26 ideas and trade secrets he stole from Palantir. This was plainly illegal and highly unethical
27 conduct, and it was a betrayal of his trusted relationship with Palantir and its executives.

28

1 5. But Abramowitz’s scheme did not end there. After stealing from Palantir, he hired
2 lawyers to demand from Palantir sensitive and confidential information about the company,
3 including the Company’s finances and business dealings, which Palantir considers to be, and
4 treats as, highly sensitive and confidential. Having uncovered Abramowitz’s breach of Palantir’s
5 trust (and of his contractual obligations to Palantir under multiple agreements), it is apparent that
6 Abramowitz is not seeking this information in good faith for a proper purpose. In fact, history
7 has shown that Abramowitz has and will misuse any information provided to him in breach of
8 confidence, causing Palantir irreparable harm in the process.

9 6. Palantir now has been forced to protect itself, both through amendments to its
10 corporate documents and through this action, by which Palantir seeks redress for Abramowitz’s
11 breaches of contract, breaches of confidence, and misuse of Palantir’s confidential and
12 proprietary information and trade secrets. Further, to protect Palantir and its shareholders—
13 including employees, former employees and other investors—from continued breaches of
14 confidence in the future, Palantir seeks a declaratory judgment that Abramowitz has no right to
15 the information he has demanded under the Investors’ Rights Agreement.

16 **PARTIES, JURISDICTION, AND VENUE**

17 7. The Court has jurisdiction over this action by virtue of Article VI § 10 of the
18 California Constitution and California Code of Civil Procedure § 410.10.

19 8. Palantir is a Delaware corporation with its principal place of business at 100
20 Hamilton Avenue, Palo Alto, California, 94301. Palantir has suffered, and continues to suffer,
21 injury in this jurisdiction by reason of Defendants’ actions.

22 9. Palantir is informed and believes and on that basis alleges that defendant Marc L.
23 Abramowitz is an individual residing in California at 1029 Ramona Street, Palo Alto, California,
24 94301. Palantir is informed and believes and on that basis alleges that Abramowitz is the trustee
25 of the Marc Abramowitz Charitable Trust No. 2. The wrongful actions of Abramowitz occurred
26 in, were targeted to, and caused damage in, California.

27
28

1 10. Palantir is informed and believes and on that basis alleges that defendant KT4
2 Partners LLC is a Delaware limited liability company with its principal place of business at 1029
3 Ramona Street, Palo Alto, California, 94301. On information and belief, KT4 does business in
4 California and has committed acts that submit it to the jurisdiction of California's courts. Upon
5 information and belief, Abramowitz is the sole member of KT4 and controls and directs the
6 activities of KT4. The wrongful actions of KT4 occurred in, were targeted to, and caused damage
7 in, California.

8 11. Palantir is ignorant of the true names of Does 1 through 50 and such names are
9 fictitious. Such defendants are legally responsible for the events and happenings described herein
10 and for the damages proximately caused thereby. Once Palantir learns of the true names of Does
11 1 through 50, Palantir will amend the complaint to include the real name(s) of such party or
12 parties.

13 12. This action is founded on injuries and damages suffered by Palantir in Santa Clara
14 County by virtue of the Defendants' misappropriation of trade secrets, breach of contract, breach
15 of confidence and other illegal and wrongful acts as alleged in this Complaint. Venue is proper in
16 this Court because the parties reside in this County and the events that form the basis for this
17 Complaint largely took place in this County.

18 FACTUAL BACKGROUND

19 Palantir's Business

20 13. Palantir is a software and services company that specializes in data analytics. In
21 2004, Palantir was founded on a vision: to provide solutions not only to problems then faced by
22 business and government, but also solutions to problems that did not yet exist, but that would
23 surely come to be as part of our rapidly-evolving world. It sought to make this vision a reality by
24 the use of technology. And it embarked on an ambitious, time-consuming, and costly endeavor to
25 create a viable, successful business. As a result of hard work, Palantir has succeeded and is now a
26 leader in its industry. Today, Palantir's products are deployed at the most critical government,
27
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1 commercial, and non-profit institutions in the world to solve problems the company's founders
2 had not even dreamed of back in 2004.

3 14. In particular, at its founding Palantir set out to create products that would
4 transform the way organizations use perhaps their most important asset in today's business world:
5 data. Palantir's mission has been and remains to develop flexible tools and services to provide
6 human-driven analysis of real-world data, with a focus on creating the world's best user
7 experience for working with data. To achieve this, Palantir builds platforms for integrating,
8 managing, and securing data, on top of which it layers applications for fully interactive, human-
9 driven, machine-assisted analysis. This means that Palantir develops programs and provides
10 services that allow businesses and government to run their businesses in a way that corresponds
11 with the reality of their marketplace and consumers.

12 15. Businesses and government use Palantir's software to interpret and visualize large
13 quantities of information from various sources. For example, businesses use Palantir's software
14 to analyze their internal and market data to better understand consumer trends, and government
15 agencies use Palantir's software to analyze intelligence data to better understand emerging
16 threats.

17 16. Palantir's success is due in part to its early recognition that many organizations are
18 traditionally unable to leverage insights from their internal data because the data is held in
19 separate silos that are often disconnected and have different access, security controls, and privacy
20 requirements. When information is siloed—that is, when important information is stored in
21 containerized, unrelated units—businesses and government cannot fully realize the potential of
22 that data. Palantir provides software solutions that avoid this problem, allowing users to run their
23 businesses consistent with the actual environment in which they operate. Thus, Palantir's
24 products are used to fuse and analyze customer data across platforms and sources and enable
25 secure collaboration among analysts, while protecting data privacy and security.

26 17. As is expected in this type of work, Palantir is also heavily involved in research
27 and development. Palantir spends millions of dollars each year to expand its business and seek
28

1 out new opportunities—and to stay ahead of the curve and atop the industry. This research and
2 development investment involves both creating new software, technologies and processes as well
3 as adapting existing products and technologies to new applications and uses.

4 **Abramowitz's Relationship with Palantir**

5 18. Initial funding for Palantir came from a variety of sources, including the
6 company's founders who remain with Palantir today as shareholders of common shares of
7 Palantir stock. Abramowitz, through KT4 and other entities he controls, was an early investor in
8 Palantir, first investing in the company in 2005.

9 19. Through the years, Abramowitz was involved with the business of Palantir.
10 Rather than acting as a passive investor, he became a regular fixture at Palantir. He established
11 relationships with the company's founders, officers, and employees. As a result, he was viewed
12 as a trusted figure by the company, including its several founders and senior employees.
13 Abramowitz fostered these relationships of confidence and held himself out as a friend of Palantir
14 whose interests were completely aligned with the company. He made clear that he could be
15 trusted to keep confidences and act in the company's best interests.

16 20. Indeed, Abramowitz spent so much time at Palantir that in 2014 he asked for an
17 office. Between 2010 and 2015, Abramowitz visited Palantir offices over thirty times. When
18 Abramowitz had questions about Palantir's business, including financial information, that were
19 relevant to his status as a shareholder and trusted advisor to the company, he was provided with
20 the information.

21 21. In this context, Abramowitz often inquired about specific Palantir projects. On
22 several occasions, Palantir provided information to Abramowitz about concepts for new
23 technology and/or new use cases for existing technology that Palantir had spent significant time
24 and resources researching, developing and testing. Palantir always provided any information to
25 Abramowitz with the express and reasonable expectation that Abramowitz would maintain its
26 confidentiality and would never pass Palantir's ideas off as his own or use the information to
27 Palantir's detriment without Palantir's knowledge or permission.

1 **Abramowitz’s Agreements Not to Violate Confidentiality**

2 22. In addition to relying on the confidential nature of its communications with
3 Abramowitz, Palantir also protected its confidential information and trade secrets through written
4 agreements.

5 23. In an August 14, 2012 Preferred Stock Transfer Agreement,
6 Abramowitz agreed “to keep confidential and refrain from using or disclosing all agreements,
7 documents and other information regarding the Company or its securityholders provided or made
8 available to [Abramowitz]...in [his] capacity as a stockholder of the Company....” (2012 PSTA
9 at ¶ 7.) Abramowitz renewed that agreement in a June 17, 2015 Preferred Stock Transfer
10 Agreement. (2017 PSTA at 7.)

11 24. In a June 17, 2015 Preferred Stock Transfer Agreement, KT4 similarly agreed “to
12 keep confidential and refrain from using or disclosing all agreements, documents and other
13 information regarding the Company or its securityholders provided or made available to
14 [Abramowitz]...in [his] capacity as a stockholder of the Company....” (2015 PSTA at ¶ 7.)

15 25. In addition, during at least one of his visits to Palantir, on July 12, 2014,
16 Abramowitz executed an NDA (the “July 2014 NDA”) covering “Proprietary Information,”
17 which is defined in the NDA as “non-public business, technical or other information, materials
18 and/or ideas of Palantir [including] anything you learn or discover as a result of exposure to or
19 analysis of any Proprietary Information.” The NDA expressly forbids Abramowitz from using or
20 revealing any of Palantir’s Proprietary Information.

21 **Abramowitz Misappropriation of Business Information and Trade Secrets**

22 26. By 2014, Abramowitz had embarked on an intentional and calculated scheme to
23 discover Palantir trade secrets and convert them to his own use and profit. In furtherance of his
24 scheme, during 2014 alone, Abramowitz was in contact with Palantir employees at least 34 times
25 and visited Palantir facilities at least 20 times. Pursuant to his scheme, Abramowitz violated the
26 trust Palantir put in him on at least three separate occasions.

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1 27. The first occasion of which Palantir is aware involves a Palantir idea concerning
2 clinical trials of drugs. Palantir had been working hard since 2011 on the best way to enter the
3 clinical trial space, including using Palantir's technology and data analytics services to improve
4 the conduct of clinical trials of prescription drugs by pharmaceutical companies and academic
5 institutions.

6 28. Palantir's work in the field of clinical trials has been extensive, and the processes
7 and systems developed through that work were important company trade secrets. As part of its
8 research and development work, Palantir employees created white papers and presentations
9 describing the ideas and projects they were working on. Palantir also signed on customers to help
10 drive the project from the research side into the market.

11 29. Abramowitz learned from Palantir about Palantir's work in the area of clinical
12 trials and, in February 2014, sought to broker a deal between Palantir and a customer to take
13 something to market. Through his conversations with Palantir on the subject and the confidential
14 access Palantir granted him to documents describing Palantir's research and development work,
15 Abramowitz learned the details of the work Palantir had been doing in the area for years.
16 Abramowitz misappropriated Palantir's inventions in this space and has attempted to patent them
17 as his own.

18 30. On October 29, 2014, without Palantir's knowledge or consent, Abramowitz filed
19 Provisional Application No. 62/072,368 with the United States Patent and Trademark Office
20 ("USPTO") seeking to patent the idea developed by Palantir and explained to Abramowitz in
21 confidence. The application falsely identifies Abramowitz as the inventor, includes no mention
22 of Palantir at all, and fails to list a single Palantir employee as an inventor.

23 31. In the second occurrence where Palantir knows Abramowitz abused his position of
24 trust to further his scheme, Abramowitz participated in discussions about an idea for using
25 Palantir's cyber security technology to improve the ability of insurance companies to provide
26 insurance to retailers and other institutions against the potential harm caused by data breaches and
27 other cybercrimes.

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1 32. In June 2014, a Palantir executive disclosed to Abramowitz during a conversation
2 that Palantir was working on opportunities in the insurance industry. When Abramowitz
3 expressed interest in the concept and requested additional information, the Palantir executive
4 arranged for Abramowitz to speak with another Palantir executive, who sent Abramowitz some
5 information on the idea via email and invited Abramowitz to meet with him at Palantir's offices
6 to discuss the idea. During his June 2014 meeting with Abramowitz, the second Palantir
7 executive described two related concepts that Palantir had developed relating to cyber security
8 insurance and the use of customer consortia to improve cyber security, as well as the Palantir
9 technology that could be used to implement them.

10 33. When Abramowitz next met with Palantir on the subject, he indicated he was
11 interested in setting up a Palantir subsidiary that he would run to perform the insurance-related
12 function Palantir had revealed to him, further confirming that his participation in the discussions
13 were solely for the benefit and interest of Palantir. Palantir did not pursue Abramowitz's
14 suggestion.

15 34. Without Palantir's knowledge, on October 21, 2014, Abramowitz filed Provisional
16 Application No. 62/066,716 at the USPTO attempting to patent the ideas he learned about in
17 confidence through his conversations with Palantir executives and claiming to be the invention's
18 sole owner and inventor. To read Abramowitz's application, one would never suspect Palantir
19 had anything to do with the idea at all, as Abramowitz fails to mention Palantir and does not
20 include a single Palantir employee as an inventor.

21 35. However, presumably unbeknownst to Abramowitz, Palantir had already filed its
22 own patent application on the invention in February 2014, months before Abramowitz learned of
23 the idea from Palantir. That application resulted in United States Patent No. 9009827 (the "827
24 Patent"), owned by Palantir and invented by Palantir employees. The similarities between
25 Palantir's valid patent and Abramowitz's application are stunning. Even a cursory reading of the
26 abstract of the '827 Patent issued to Palantir and the application filed by Abramowitz reveals that
27 they are the same invention—one which Abramowitz misappropriated from Palantir.
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1 36. Abramowitz's scheme is clearly revealed through his filing of two patent
2 applications within ten days of one another seeking to secure sole inventorship over ideas he
3 learned from Palantir in confidence. Abramowitz continued his concerted scheme to
4 misappropriate Palantir's ideas in at least one more, third area. After discussions with Palantir
5 employees concerning Palantir's work on adapting its data analysis technology for use in oil and
6 gas exploration, Abramowitz filed Provisional Application No. 62/094,888 with the USPTO,
7 seeking to patent as sole owner and inventor the ideas he learned from Palantir concerning
8 Palantir's work in this area. As with his other applications described above, Abramowitz filed the
9 application without Palantir's knowledge or consent and failed to credit Palantir or its employees
10 in any way.

11 37. Through his months-long scheme, Abramowitz intentionally abused his status as a
12 trusted investor at Palantir in an attempt to profit at Palantir's expense by taking multiple ideas
13 from Palantir and attempting to patent them as his own. Although, on information and belief,
14 Abramowitz does not have the resources, technology, or experience to market the ideas
15 effectively, he could attempt to use the patent applications or any issued patents to hold Palantir
16 hostage in exchange for royalties. Abramowitz's actions are causing Palantir irreparable harm,
17 and Palantir is therefore separately seeking to have Abramowitz's patent applications denied by
18 the USPTO.

19 38. The patent applications are not the only indication that Abramowitz has
20 misappropriated information and access to attempt to profit at Palantir's expense. Palantir's
21 company name is inspired by the "seeing stones" referenced in The Lord of the Rings. Without
22 Palantir's knowledge, Abramowitz filed for a trademark on the mark "Shire," which is also
23 referenced in The Lord of the Rings as the place where one of the main characters lives. It is
24 clear that Abramowitz has filed this trademark application in an attempt to further improperly
25 associate himself with what he views as the Palantir brand.

26 39. Furthermore, Abramowitz has filed this trademark application with an intent to use
27 the mark in connection with "underwriting and administration of cyber liability insurance;
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1 underwriting and administration of cyber security insurance; insurance brokerage in the field of
2 cyber liability and cyber security insurance.” He has claimed he intends to use the mark for the
3 aforementioned goods and services despite knowing that the aforementioned goods and services
4 are services offered by, or intended to be offered by, Palantir, from whom he misappropriated
5 confidential and proprietary ideas and information in these areas.

6 **Abramowitz Demands Information Under the Investors’ Rights Agreement**

7 40. In furtherance of his scheme, on August 16, 2016, KT4, through counsel at
8 Williams & Connolly LLP, sent Palantir a letter (the “Demand Letter”) demanding information
9 pursuant to the Investors’ Rights Agreement (as amended most recently on September 1, 2016,
10 the “IRA”). Under the February 15, 2008 version of the IRA (the “February IRA”) invoked by
11 Abramowitz in his letter, and the July 8, 2015 version in effect at the time Abramowitz sent his
12 letter (the “July IRA”), the agreement granted certain rights to receive information from Palantir
13 to anyone who was a “Major Investor” in Palantir, defined in Section 2.1 of the IRA as any
14 investor that holds “at least 5,000,000 shares of” certain types of Palantir stock.

15 41. In the Demand Letter, KT4 purports to be a Major Investor of Palantir and
16 demands that Palantir produce documents and provide information to its counsel pursuant to
17 Sections 2.1 and 2.2 of the February IRA. Neither IRA, however, provides any right for counsel
18 or anyone other than a Major Investor to receive the information.

19 **Palantir Scrupulously Protects Its Confidential Information and Trade Secrets**

20 42. Palantir undertakes significant efforts to protect the confidentiality and security of
21 its trade secrets, property (including physical locations, intellectual property, and network
22 security), as well as sensitive and confidential business and financial information. This
23 confidential information is not generally known to the public and provides actual and potential
24 economic value to Palantir from not being generally known to the public or to Palantir’s
25 competitors.

26 43. Palantir employs both technical and physical safety measures to maintain the
27 security of its property and confidential information. Among other things, Palantir restricts
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1 employees' access to sensitive internal information such that individual employees can only
2 access such data after obtaining appropriate authorization and only to the extent necessary to
3 perform their jobs. Additionally, Palantir employs a multitude of technical security measures to
4 protect its systems and networks, including, among other methods: intrusion detection systems,
5 network monitoring tools, anti-malware software, network firewalls, and whole disk encryption
6 of employee computers, among other measures. Palantir's network and security systems are also
7 continually monitored for potential security risks. To secure access to information and data no
8 matter where employees are, Palantir uses and requires complex password requirements and two-
9 factor authentication for access to its hardware and its network.

10 44. In addition to data and network security, physical access to Palantir's facilities is
11 also highly restricted. Palantir employees must use electronic badges to access Palantir facilities.
12 Access to certain sensitive areas of Palantir's facilities is further restricted to a small subset of
13 Palantir employees with a specific need for access (including, for example, Palantir facilities
14 containing network servers and security equipment, among others). Visitors must be invited to
15 Palantir facilities, must sign in and wear a visitor badge and are escorted at all times. In addition,
16 certain areas of Palantir's facilities are off limits to visitors, and Palantir deploys security guards
17 to protect its facilities.

18 45. Palantir also implements numerous measures and policies to ensure that its
19 employees safeguard the confidentiality and security of its trade secrets and sensitive and
20 confidential business information. As part of the hiring process, Palantir requires pre-
21 employment background checks for all new employees and also requires legal training for new
22 hires, covering confidentiality, information and data security, and compliance.

23 **Palantir and Major Investors Amend the IRA to Protect Palantir, its Employees, and**
24 **Shareholders from Malicious Actors**

25 46. Having discovered Abramowitz's actions described above betraying Palantir's
26 trust and misappropriating its trade secrets—and fearing more such betrayals and breaches of
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1 confidence that remain undiscovered—Palantir could no longer trust Abramowitz with its
2 confidential information, including the information demanded by KT4 in the Demand Letter.

3 47. To protect Palantir—as well as its employees, former employees, investors, and
4 other shareholders—from the malicious acts of Defendants, on September 1, 2016, Palantir and a
5 group of its Major Investors holding a majority of the Registrable Securities held by Major
6 Investors invoked their rights under Section 3.7 of the July IRA to amend the agreement (the
7 “Amendment”). Even assuming KT4 was a Major Investor with rights under Sections 2.1 and 2.2
8 of the July IRA, which Palantir does not concede, KT4 has no such rights under the current IRA,
9 and the Amendment is expressly retroactive in its effect, as permitted by Section 3.7.

10 48. Palantir did not take this action lightly, but after receiving the Demand Letter and
11 noting the nefarious activities of Defendants through their access as investors, Palantir determined
12 that it was necessary to act to protect itself and others from the harmful actions of Defendants.
13 Palantir regularly and frequently works with investors, upon request, to provide relevant
14 information corresponding to their status as a shareholder, subject to confidentiality obligations.
15 As it has done in responding to Abramowitz’s reasonable questions in the past, Palantir stands
16 ready to do the same with KT4 upon a showing that such requests are being made in good faith
17 and with no improper purpose.

18 Harm to Palantir

19 49. As a result of Defendants’ actions, Palantir has been and will continue to be
20 injured in an amount to be established according to proof.

21 50. As a result of Abramowitz’s unauthorized copying, theft, and misappropriation of
22 Palantir’s confidential and proprietary information and trade secrets as well as his co-opting of
23 Palantir’s work developing technology and ideas and subsequently passing them off as his own,
24 Palantir has been and will continue to be injured absent equitable relief.

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract – Against All Defendants)**

3 51. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 50.

5 52. Defendants' contracts with Palantir, including, *inter alia*, the Transfer Agreements
6 and the July 2014 NDA (the "Confidentiality Contracts"), imposed a contractual obligation on
7 Defendants to maintain the confidentiality of information learned or accessed as a result of
8 Defendants' investments in Palantir, Abramowitz's visits to Palantir's offices, and his discussions
9 with Palantir employees.

10 53. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
11 contract and all conditions precedent to its enforcement have been performed by Palantir.

12 54. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
13 precedent to its enforcement have been performed by Palantir.

14 55. Under the Confidentiality Contracts, Defendants agreed to hold in strictest
15 confidence, and not to use, except for the benefit of the Company, any information they obtain or
16 access as investors or during visits or discussions.

17 56. Defendants breached the Confidentiality Agreements when Abramowitz used the
18 information and ideas he learned from Palantir employees to file patent applications listing
19 himself as sole inventor of Palantir's ideas that he learned in confidence, as well as a trademark
20 application on "Shire."

21 57. As a direct and proximate result of Defendants' wrongful conduct, Palantir has
22 been harmed and is being forced to take expensive steps to reduce and mitigate that harm,
23 including opposing Abramowitz's patent and trademark applications.

24 58. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
25 where allowed.

1 **SECOND CAUSE OF ACTION**

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing— Against All Defendants)**

3 59. Plaintiff repeats and realleges paragraphs 1 through 58 above as though fully set
4 forth herein.

5 60. California law implies a covenant of good faith and fair dealing in all contracts.

6 61. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
7 contract and all conditions precedent to its enforcement have been performed by Palantir.

8 62. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
9 precedent to its enforcement have been performed by Palantir.

10 63. Defendants have unfairly interfered with Plaintiff's right to receive the benefit of
11 the Transfer Agreements and July 2014 NDA by, among other things, misappropriating and using
12 Plaintiff's proprietary, confidential, and trade secret information and falsely claiming to have
13 invented Palantir's inventions.

14 64. Defendants have breached and violated its implied covenant of good faith and fair
15 dealing.

16 65. As a result of that breach by Defendants, Plaintiff has suffered monetary damages
17 in an amount to be quantified at trial.

18 **THIRD CAUSE OF ACTION**

19 **(Violation of Cal. Civ. Code § 3426 et seq. – Against Abramowitz)**

20 66. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
21 through 65.

22 67. Palantir's confidential and proprietary information pertaining to its projects,
23 including those concerning use of data analysis in the cyber security insurance, clinical trial and
24 natural resources exploration contexts, constitute protectable trade secrets as set forth in
25 California Civil Code § 3426.1(d).

26 68. Palantir's confidential and proprietary information derives independent economic
27 value, actual or potential, from not being generally known to the public or to other persons who
28

1 can obtain economic value from their disclosure or use as set forth in California Civil Code
2 § 3426.1(d)(1).

3 69. Palantir's confidential and proprietary information is the subject of efforts that are
4 reasonable under the circumstances to maintain their secrecy as set forth in California Civil Code
5 § 3426.1(d)(2).

6 70. Palantir did not consent to the use of any of its trade secrets by anyone other than
7 authorized employees using them for Palantir's business purposes.

8 71. Abramowitz willfully and intentionally misappropriated Palantir's trade secrets
9 when, *inter alia*, he filed patent and trademark applications claiming inventorship and ownership
10 of Palantir's ideas. Palantir is informed and believes that Abramowitz has used Palantir's trade
11 secret, confidential and/or proprietary information to develop a competing business or in
12 furtherance of that goal.

13 72. Palantir is entitled to an injunction of both actual and threatened misappropriation
14 as set forth in California Civil Code § 3426.2(a).

15 73. Palantir also requests that the court take affirmative acts to protect Palantir's trade
16 secrets, as set forth in California Civil Code § 3426.2(c), including ordering an inspection of
17 Abramowitz's personal computer(s), USB drives, email accounts, cloud storage accounts and
18 other sources and equipment by a forensics expert to determine whether Palantir's trade secrets
19 were wrongfully taken and/or disseminated to others, and to ensure that no trade secrets
20 belonging to Palantir remain saved on those systems; and issue a writ of possession, a preliminary
21 injunction, and a permanent injunction ordering the return of Palantir's confidential information
22 and prohibiting Abramowitz from continuing his unlawful actions.

23 74. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
24 where allowed.

25 75. Abramowitz's conduct as alleged herein was willful, malicious and wanton, and
26 undertaken for the purpose of injuring or causing injury to Palantir. Palantir seeks exemplary and
27 punitive damages against Abramowitz.
28

1 **FOURTH CAUSE OF ACTION**

2 **(Declaratory Relief – Against All Defendants)**

3 76. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 75.

5 77. There presently exists a real and actual controversy between Palantir and KT4
6 regarding whether KT4 is entitled under the IRA to the information sought through the Demand
7 Letter.

8 78. KT4 maintains that it is entitled to information under Sections 2.1 and 2.2 of the
9 IRA, and Palantir maintains that KT4 is not a “Major Investor” under the IRA, and therefore has
10 no such right.

11 79. Defendants have acted with unclean hands by, among other things,
12 misappropriated Palantir’s trade secrets.

13 80. A declaratory judgment is necessary and appropriate at this time to resolve the
14 controversy between the parties. Palantir therefore specifically requests a judgment declaring that
15 KT4 has no right to any information pursuant to Sections 2.1 or 2.2 of the IRA.

16 **FIFTH CAUSE OF ACTION**

17 **(Violation of California’s Unfair Competition Law,**

18 **Cal. Bus. & Prof. Code Section 17200 *et seq.* – Against All Defendants)**

19 81. Plaintiff Palantir repeats and realleges paragraphs 1 through 80 above as though
20 fully set forth herein.

21 82. Defendants have engaged in (and continues to engage in) the unlawful, fraudulent,
22 and unfair business acts and practices described throughout this Complaint in violation of
23 California’s Unfair Competition Law (the “UCL”), California Business and Professions Code,
24 Section 17200, *et seq.*

25 83. Defendants’ business acts and practices were unlawful under the UCL because
26 they resulted in the violations of state common law described herein, including breach of contract
27 and breach of the implied covenant of good faith and fair dealing.

28

1 d. moving or transferring outside the United States Palantir's property,
2 emails, documents or materials that are relevant or potentially relevant to this action;

3 3. For an Order requiring that Palantir's confidential, proprietary and trade secret
4 information be returned to Palantir;

5 4. For an Order requiring all Defendants to divulge the identity of the individuals,
6 groups and companies to whom they have disclosed Palantir's confidential, proprietary and trade
7 secret information;

8 5. For an Order requiring all Defendants to account for and pay to Palantir all ill-
9 gotten gains, profits, and savings obtained or derived from their improper conduct;

10 6. For damages to be proven at trial;

11 7. For an Order awarding Palantir punitive damages in a sum to be determined at
12 trial, on the basis of Defendants' willful and deliberate tortious conduct;

13 8. For restitution and disgorgement of all ill-gotten gains unjustly obtained and
14 retained by Defendants through the acts complained of herein;

15 9. For prejudgment interest;

16 10. For an Order awarding Palantir its attorney's fees and all costs of suit incurred
17 herein; and

18 11. For such other and further relief as the Court deems just and proper.
19
20

21 Dated: September 1, 2016

BOIES, SCHILLER & FLEXNER LLP

22
23
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: September 1, 2016

BOIES, SCHILLER & FLEXNER LLP

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**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Additional Parties Attachment form is attached.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PALANTIR TECHNOLOGIES INC., a Delaware corporation

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California

CASE NUMBER 16CV299476
(Número del Caso)

County of Santa Clara
191 North First Street, San Jose, California

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David L. Zifkin, 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401, Tel: (310) 752-2400

DATE: 9/1/2016 (Fecha) David H. Yamaski Clerk, by /s/ Rowena Walker Deputy Chief executive Officer (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): Marc L. Abramowitz, in his individual capacity and as trustee of the MARC ABRAMOWITZ CHARITABLE TRUST NO. 2, KT4 PARTNERS LLC, a Delaware limited liability company

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

- other (specify): Trustee
- 4. by personal delivery on (date):

SHORT TITLE: PALANTIR TECHNOLOGIES INC. v. ABRAMOWITZ, et al.	CASE NUMBER:
--	--------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List **additional parties** (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

MARC L. ABRAMOWITZ, in his individual capacity and as trustee of the MARC ABRAMOWITZ CHARITABLE TRUST NO. 2, KT4 PARTNERS LLC, a Delaware limited liability company, and DOES 1 through 50, inclusive,

Page _____ of _____

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
David L. Zifkin (SBN 232845)
EYES, SCHILLER & FLEXNER LLP
401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401
TELEPHONE NO.: (310) 752-2400 FAX NO.: (310) 752-2490
ATTORNEY FOR (Name): Palantir Technologies Inc.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara
STREET ADDRESS: 191 N 1st Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Jose, CA 95113
BRANCH NAME: Downtown Superior Court

CASE NAME:
PALANTIR TECHNOLOGIES INC. v. MARC ABRAMOWITZ, et al.

CIVIL CASE COVER SHEET
 Unlimited
(Amount demanded exceeds \$25,000)
 Limited
(Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

FOR COURT USE ONLY
E-FILED
9/1/2016 11:20:57 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By: Rowena Walker

CASE NUMBER: 16CV299476
JUDGE: Peter H. Kirwan
DEPT: 1 / Complex

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 5

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 1, 2016
David L. Zifkin
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
 - Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

- Commercial (31)
- Residential (32)
 - Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment *(non-domestic relations)*
 - Sister State Judgment
 - Administrative Agency Award *(not unpaid taxes)*
 - Petition/Certification of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint *(not specified above)* (42)
- Declaratory Relief Only
- Injunctive Relief Only *(non-harassment)*
- Mechanics Lien
- Other Commercial Complaint Case *(non-tort/non-complex)*
- Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: 16CV299476**READ THIS ENTIRE FORM**

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANTS (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, in the Clerk's Office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>
- Rose Printing: 408-293-8177 or becky@rose-printing.com (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Hon. Peter H. Kirwan Department: 1

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 1/6/2017 Time: 10:00am in Department 1

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)
3 (dzifkin@bsflp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401,
6 Telephone: (310) 752-2400
7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED
9/1/2016 11:20:57 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 **16CV299476**

14 PALANTIR TECHNOLOGIES INC., a)
15 Delaware corporation,)

16 *Plaintiff,*)

17 v.)

18 MARC L. ABRAMOWITZ, in his individual)
19 capacity and as trustee of the MARC)
20 ABRAMOWITZ CHARITABLE TRUST NO.)
21 2, KT4 PARTNERS LLC, a Delaware limited)
22 liability company, and DOES 1 through 50,)
23 inclusive,)

24 *Defendants.*)

Case No.)
COMPLAINT FOR:)
(1) Breach of Contract)
(2) Breach of the Implied Covenant of Good)
Faith and Fair Dealing)
(3) Violation of Cal. Civ. Code § 3426 et seq.)
(4) Declaratory Relief)
(5) Violation of California's Unfair)
Competition Law, Cal. Bus. & Prof. Code §)
17200 et seq.)

25 **JURY TRIAL DEMAND**

26 Complaint Filed: September 1, 2016
27 Trial Date: Not set
28

1 Plaintiff Palantir Technologies Inc. ("Palantir") sues defendants Marc L. Abramowitz
2 ("Abramowitz"), both in his individual capacity and as trustee of the Marc Abramowitz
3 Charitable Trust No. 2 (the "Trust"), KT4 Partners LLC ("KT4"), and Does 1 through 50
4 (collectively with Abramowitz, KT4, and the Trust, "Defendants") as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action to stop Defendants from misappropriating Palantir's confidential
7 information and proprietary trade secrets for their own benefit and to prevent them from receiving
8 any additional confidential or proprietary information from Palantir pursuant to their Investors'
9 Rights Agreement.

10 2. Abramowitz was a respected confidant and advisor to Palantir and its senior
11 executives until he betrayed the trust they bestowed upon him for his own personal gain. He was,
12 through KT4 and other entities, an early equity investor in Palantir who personally engaged in
13 regular discussions with executives about some of the company's most sensitive business
14 strategies and trade secrets. Those discussions were highly confidential, as was made clear by
15 express written agreements among the parties at the time and a course of dealing based on the
16 most basic principles of fairness and honesty between a trusted shareholder and advisor and
17 management.

18 3. Nonetheless, as part of brazen scheme to claim Palantir's own highly confidential
19 information and trade secrets as his own, Abramowitz stole those secrets, engaged in methodical
20 deception of Palantir's senior executives, and made false claims to the United States Patent and
21 Trademark Office. Abramowitz's claim to be a patent innovator is directly contradicted by the
22 facts surrounding his professional career.

23 4. To start, Abramowitz has no notable history as an inventor or patent innovator in
24 the data analysis area. He has made most of his career and fortune in real estate and buyout
25 investing. Yet, beginning in 2014, Abramowitz suddenly filed three patents, all of them based on
26 ideas and trade secrets he stole from Palantir. This was plainly illegal and highly unethical
27 conduct, and it was a betrayal of his trusted relationship with Palantir and its executives.
28

1 5. But Abramowitz's scheme did not end there. After stealing from Palantir, he hired
2 lawyers to demand from Palantir sensitive and confidential information about the company,
3 including the Company's finances and business dealings, which Palantir considers to be, and
4 treats as, highly sensitive and confidential. Having uncovered Abramowitz's breach of Palantir's
5 trust (and of his contractual obligations to Palantir under multiple agreements), it is apparent that
6 Abramowitz is not seeking this information in good faith for a proper purpose. In fact, history
7 has shown that Abramowitz has and will misuse any information provided to him in breach of
8 confidence, causing Palantir irreparable harm in the process.

9 6. Palantir now has been forced to protect itself, both through amendments to its
10 corporate documents and through this action, by which Palantir seeks redress for Abramowitz's
11 breaches of contract, breaches of confidence, and misuse of Palantir's confidential and
12 proprietary information and trade secrets. Further, to protect Palantir and its shareholders—
13 including employees, former employees and other investors—from continued breaches of
14 confidence in the future, Palantir seeks a declaratory judgment that Abramowitz has no right to
15 the information he has demanded under the Investors' Rights Agreement.

16 **PARTIES, JURISDICTION, AND VENUE**

17 7. The Court has jurisdiction over this action by virtue of Article VI § 10 of the
18 California Constitution and California Code of Civil Procedure § 410.10.

19 8. Palantir is a Delaware corporation with its principal place of business at 100
20 Hamilton Avenue, Palo Alto, California, 94301. Palantir has suffered, and continues to suffer,
21 injury in this jurisdiction by reason of Defendants' actions.

22 9. Palantir is informed and believes and on that basis alleges that defendant Marc L.
23 Abramowitz is an individual residing in California at 1029 Ramona Street, Palo Alto, California,
24 94301. Palantir is informed and believes and on that basis alleges that Abramowitz is the trustee
25 of the Marc Abramowitz Charitable Trust No. 2. The wrongful actions of Abramowitz occurred
26 in, were targeted to, and caused damage in, California.

1 10. Palantir is informed and believes and on that basis alleges that defendant KT4
2 Partners LLC is a Delaware limited liability company with its principal place of business at 1029
3 Ramona Street, Palo Alto, California, 94301. On information and belief, KT4 does business in
4 California and has committed acts that submit it to the jurisdiction of California's courts. Upon
5 information and belief, Abramowitz is the sole member of KT4 and controls and directs the
6 activities of KT4. The wrongful actions of KT4 occurred in, were targeted to, and caused damage
7 in, California.

8 11. Palantir is ignorant of the true names of Docs 1 through 50 and such names are
9 fictitious. Such defendants are legally responsible for the events and happenings described herein
10 and for the damages proximately caused thereby. Once Palantir learns of the true names of Docs
11 1 through 50, Palantir will amend the complaint to include the real name(s) of such party or
12 parties.

13 12. This action is founded on injuries and damages suffered by Palantir in Santa Clara
14 County by virtue of the Defendants' misappropriation of trade secrets, breach of contract, breach
15 of confidence and other illegal and wrongful acts as alleged in this Complaint. Venue is proper in
16 this Court because the parties reside in this County and the events that form the basis for this
17 Complaint largely took place in this County.

18 **FACTUAL BACKGROUND**

19 **Palantir's Business**

20 13. Palantir is a software and services company that specializes in data analytics. In
21 2004, Palantir was founded on a vision: to provide solutions not only to problems then faced by
22 business and government, but also solutions to problems that did not yet exist, but that would
23 surely come to be as part of our rapidly-evolving world. It sought to make this vision a reality by
24 the use of technology. And it embarked on an ambitious, time-consuming, and costly endeavor to
25 create a viable, successful business. As a result of hard work, Palantir has succeeded and is now a
26 leader in its industry. Today, Palantir's products are deployed at the most critical government,
27
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1 commercial, and non-profit institutions in the world to solve problems the company's founders
2 had not even dreamed of back in 2004.

3 14. In particular, at its founding Palantir set out to create products that would
4 transform the way organizations use perhaps their most important asset in today's business world:
5 data. Palantir's mission has been and remains to develop flexible tools and services to provide
6 human-driven analysis of real-world data, with a focus on creating the world's best user
7 experience for working with data. To achieve this, Palantir builds platforms for integrating,
8 managing, and securing data, on top of which it layers applications for fully interactive, human-
9 driven, machine-assisted analysis. This means that Palantir develops programs and provides
10 services that allow businesses and government to run their businesses in a way that corresponds
11 with the reality of their marketplace and consumers.

12 15. Businesses and government use Palantir's software to interpret and visualize large
13 quantities of information from various sources. For example, businesses use Palantir's software
14 to analyze their internal and market data to better understand consumer trends, and government
15 agencies use Palantir's software to analyze intelligence data to better understand emerging
16 threats.

17 16. Palantir's success is due in part to its early recognition that many organizations are
18 traditionally unable to leverage insights from their internal data because the data is held in
19 separate silos that are often disconnected and have different access, security controls, and privacy
20 requirements. When information is siloed—that is, when important information is stored in
21 containerized, unrelated units—businesses and government cannot fully realize the potential of
22 that data. Palantir provides software solutions that avoid this problem, allowing users to run their
23 businesses consistent with the actual environment in which they operate. Thus, Palantir's
24 products are used to fuse and analyze customer data across platforms and sources and enable
25 secure collaboration among analysts, while protecting data privacy and security.

26 17. As is expected in this type of work, Palantir is also heavily involved in research
27 and development. Palantir spends millions of dollars each year to expand its business and seek
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1 out new opportunities—and to stay ahead of the curve and atop the industry. This research and
2 development investment involves both creating new software, technologies and processes as well
3 as adapting existing products and technologies to new applications and uses.

4 Abramowitz's Relationship with Palantir

5 18. Initial funding for Palantir came from a variety of sources, including the
6 company's founders who remain with Palantir today as shareholders of common shares of
7 Palantir stock. Abramowitz, through KT4 and other entities he controls, was an early investor in
8 Palantir, first investing in the company in 2005.

9 19. Through the years, Abramowitz was involved with the business of Palantir.
10 Rather than acting as a passive investor, he became a regular fixture at Palantir. He established
11 relationships with the company's founders, officers, and employees. As a result, he was viewed
12 as a trusted figure by the company, including its several founders and senior employees.
13 Abramowitz fostered these relationships of confidence and held himself out as a friend of Palantir
14 whose interests were completely aligned with the company. He made clear that he could be
15 trusted to keep confidences and act in the company's best interests.

16 20. Indeed, Abramowitz spent so much time at Palantir that in 2014 he asked for an
17 office. Between 2010 and 2015, Abramowitz visited Palantir offices over thirty times. When
18 Abramowitz had questions about Palantir's business, including financial information, that were
19 relevant to his status as a shareholder and trusted advisor to the company, he was provided with
20 the information.

21 21. In this context, Abramowitz often inquired about specific Palantir projects. On
22 several occasions, Palantir provided information to Abramowitz about concepts for new
23 technology and/or new use cases for existing technology that Palantir had spent significant time
24 and resources researching, developing and testing. Palantir always provided any information to
25 Abramowitz with the express and reasonable expectation that Abramowitz would maintain its
26 confidentiality and would never pass Palantir's ideas off as his own or use the information to
27 Palantir's detriment without Palantir's knowledge or permission.
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1 **Abramowitz's Agreements Not to Violate Confidentiality**

2 22. In addition to relying on the confidential nature of its communications with
3 Abramowitz, Palantir also protected its confidential information and trade secrets through written
4 agreements.

5 23. In an August 14, 2012 Preferred Stock Transfer Agreement,
6 Abramowitz agreed “to keep confidential and refrain from using or disclosing all agreements,
7 documents and other information regarding the Company or its securityholders provided or made
8 available to [Abramowitz]...in [his] capacity as a stockholder of the Company....” (2012 PSTA
9 at ¶ 7.) Abramowitz renewed that agreement in a June 17, 2015 Preferred Stock Transfer
10 Agreement. (2017 PSTA at 7.)

11 24. In a June 17, 2015 Preferred Stock Transfer Agreement, KT4 similarly agreed “to
12 keep confidential and refrain from using or disclosing all agreements, documents and other
13 information regarding the Company or its securityholders provided or made available to
14 [Abramowitz]...in [his] capacity as a stockholder of the Company....” (2015 PSTA at ¶ 7.)

15 25. In addition, during at least one of his visits to Palantir, on July 12, 2014,
16 Abramowitz executed an NDA (the “July 2014 NDA”) covering “Proprietary Information,”
17 which is defined in the NDA as “non-public business, technical or other information, materials
18 and/or ideas of Palantir [including] anything you learn or discover as a result of exposure to or
19 analysis of any Proprietary Information.” The NDA expressly forbids Abramowitz from using or
20 revealing any of Palantir’s Proprietary Information.

21 **Abramowitz Misappropriation of Business Information and Trade Secrets**

22 26. By 2014, Abramowitz had embarked on an intentional and calculated scheme to
23 discover Palantir trade secrets and convert them to his own use and profit. In furtherance of his
24 scheme, during 2014 alone, Abramowitz was in contact with Palantir employees at least 34 times
25 and visited Palantir facilities at least 20 times. Pursuant to his scheme, Abramowitz violated the
26 trust Palantir put in him on at least three separate occasions.

1 27. The first occasion of which Palantir is aware involves a Palantir idea concerning
2 clinical trials of drugs. Palantir had been working hard since 2011 on the best way to enter the
3 clinical trial space, including using Palantir's technology and data analytics services to improve
4 the conduct of clinical trials of prescription drugs by pharmaceutical companies and academic
5 institutions.

6 28. Palantir's work in the field of clinical trials has been extensive, and the processes
7 and systems developed through that work were important company trade secrets. As part of its
8 research and development work, Palantir employees created white papers and presentations
9 describing the ideas and projects they were working on. Palantir also signed on customers to help
10 drive the project from the research side into the market.

11 29. Abramowitz learned from Palantir about Palantir's work in the area of clinical
12 trials and, in February 2014, sought to broker a deal between Palantir and a customer to take
13 something to market. Through his conversations with Palantir on the subject and the confidential
14 access Palantir granted him to documents describing Palantir's research and development work,
15 Abramowitz learned the details of the work Palantir had been doing in the area for years.
16 Abramowitz misappropriated Palantir's inventions in this space and has attempted to patent them
17 as his own.

18 30. On October 29, 2014, without Palantir's knowledge or consent, Abramowitz filed
19 Provisional Application No. 62/072,368 with the United States Patent and Trademark Office
20 ("USPTO") seeking to patent the idea developed by Palantir and explained to Abramowitz in
21 confidence. The application falsely identifies Abramowitz as the inventor, includes no mention
22 of Palantir at all, and fails to list a single Palantir employee as an inventor.

23 31. In the second occurrence where Palantir knows Abramowitz abused his position of
24 trust to further his scheme, Abramowitz participated in discussions about an idea for using
25 Palantir's cyber security technology to improve the ability of insurance companies to provide
26 insurance to retailers and other institutions against the potential harm caused by data breaches and
27 other cybercrimes.

1 32. In June 2014, a Palantir executive disclosed to Abramowitz during a conversation
2 that Palantir was working on opportunities in the insurance industry. When Abramowitz
3 expressed interest in the concept and requested additional information, the Palantir executive
4 arranged for Abramowitz to speak with another Palantir executive, who sent Abramowitz some
5 information on the idea via email and invited Abramowitz to meet with him at Palantir's offices
6 to discuss the idea. During his June 2014 meeting with Abramowitz, the second Palantir
7 executive described two related concepts that Palantir had developed relating to cyber security
8 insurance and the use of customer consortia to improve cyber security, as well as the Palantir
9 technology that could be used to implement them.

10 33. When Abramowitz next met with Palantir on the subject, he indicated he was
11 interested in setting up a Palantir subsidiary that he would run to perform the insurance-related
12 function Palantir had revealed to him, further confirming that his participation in the discussions
13 were solely for the benefit and interest of Palantir. Palantir did not pursue Abramowitz's
14 suggestion.

15 34. Without Palantir's knowledge, on October 21, 2014, Abramowitz filed Provisional
16 Application No. 62/066,716 at the USPTO attempting to patent the ideas he learned about in
17 confidence through his conversations with Palantir executives and claiming to be the invention's
18 sole owner and inventor. To read Abramowitz's application, one would never suspect Palantir
19 had anything to do with the idea at all, as Abramowitz fails to mention Palantir and does not
20 include a single Palantir employee as an inventor.

21 35. However, presumably unbeknownst to Abramowitz, Palantir had already filed its
22 own patent application on the invention in February 2014, months before Abramowitz learned of
23 the idea from Palantir. That application resulted in United States Patent No. 9009827 (the "'827
24 Patent"), owned by Palantir and invented by Palantir employees. The similarities between
25 Palantir's valid patent and Abramowitz's application are stunning. Even a cursory reading of the
26 abstract of the '827 Patent issued to Palantir and the application filed by Abramowitz reveals that
27 they are the same invention—one which Abramowitz misappropriated from Palantir.
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1 36. Abramowitz's scheme is clearly revealed through his filing of two patent
2 applications within ten days of one another seeking to secure sole inventorship over ideas he
3 learned from Palantir in confidence. Abramowitz continued his concerted scheme to
4 misappropriate Palantir's ideas in at least one more, third area. After discussions with Palantir
5 employees concerning Palantir's work on adapting its data analysis technology for use in oil and
6 gas exploration, Abramowitz filed Provisional Application No. 62/094,888 with the USPTO,
7 seeking to patent as sole owner and inventor the ideas he learned from Palantir concerning
8 Palantir's work in this area. As with his other applications described above, Abramowitz filed the
9 application without Palantir's knowledge or consent and failed to credit Palantir or its employees
10 in any way.

11 37. Through his months-long scheme, Abramowitz intentionally abused his status as a
12 trusted investor at Palantir in an attempt to profit at Palantir's expense by taking multiple ideas
13 from Palantir and attempting to patent them as his own. Although, on information and belief,
14 Abramowitz does not have the resources, technology, or experience to market the ideas
15 effectively, he could attempt to use the patent applications or any issued patents to hold Palantir
16 hostage in exchange for royalties. Abramowitz's actions are causing Palantir irreparable harm,
17 and Palantir is therefore separately seeking to have Abramowitz's patent applications denied by
18 the USPTO.

19 38. The patent applications are not the only indication that Abramowitz has
20 misappropriated information and access to attempt to profit at Palantir's expense. Palantir's
21 company name is inspired by the "seeing stones" referenced in The Lord of the Rings. Without
22 Palantir's knowledge, Abramowitz filed for a trademark on the mark "Shire," which is also
23 referenced in The Lord of the Rings as the place where one of the main characters lives. It is
24 clear that Abramowitz has filed this trademark application in an attempt to further improperly
25 associate himself with what he views as the Palantir brand.

26 39. Furthermore, Abramowitz has filed this trademark application with an intent to use
27 the mark in connection with "underwriting and administration of cyber liability insurance;
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1 underwriting and administration of cyber security insurance; insurance brokerage in the field of
2 cyber liability and cyber security insurance.” He has claimed he intends to use the mark for the
3 aforementioned goods and services despite knowing that the aforementioned goods and services
4 are services offered by, or intended to be offered by, Palantir, from whom he misappropriated
5 confidential and proprietary ideas and information in these areas.

6 **Abramowitz Demands Information Under the Investors’ Rights Agreement**

7 40. In furtherance of his scheme, on August 16, 2016, KT4, through counsel at
8 Williams & Connolly LLP, sent Palantir a letter (the “Demand Letter”) demanding information
9 pursuant to the Investors’ Rights Agreement (as amended most recently on September 1, 2016,
10 the “IRA”). Under the February 15, 2008 version of the IRA (the “February IRA”) invoked by
11 Abramowitz in his letter, and the July 8, 2015 version in effect at the time Abramowitz sent his
12 letter (the “July IRA”), the agreement granted certain rights to receive information from Palantir
13 to anyone who was a “Major Investor” in Palantir, defined in Section 2.1 of the IRA as any
14 investor that holds “at least 5,000,000 shares of” certain types of Palantir stock.

15 41. In the Demand Letter, KT4 purports to be a Major Investor of Palantir and
16 demands that Palantir produce documents and provide information to its counsel pursuant to
17 Sections 2.1 and 2.2 of the February IRA. Neither IRA, however, provides any right for counsel
18 or anyone other than a Major Investor to receive the information.

19 **Palantir Scrupulously Protects Its Confidential Information and Trade Secrets**

20 42. Palantir undertakes significant efforts to protect the confidentiality and security of
21 its trade secrets, property (including physical locations, intellectual property, and network
22 security), as well as sensitive and confidential business and financial information. This
23 confidential information is not generally known to the public and provides actual and potential
24 economic value to Palantir from not being generally known to the public or to Palantir’s
25 competitors.

26 43. Palantir employs both technical and physical safety measures to maintain the
27 security of its property and confidential information. Among other things, Palantir restricts
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1 employees' access to sensitive internal information such that individual employees can only
2 access such data after obtaining appropriate authorization and only to the extent necessary to
3 perform their jobs. Additionally, Palantir employs a multitude of technical security measures to
4 protect its systems and networks, including, among other methods: intrusion detection systems,
5 network monitoring tools, anti-malware software, network firewalls, and whole disk encryption
6 of employee computers, among other measures. Palantir's network and security systems are also
7 continually monitored for potential security risks. To secure access to information and data no
8 matter where employees are, Palantir uses and requires complex password requirements and two-
9 factor authentication for access to its hardware and its network.

10 44. In addition to data and network security, physical access to Palantir's facilities is
11 also highly restricted. Palantir employees must use electronic badges to access Palantir facilities.
12 Access to certain sensitive areas of Palantir's facilities is further restricted to a small subset of
13 Palantir employees with a specific need for access (including, for example, Palantir facilities
14 containing network servers and security equipment, among others). Visitors must be invited to
15 Palantir facilities, must sign in and wear a visitor badge and are escorted at all times. In addition,
16 certain areas of Palantir's facilities are off limits to visitors, and Palantir deploys security guards
17 to protect its facilities.

18 45. Palantir also implements numerous measures and policies to ensure that its
19 employees safeguard the confidentiality and security of its trade secrets and sensitive and
20 confidential business information. As part of the hiring process, Palantir requires pre-
21 employment background checks for all new employees and also requires legal training for new
22 hires, covering confidentiality, information and data security, and compliance.

23 **Palantir and Major Investors Amend the IRA to Protect Palantir, its Employees, and**
24 **Shareholders from Malicious Actors**

25 46. Having discovered Abramowitz's actions described above betraying Palantir's
26 trust and misappropriating its trade secrets—and fearing more such betrayals and breaches of
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1 confidence that remain undiscovered—Palantir could no longer trust Abramowitz with its
2 confidential information, including the information demanded by KT4 in the Demand Letter.

3 47. To protect Palantir—as well as its employees, former employees, investors, and
4 other shareholders—from the malicious acts of Defendants, on September 1, 2016, Palantir and a
5 group of its Major Investors holding a majority of the Registrable Securities held by Major
6 Investors invoked their rights under Section 3.7 of the July IRA to amend the agreement (the
7 “Amendment”). Even assuming KT4 was a Major Investor with rights under Sections 2.1 and 2.2
8 of the July IRA, which Palantir does not concede, KT4 has no such rights under the current IRA,
9 and the Amendment is expressly retroactive in its effect, as permitted by Section 3.7.

10 48. Palantir did not take this action lightly, but after receiving the Demand Letter and
11 noting the nefarious activities of Defendants through their access as investors, Palantir determined
12 that it was necessary to act to protect itself and others from the harmful actions of Defendants.
13 Palantir regularly and frequently works with investors, upon request, to provide relevant
14 information corresponding to their status as a shareholder, subject to confidentiality obligations.
15 As it has done in responding to Abramowitz’s reasonable questions in the past, Palantir stands
16 ready to do the same with KT4 upon a showing that such requests are being made in good faith
17 and with no improper purpose.

18 Harm to Palantir

19 49. As a result of Defendants’ actions, Palantir has been and will continue to be
20 injured in an amount to be established according to proof.

21 50. As a result of Abramowitz’s unauthorized copying, theft, and misappropriation of
22 Palantir’s confidential and proprietary information and trade secrets as well as his co-opting of
23 Palantir’s work developing technology and ideas and subsequently passing them off as his own,
24 Palantir has been and will continue to be injured absent equitable relief.

1 FIRST CAUSE OF ACTION

2 **(Breach of Contract – Against All Defendants)**

3 51. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 50.

5 52. Defendants' contracts with Palantir, including, *inter alia*, the Transfer Agreements
6 and the July 2014 NDA (the "Confidentiality Contracts"), imposed a contractual obligation on
7 Defendants to maintain the confidentiality of information learned or accessed as a result of
8 Defendants' investments in Palantir, Abramowitz's visits to Palantir's offices, and his discussions
9 with Palantir employees.

10 53. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
11 contract and all conditions precedent to its enforcement have been performed by Palantir.

12 54. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
13 precedent to its enforcement have been performed by Palantir.

14 55. Under the Confidentiality Contracts, Defendants agreed to hold in strictest
15 confidence, and not to use, except for the benefit of the Company, any information they obtain or
16 access as investors or during visits or discussions.

17 56. Defendants breached the Confidentiality Agreements when Abramowitz used the
18 information and ideas he learned from Palantir employees to file patent applications listing
19 himself as sole inventor of Palantir's ideas that he learned in confidence, as well as a trademark
20 application on "Shire."

21 57. As a direct and proximate result of Defendants' wrongful conduct, Palantir has
22 been harmed and is being forced to take expensive steps to reduce and mitigate that harm,
23 including opposing Abramowitz's patent and trademark applications.

24 58. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
25 where allowed.

1 **SECOND CAUSE OF ACTION**

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing– Against All Defendants)**

3 59. Plaintiff repeats and realleges paragraphs 1 through 58 above as though fully set
4 forth herein.

5 60. California law implies a covenant of good faith and fair dealing in all contracts.

6 61. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
7 contract and all conditions precedent to its enforcement have been performed by Palantir.

8 62. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
9 precedent to its enforcement have been performed by Palantir.

10 63. Defendants have unfairly interfered with Plaintiff's right to receive the benefit of
11 the Transfer Agreements and July 2014 NDA by, among other things, misappropriating and using
12 Plaintiff's proprietary, confidential, and trade secret information and falsely claiming to have
13 invented Palantir's inventions.

14 64. Defendants have breached and violated its implied covenant of good faith and fair
15 dealing.

16 65. As a result of that breach by Defendants, Plaintiff has suffered monetary damages
17 in an amount to be quantified at trial.

18 **THIRD CAUSE OF ACTION**

19 **(Violation of Cal. Civ. Code § 3426 et seq. – Against Abramowitz)**

20 66. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
21 through 65.

22 67. Palantir's confidential and proprietary information pertaining to its projects,
23 including those concerning use of data analysis in the cyber security insurance, clinical trial and
24 natural resources exploration contexts, constitute protectable trade secrets as set forth in
25 California Civil Code § 3426.1(d).

26 68. Palantir's confidential and proprietary information derives independent economic
27 value, actual or potential, from not being generally known to the public or to other persons who
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1 can obtain economic value from their disclosure or use as set forth in California Civil Code
2 § 3426.1(d)(1).

3 69. Palantir's confidential and proprietary information is the subject of efforts that are
4 reasonable under the circumstances to maintain their secrecy as set forth in California Civil Code
5 § 3426.1(d)(2).

6 70. Palantir did not consent to the use of any of its trade secrets by anyone other than
7 authorized employees using them for Palantir's business purposes.

8 71. Abramowitz willfully and intentionally misappropriated Palantir's trade secrets
9 when, *inter alia*, he filed patent and trademark applications claiming inventorship and ownership
10 of Palantir's ideas. Palantir is informed and believes that Abramowitz has used Palantir's trade
11 secret, confidential and/or proprietary information to develop a competing business or in
12 furtherance of that goal.

13 72. Palantir is entitled to an injunction of both actual and threatened misappropriation
14 as set forth in California Civil Code § 3426.2(a).

15 73. Palantir also requests that the court take affirmative acts to protect Palantir's trade
16 secrets, as set forth in California Civil Code § 3426.2(c), including ordering an inspection of
17 Abramowitz's personal computer(s), USB drives, email accounts, cloud storage accounts and
18 other sources and equipment by a forensics expert to determine whether Palantir's trade secrets
19 were wrongfully taken and/or disseminated to others, and to ensure that no trade secrets
20 belonging to Palantir remain saved on those systems; and issue a writ of possession, a preliminary
21 injunction, and a permanent injunction ordering the return of Palantir's confidential information
22 and prohibiting Abramowitz from continuing his unlawful actions.

23 74. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
24 where allowed.

25 75. Abramowitz's conduct as alleged herein was willful, malicious and wanton, and
26 undertaken for the purpose of injuring or causing injury to Palantir. Palantir seeks exemplary and
27 punitive damages against Abramowitz.
28

1 **FOURTH CAUSE OF ACTION**

2 **(Declaratory Relief – Against All Defendants)**

3 76. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 75.

5 77. There presently exists a real and actual controversy between Palantir and KT4
6 regarding whether KT4 is entitled under the IRA to the information sought through the Demand
7 Letter.

8 78. KT4 maintains that it is entitled to information under Sections 2.1 and 2.2 of the
9 IRA, and Palantir maintains that KT4 is not a “Major Investor” under the IRA, and therefore has
10 no such right.

11 79. Defendants have acted with unclean hands by, among other things,
12 misappropriated Palantir’s trade secrets.

13 80. A declaratory judgment is necessary and appropriate at this time to resolve the
14 controversy between the parties. Palantir therefore specifically requests a judgment declaring that
15 KT4 has no right to any information pursuant to Sections 2.1 or 2.2 of the IRA.

16 **FIFTH CAUSE OF ACTION**

17 **(Violation of California’s Unfair Competition Law,**

18 **Cal. Bus. & Prof. Code Section 17200 *et seq.* – Against All Defendants)**

19 81. Plaintiff Palantir repeats and realleges paragraphs 1 through 80 above as though
20 fully set forth herein.

21 82. Defendants have engaged in (and continues to engage in) the unlawful, fraudulent,
22 and unfair business acts and practices described throughout this Complaint in violation of
23 California’s Unfair Competition Law (the “UCL”), California Business and Professions Code,
24 Section 17200, *et seq.*

25 83. Defendants’ business acts and practices were unlawful under the UCL because
26 they resulted in the violations of state common law described herein, including breach of contract
27 and breach of the implied covenant of good faith and fair dealing.

1 84. Defendants' business acts and practices were fraudulent because a reasonable
2 person would likely be deceived by Defendant's false statements and claims, including that they
3 invented and own Palantir's inventions.

4 85. Defendants' business acts and practices are unfair because the harm suffered by
5 Palantir described herein outweighs any justification that Defendants may assert for engaging in
6 those acts and practices. Moreover, Palantir could not have avoided the harm it suffered as a
7 result of Defendants' unfair acts and practices because Defendants made every effort to obscure
8 and conceal from Palantir the existence and extent of its harmful acts and practices.

9 86. Defendants' unlawful, unfair and fraudulent business acts and practices were
10 carried out and effectuated in California and injured Plaintiff in California.

11 87. Plaintiff suffered harm as herein alleged as a direct and proximate result of
12 Defendants' unlawful, unfair and fraudulent business acts and practices.

13 88. Plaintiff is entitled to an injunction enjoining Defendants from such further
14 violations of the UCL. Any such injunction will benefit Plaintiff and the general public.
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Palantir respectfully requests the following relief:

- 18 1. Judgment in favor of Palantir and against all Defendants on all of Palantir's claims
19 asserted in the Complaint;
- 20 2. For a preliminary injunction and permanent injunction restraining Defendants,
21 their officers, agents, servants, employees, and all persons acting in concert or participation with
22 them from:
- 23 a. perpetuating the wrongful acts and conduct as set forth above;
 - 24 b. directly or indirectly retaining, using or disclosing Palantir's trade secret,
25 confidential and/or proprietary information, and derivatives thereof;
 - 26 c. destroying any property, emails, documents or materials that are relevant or
27 potentially relevant to this action;
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1 d. moving or transferring outside the United States Palantir's property,
2 emails, documents or materials that are relevant or potentially relevant to this action;

3 3. For an Order requiring that Palantir's confidential, proprietary and trade secret
4 information be returned to Palantir;

5 4. For an Order requiring all Defendants to divulge the identity of the individuals,
6 groups and companies to whom they have disclosed Palantir's confidential, proprietary and trade
7 secret information;

8 5. For an Order requiring all Defendants to account for and pay to Palantir all ill-
9 gotten gains, profits, and savings obtained or derived from their improper conduct;

10 6. For damages to be proven at trial;

11 7. For an Order awarding Palantir punitive damages in a sum to be determined at
12 trial, on the basis of Defendants' willful and deliberate tortious conduct;

13 8. For restitution and disgorgement of all ill-gotten gains unjustly obtained and
14 retained by Defendants through the acts complained of herein;

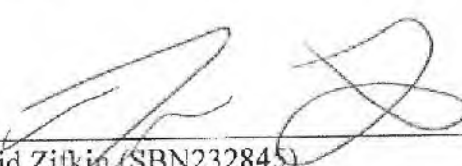
15 9. For prejudgment interest;

16 10. For an Order awarding Palantir its attorney's fees and all costs of suit incurred
17 herein; and

18 11. For such other and further relief as the Court deems just and proper.
19
20

21 Dated: September 1, 2016

BOIES, SCHILLER & FLEXNER LLP

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11
DEMAND FOR JURY TRIAL

12
Plaintiff hereby demands a trial by jury.

13
Dated: September 1, 2016

BOIES, SCHILLER & FLEXNER LLP

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Telephone: (954) 356-0011
Facsimile: (954) 356-0022
Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Additional Parties Attachment form is attached.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PALANTIR TECHNOLOGIES INC., a Delaware corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California

CASE NUMBER: 16CV299476
(Número del Caso)

County of Santa Clara
191 North First Street, San Jose, California

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David L. Zifkin, 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401, Tel: (310) 752-2400

DATE: 9/1/2016 (Fecha) David H. Yamaski Chief executive Officer Clerk, by /s/ Rowena Walker Deputy (Adjunto) (Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
 - by personal delivery on (date):

SHORT TITLE: PALANTIR TECHNOLOGIES INC. v. ABRAMOWITZ, et al.	CASE NUMBER:
--	--------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

MARC L. ABRAMOWITZ, in his individual capacity and as trustee of the MARC ABRAMOWITZ CHARITABLE TRUST NO. 2, KT4 PARTNERS LLC, a Delaware limited liability company, and DOES 1 through 50, inclusive,

Page _____ of _____

Page 1 of 1

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- *The parties have* a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute. Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784

CIVIL LAWSUIT NOTICECASE NUMBER: 16CV299476

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

READ THIS ENTIRE FORM

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANTS (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, in the Clerk's Office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>
- Rose Printing: 408-293-8177 or becky@rose-printing.com (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Hon. Peter H. Kirwan Department: 1

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 1/6/2017 Time: 10:00am in Department 1

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

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Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)
3 (dzifkin@bsflp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401
6 Telephone: (310) 752-2400
7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED
9/19/2016 12:00:00 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By: Rowena Walker

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 PALANTIR TECHNOLOGIES INC., a
14 Delaware corporation,

15 *Plaintiff,*

16 v.

17 MARC L. ABRAMOWITZ, in his individual
18 capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
20 2, KT4 PARTNERS LLC, a Delaware limited
21 liability company, and DOES 1 through 50,
22 inclusive,

23 *Defendants.*

) Case No. 16CV299476

) **NOTICE AND VERIFIED APPLICATION**
) **OF DAVID BOIES TO APPEAR AS**
) **COUNSEL PRO HAC VICE FOR**
) **PLAINTIFF PALANTIR**
) **TECHNOLOGIES, INC.**

) Date: October 21, 2016

) Time: 9:00 a.m.

) Dept.: 1

) Judge: Hon. Peter H. Kirwan

) Complaint Filed: September 1, 2016

) Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on October 21, 2016, in
3 Department 1 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Peter H. Kirwan, presiding, Plaintiff Palantir Technologies, Inc.
5 (“Palantir”) will apply for an order permitting David Boies of the law firm of Boies, Schiller &
6 Flexner LLP to appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 The application is made pursuant to Rule 9.40 of the California Rules of Court and is
8 based on this Notice and the attached Application. Rule 9.40 provides that a person “who is not a
9 member of the State Bar of California but who is a member in good standing of and eligible to
10 practice before the Bar of any United States Court or the highest court in any state,” and “who has
11 been retained to appear in a particular cause pending in a court of this state, may in the discretion
12 of the court be permitted upon written application to appear as counsel *pro hac vice*, provided that
13 an active member of the State Bar of California is associated as counsel of record.”

14 This application is necessary because Palantir anticipates that the participation and
15 appearance of David Boies of Boies, Schiller & Flexner LLP will be required on its behalf. As
16 set forth in the attached Application of David Boies, all requirements of Rule 9.40 have been met.
17 Proper and timely notice of this application will be given to the Defendants and to the State Bar
18 of California at its San Francisco address. A copy of the letter to the State Bar of California
19 attaching this application and payment of the requisite fee to the State Bar of California is
20 attached to the Declaration of David L. Zifkin.

21 Accordingly, David Boies respectfully requests permission to appear as counsel *pro hac*
22 *vice* in the above-captioned matter on behalf of Palantir.

23
24 Dated: September 17, 2016

BOIES, SCHILLER & FLEXNER LLP

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27 By: _____
David Zifkin (SBN232845)
28 (dzifkin@bsfllp.com)

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401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,
Telephone: (310) 752-2400
Facsimile: (310) 752-2490

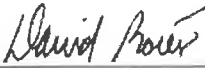
John T. Zach (*Pro Hac Vice* to be filed)
(jzach@bsflp.com)
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

Carlos M. Sires (*Pro Hac Vice* to be filed)
(csires@bsflp.com)
401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022
Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

1 follows: 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401; 310-752-2400.

2 11. The matters stated herein are true based on my own personal knowledge. I declare
3 under penalty of perjury under the laws of the State of California and the United States of
4 America that the foregoing is true and correct.

5 Executed on September 17, 2016, at Armonk, New York.

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8 _____
9 David Boies

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Attachment 1

COURT	ADMITTED
State of New York	March 27, 1967
United States Supreme Court	October 29, 1974
United States District Court, Eastern District of New York	June 5, 1981
United States District Court, Southern District of New York	September 6, 1991
United States District Court, District of Colorado	September 1, 2000
United States District Court, Eastern District of Wisconsin	December 5, 2011
United States Court of Appeals, First Circuit	July 7, 2006
United States Court of Appeals, Second Circuit	April 17, 1967
United States Court of Appeals, Third Circuit	September 8, 1995
United States Court of Appeals, Fourth Circuit	January 16, 2001
United States Court of Appeals, Fifth Circuit	January 20, 2009
United States Court of Appeals, Sixth Circuit	August 26, 2003
United States Court of Appeals, Seventh Circuit	March 22, 2002
United States Court of Appeals, Ninth Circuit	November 13, 1972
United States Court of Appeals, Tenth Circuit	November 20, 1973
United States Court of Appeals, Eleventh Circuit	April 8, 2009
United States Court of Appeals, Federal Circuit	February 9, 2001
United States Court of Appeals, D.C. Circuit	February 6, 1985
United States Court of International Trade	January 5, 1982
United States Court of Federal Claims	November 16, 2011

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)
3 (dzifkin@bsflp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401,
6 Telephone: (310) 752-2400
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8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED
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13 PALANTIR TECHNOLOGIES INC., a)
14 Delaware corporation,)

15 *Plaintiff,*)

16 v.)

17 MARC L. ABRAMOWITZ, in his individual)
18 capacity and as trustee of the MARC)
19 ABRAMOWITZ CHARITABLE TRUST NO.)
20 2, KT4 PARTNERS LLC, a Delaware limited)
21 liability company, and DOES 1 through 50,)
22 inclusive,)

23 *Defendants.*)
24)
25)
26)
27)
28)

Case No. 16CV299476

**DECLARATION OF DAVID L. ZIFKIN
IN SUPPORT OF VERIFIED
APPLICATION OF DAVID BOIES TO
APPEAR *PRO HAC VICE***

Date: October 21, 2016

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Peter H. Kirwan

Complaint Filed: September 1, 2016

Trial Date: Not set

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I, David L. Zifkin, declare and state as follows:

I am an attorney duly admitted to practice law in the State of California and am a partner with the law firm Boies, Schiller & Flexner, LLP, counsel for Plaintiff Palantir Technologies, Inc. (“Palantir”). I make this declaration in support of the Verified Application of David Boies to Appear *Pro Hac Vice*. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently with respect thereto.

2. I am a member in good standing of the State Bar of California.

3. Copies of the Verified Application of David Boies to Appear *Pro Hac Vice*, as well as the Notice of the Application, and this Declaration are being timely served upon Defendants and on the State Bar of California’s San Francisco office. Additionally, I am causing all applicable fees to be paid. Attached hereto as Exhibit A is a copy of the letter to the State Bar of California attaching this application and payment of the requisite fee to the State Bar of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of September, 2016, at Santa Monica, California.



David L. Zifkin

EXHIBIT A

September 16, 2016

VIA FEDERAL EXPRESS

The State Bar of California
Office of Certification
180 Howard Street
San Francisco, CA 94105

Re: Palantir Technologies Inc. v. Marc L. Abramowitz, et al.
Santa Clara Superior Court Case No. 16CV299476

Dear Sir or Madam:

Enclosed please find the following documents for the Verified Application of David Boies of the law firm Boies, Schiller & Flexner LLP to appear *pro hac vice* on behalf of Palantir Technologies, Inc., in the above-entitled action, along with a check for \$50.00.

1. Notice of Hearing and Verified Application of David Boies to Appear *Pro Hac Vice*;
2. [Proposed] Order Granting Application of David Boies to Appear *Pro Hac Vice*;
and
3. Proof of Service.

Sincerely,

David L. Zifkin/anh

David L. Zifkin

Enclosures

BOIES SCHILLER & FLEXNER LLP
LA EXPENSE ACCOUNT
401 WILSHIRE BLVD STE 850
SANTA MONICA, CA 90401-1453

5006

51-110/211 7796
3520711635

DATE SEPTEMBER 16, 2016

PAY
TO THE
ORDER OF

THE STATE BAR OF CALIFORNIA

\$ 50

FIFTY DOLLARS ONLY

DOLLARS



Wells Fargo Bank, N.A.
Connecticut
wellsfargo.com

FOR

D BOIES PRO HAC VICE

⑈0000005006⑈ ⑆021101108⑆ 3520711635⑈

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)
3 (dzifkin@bsflp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401,
6 Telephone: (310) 752-2400
7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED

9/19/2016 12:00:00 AM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476

Reviewed By: Rowena Walker

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 PALANTIR TECHNOLOGIES INC., a
14 Delaware corporation,

15 *Plaintiff,*

16 v.

17 MARC L. ABRAMOWITZ, in his individual
18 capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
20 2, KT4 PARTNERS LLC, a Delaware limited
21 liability company, and DOES 1 through 50,
22 inclusive,

23 *Defendants.*

), Case No. 16CV299476

), **DECLARATION OF DAVID L. ZIFKIN**
), **IN SUPPORT OF VERIFIED**
), **APPLICATION OF JOHN T. ZACH TO**
), **APPEAR PRO HAC VICE**

), Date: October 21, 2016

), Time: 9:00 a.m.

), Dept.: 1

), Judge: Hon. Peter H. Kirwan

), Complaint Filed: September 1, 2016

), Trial Date: Not set

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I, David L. Zifkin, declare and state as follows:

I am an attorney duly admitted to practice law in the State of California and am a partner with the law firm Boies, Schiller & Flexner, LLP, counsel for Plaintiff Palantir Technologies, Inc. (“Palantir”). I make this declaration in support of the Verified Application of John T. Zach to Appear *Pro Hac Vice*. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently with respect thereto.

2. I am a member in good standing of the State Bar of California.

3. Copies of the Verified Application of John T. Zach to Appear *Pro Hac Vice*, as well as the Notice of the Application, and this Declaration are being timely served upon Defendants and on the State Bar of California’s San Francisco office. Additionally, I am causing all applicable fees to be paid. Attached hereto as Exhibit A is a copy of the letter to the State Bar of California attaching this application and payment of the requisite fee to the State Bar of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of September, 2016, at Santa Monica, California.



David L. Zifkin

EXHIBIT A

September 16, 2016

VIA FEDERAL EXPRESS

The State Bar of California
Office of Certification
180 Howard Street
San Francisco, CA 94105

Re: Palantir Technologies Inc. v. Marc L. Abramowitz, et al.
Santa Clara Superior Court Case No. 16CV299476

Dear Sir or Madam:

Enclosed please find the following documents for the Verified Application of John T. Zach of the law firm Boies, Schiller & Flexner LLP to appear *pro hac vice* on behalf of Plaintiff Palantir Technologies Inc., in the above-entitled action, along with a check for \$50.00.

1. Notice of Hearing and Verified Application of John T. Zach to Appear *Pro Hac Vice*;
2. [Proposed] Order Granting Application of John T. Zach to Appear *Pro Hac Vice*;
and
3. Proof of Service.

Sincerely,

David J. Zifkin/anh

David L. Zifkin

Enclosures

BOIES SCHILLER & FLEXNER LLP
LA EXPENSE ACCOUNT
401 WILSHIRE BLVD STE 850
SANTA MONICA, CA 90401-1453

5007

57-110/211 7796
0520711635

DATE 9/16/18

PAY
TO THE
ORDER OF

The State Bar of California
F. P. Y. 00/100

\$ 50,00

DOLLARS

 See the
signature
strip on
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WELLS FARGO Wells Fargo Bank, N.A.
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wellsfargo.com

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1 **BOIES, SCHILLER & FLEXNER LLP**
David Zifkin (SBN232845)
2 (dzifkin@bsflp.com)
3 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401
4 Telephone: (310) 752-2400
Facsimile: (310) 752-2490

5
6 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 PALANTIR TECHNOLOGIES INC., a)
12 Delaware corporation,)

13 *Plaintiff,*)

14 v.)

15 MARC L. ABRAMOWITZ, in his individual)
16 capacity and as trustee of the MARC)
17 ABRAMOWITZ CHARITABLE TRUST NO.)
18 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
inclusive,)

19 *Defendants.*)
20)
21)
22)

Case No. 16CV299476

PROOF OF SERVICE BY U.S. MAIL

Complaint Filed: September 1, 2016
Trial Date: Not set

PROOF OF SERVICE

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I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401. On September 19, 2016 I served the following document(s):

1. **NOTICE AND VERIFIED APPLICATION OF DAVID BOIES TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**
2. **DECLARATION OF DAVID L. ZIFKIN IN SUPPORT OF VERIFIED APPLICATION OF DAVID BOIES TO APPEAR *PRO HAC VICE***
3. **[PROPOSED] ORDER PERMITTED DAVID BOIES TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**
4. **NOTICE AND VERIFIED APPLICATION OF JOHN T. ZACH TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**
5. **DECLARATION OF DAVID L. ZIFKIN IN SUPPORT OF VERIFIED APPLICATION OF JOHN T. ZACH TO APPEAR *PRO HAC VICE***
6. **[PROPOSED] ORDER PERMITTED JOHN T. ZACH TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**

I personally served the documents on the persons below, as follows:

MARC L. ABRAMOWITZ
3455 WASHINGTON STREET
SAN FRANCISCO, CA 94118

KT4 PARTNERS LLC
C/O AGENT FOR SERVICE:
INCORP SERVICES, INC.
919 NORTH MARKET STREET,
SUITE 425
WILMINGTON, DE 19801

The documents were served by the following means:

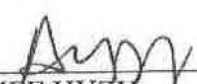
<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input checked="" type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or

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	<p>package addressed to the persons at the addresses listed above and:</p> <p><input checked="" type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.</p> <p><input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.</p>
<input type="checkbox"/>	<p>By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on September 19, 2016 at Santa Monica, California.



AIMEE HYZY

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Zifkin (SBN232845)

3 (dzifkin@bsfllp.com)

4 401 Wilshire Boulevard, Suite 850

5 Santa Monica, CA 90401,

6 Telephone: (310) 752-2400

7 Facsimile: (310) 752-2490

8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13 PALANTIR TECHNOLOGIES INC., a
14 Delaware corporation,

15 *Plaintiff,*

16 v.

17 MARC L. ABRAMOWITZ, in his individual
18 capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
20 2, KT4 PARTNERS LLC, a Delaware limited
21 liability company, and DOES 1 through 50,
22 inclusive,

23 *Defendants.*

) Case No. 16CV299476

) **[PROPOSED] ORDER PERMITTED**
) **DAVID BOIES TO APPEAR AS**
) **COUNSEL *PRO HAC VICE* FOR**
) **PLAINTIFF PALANTIR**
) **TECHNOLOGIES, INC.**

) Date: October 21, 2016

) Time: 9:00 a.m.

) Dept.: 1

) Judge: Hon. Peter H. Kirwan

) Complaint Filed: September 1, 2016

) Trial Date: Not set

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The verified application of David Boies of Boies, Schiller & Flexner LLP to appear as counsel *pro hac vice* for Plaintiff Palantir Technologies, Inc. (“Palantir”) was filed on September 17, 2016.

Having considered the papers submitted in support of the verified application of David Boies to appear *pro hac vice* and good cause appearing,

IT IS HEREBY ORDERED that the verified application of David Boies of Boies, Schiller & Flexner LLP to appear in the above-captioned matter as counsel *pro hac vice* for Palantir, pursuant to Rule 9.40 of the California Rules of Court, is GRANTED.

IT IS SO ORDERED.

DATED: _____, 2016

Honorable Peter H. Kirwan
Judge of the Superior Court for the State of California

1 **BOIES, SCHILLER & FLEXNER LLP**
2 David Zifkin (SBN232845)
3 (dzifkin@bsfllp.com)
4 401 Wilshire Boulevard, Suite 850
5 Santa Monica, CA 90401,
6 Telephone: (310) 752-2400
7 Facsimile: (310) 752-2490
8 *Additional counsel identified on signature page*

9 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

13	PALANTIR TECHNOLOGIES INC., a	)	Case No. 16CV299476
14	Delaware corporation,)	
15	<i>Plaintiff,</i>	)	[PROPOSED] ORDER PERMITTED
16	v.	)	JOHN T. ZACH TO APPEAR AS
17		)	COUNSEL <i>PRO HAC VICE</i> FOR
18		)	PLAINTIFF PALANTIR
19		)	TECHNOLOGIES, INC.
20	MARC L. ABRAMOWITZ, in his individual)	
21	capacity and as trustee of the MARC	)	Date: October 21, 2016
22	ABRAMOWITZ CHARITABLE TRUST NO.	)	Time: 9:00 a.m.
23	2, KT4 PARTNERS LLC, a Delaware limited	)	Dept.: 1
24	liability company, and DOES 1 through 50,	)	Judge: Hon. Peter H. Kirwan
25	inclusive,)	
26	<i>Defendants.</i>)	Complaint Filed: September 1, 2016
27)	Trial Date: Not set
28)	

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The verified application of John T. Zach of Boies, Schiller & Flexner LLP to appear as counsel *pro hac vice* for Plaintiff Palantir Technologies, Inc. (“Palantir”) was filed on September 17, 2016.

Having considered the papers submitted in support of the verified application of John T. Zach to appear *pro hac vice* and good cause appearing,

IT IS HEREBY ORDERED that the verified application of John T. Zach of Boies, Schiller & Flexner LLP to appear in the above-captioned matter as counsel *pro hac vice* for Palantir, pursuant to Rule 9.40 of the California Rules of Court, is GRANTED.

IT IS SO ORDERED.

DATED: _____, 2016

Honorable Peter H. Kirwan
Judge of the Superior Court for the State of California

1 **BOIES, SCHILLER & FLEXNER LLP**
David Zifkin (SBN232845)
2 (dzifkin@bsflp.com)
3 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401
4 Telephone: (310) 752-2400
Facsimile: (310) 752-2490
5 *Additional counsel identified on signature page*

E-FILED
9/19/2016 12:00:00 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

6 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SANTA CLARA**

10 **UNLIMITED JURISDICTION**

11 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
12 Delaware corporation,)
13 *Plaintiff,*) **NOTICE AND VERIFIED APPLICATION**
14) **OF JOHN T. ZACH TO APPEAR AS**
15) **COUNSEL *PRO HAC VICE* FOR**
16) **PLAINTIFF PALANTIR**
17) **TECHNOLOGIES, INC.**
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v.
MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,
Defendants.

Date: October 21, 2016
Time: 9:00 a.m.
Dept.: 1
Judge: Hon. Peter H. Kirwan
Complaint Filed: September 1, 2016
Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on October 21, 2016, in
3 Department 1 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Peter H. Kirwan, presiding, Plaintiff Palantir Technologies, Inc.
5 (“Palantir”) will apply for an order permitting John T. Zach of the law firm of Boies, Schiller &
6 Flexner LLP to appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 The application is made pursuant to Rule 9.40 of the California Rules of Court and is
8 based on this Notice and the attached Application. Rule 9.40 provides that a person “who is not a
9 member of the State Bar of California but who is a member in good standing of and eligible to
10 practice before the Bar of any United States Court or the highest court in any state,” and “who has
11 been retained to appear in a particular cause pending in a court of this state, may in the discretion
12 of the court be permitted upon written application to appear as counsel *pro hac vice*, provided that
13 an active member of the State Bar of California is associated as counsel of record.”

14 This application is necessary because Palantir anticipates that the participation and
15 appearance of John T. Zach of Boies, Schiller & Flexner LLP will be required on its behalf. As
16 set forth in the attached Application of John T. Zach, all requirements of Rule 9.40 have been
17 met. Proper and timely notice of this application will be given to the Defendants and to the State
18 Bar of California at its San Francisco address. A copy of the letter to the State Bar of California
19 attaching this application and payment of the requisite fee to the State Bar of California is
20 attached to the Declaration of David L. Zifkin.

21 Accordingly, John T. Zach respectfully requests permission to appear as counsel *pro hac*
22 *vice* in the above-captioned matter on behalf of Palantir.

23
24 Dated: September 16, 2016

BOIES, SCHILLER & FLEXNER LLP

25
26 

27 By: _____
David Zifkin (SBN232845)
28 (dzifkin@bsflp.com)

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401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,
Telephone: (310) 752-2400
Facsimile: (310) 752-2490

John T. Zach (*Pro Hac Vice* to be filed)
(jzach@bsflp.com)
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

Carlos M. Sires (*Pro Hac Vice* to be filed)
(csires@bsflp.com)
401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022
Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

1 of America that the foregoing is true and correct.

2 Executed on September 16, 2016, at NY, NY.

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6 John T. Zach

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1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Boies (*Pro Hac Vice* appl. pending)
3 (dboies@bsfllp.com)
4 333 Main Street
5 Armonk, NY 10504
6 Telephone: (914) 749-8200
7 Facsimile: (914) 749-8300

8 David Zifkin (SBN 232845)
9 (dzifkin@bsfllp.com)
10 Shira Liu (SBN 274158)
11 (sliu@bsfllp.com)
12 401 Wilshire Boulevard, Suite 850
13 Santa Monica, CA 90401,
14 Telephone: (310) 752-2400
15 Facsimile: (310) 752-2490

16 *Additional counsel identified on signature page*

17 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

E-FILED
9/23/2016 5:04:54 PM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SANTA CLARA**

20 **UNLIMITED JURISDICTION**

21 PALANTIR TECHNOLOGIES INC., a
22 Delaware corporation,

23 *Plaintiff,*

24 v.

25 MARC L. ABRAMOWITZ, in his individual
26 capacity and as trustee of the MARC
27 ABRAMOWITZ CHARITABLE TRUST NO.
28 2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

) Case No. 16CV299476
)
) **FIRST AMENDED COMPLAINT FOR:**
) (1) Breach of Contract
) (2) Breach of the Implied Covenant of Good
) Faith and Fair Dealing
) (3) Violation of Cal. Civ. Code § 3426 et seq.
) (4) Declaratory Relief
) (5) Violation of California’s Unfair
) Competition Law, Cal. Bus. & Prof. Code §
) 17200 et seq.
) **JURY TRIAL DEMAND**
)
) Complaint Filed: September 1, 2016
) Trial Date: Not set

1 Plaintiff Palantir Technologies Inc. (“Palantir”), for its First Amended Complaint against
2 defendants Marc L. Abramowitz (“Abramowitz”), both in his individual capacity and as trustee of
3 the Marc Abramowitz Charitable Trust No. 2 (the “Trust”), KT4 Partners LLC (“KT4”), and
4 Does 1 through 50 (collectively with Abramowitz, KT4, and the Trust, “Defendants”), alleges as
5 follows:

6 **NATURE OF THE ACTION**

7 1. This is an action to stop Defendants from misappropriating Palantir’s confidential
8 information and proprietary trade secrets for their own benefit and to prevent them from receiving
9 any additional confidential or proprietary information from Palantir pursuant to an Investors’
10 Rights Agreement.

11 2. Abramowitz was a respected confidant and advisor to Palantir and its senior
12 executives until he betrayed the trust they bestowed upon him for his own personal gain. He was,
13 through KT4 and other entities, an early equity investor in Palantir who personally engaged in
14 regular discussions with executives about some of the company’s most sensitive business
15 strategies and trade secrets. Those discussions were highly confidential, as was made clear by
16 express written agreements among the parties at the time and a course of dealing based on the
17 most basic principles of fairness and honesty between a trusted shareholder and advisor and
18 Palantir’s management and business personnel.

19 3. Nonetheless, as part of brazen scheme to claim Palantir’s own highly confidential
20 information and trade secrets as his own, Abramowitz stole those secrets, engaged in methodical
21 deception of Palantir’s senior executives, and made false claims to the United States Patent and
22 Trademark Office (USPTO). Abramowitz’s claim to be a patent innovator is directly
23 contradicted by the facts surrounding his professional career and his interactions with Palantir.

24 4. To start, Abramowitz has no notable history as an inventor or patent innovator in
25 the data analysis area. He has made most of his career and fortune in real estate and buyout
26 investing. Yet, beginning in 2014, Abramowitz suddenly filed five patent applications with the
27 USPTO, all of them based on trade secrets he stole from Palantir. This was plainly illegal and
28 highly unethical conduct, and it was a betrayal of his trusted relationship with Palantir and its

1 executives.

2 5. But Abramowitz's scheme did not end there. After stealing from Palantir, he hired
3 lawyers to demand from Palantir sensitive and confidential information about the company,
4 including its finances and business dealings, which Palantir considers to be, and treats as, highly
5 sensitive and confidential. Having uncovered Abramowitz's breach of Palantir's trust (and of his
6 contractual obligations to Palantir under multiple agreements), it is apparent that Abramowitz is
7 not seeking this information in good faith or for a proper purpose. In fact, unlike Palantir's other
8 investors, history has shown that Abramowitz has and will misuse any information provided to
9 him in breach of confidence, causing Palantir irreparable harm in the process.

10 6. Palantir now has been forced to protect itself, both through amendments to its
11 corporate documents, through actions before the USPTO, and through this action, by which
12 Palantir seeks redress for Abramowitz's breaches of contract, breaches of confidence, and misuse
13 of Palantir's confidential and proprietary information and trade secrets. Further, to protect
14 Palantir and its shareholders—including employees, former employees and other investors—from
15 continued breaches of confidence in the future, Palantir seeks a declaratory judgment that
16 Abramowitz has no right to the information he has demanded under the Investors' Rights
17 Agreement.

18 **PARTIES, JURISDICTION, AND VENUE**

19 7. The Court has jurisdiction over this action by virtue of Article VI § 10 of the
20 California Constitution and California Code of Civil Procedure § 410.10.

21 8. Palantir is a Delaware corporation with its principal place of business at 100
22 Hamilton Avenue, Palo Alto, California, 94301. Palantir has suffered, and continues to suffer,
23 injury in this jurisdiction by reason of Defendants' actions.

24 9. Palantir is informed and believes and on that basis alleges that defendant Marc L.
25 Abramowitz is an individual residing in San Francisco, California. Palantir is informed and
26 believes and on that basis alleges that Abramowitz is the trustee of the Marc Abramowitz
27 Charitable Trust No. 2. The wrongful actions of Abramowitz occurred in, were targeted to, and
28 caused damage in, California.

1 10. Palantir is informed and believes and on that basis alleges that defendant KT4
2 Partners LLC is a Delaware limited liability company with its principal place of business in San
3 Francisco, California. On information and belief, KT4 does business in California and has
4 committed acts that submit it to the jurisdiction of California’s courts. Upon information and
5 belief, Abramowitz is the sole member of KT4 and controls and directs the activities of KT4. The
6 wrongful actions of KT4 occurred in, were targeted to, and caused damage in, California.

7 11. Palantir is ignorant of the true names of Does 1 through 50 and such names are
8 fictitious. Such defendants are legally responsible for the events and happenings described herein
9 and for the damages proximately caused thereby. Once Palantir learns of the true names of Does
10 1 through 50, Palantir will amend the complaint to include the real name(s) of such party or
11 parties.

12 12. This action is founded on injuries and damages suffered by Palantir in Santa Clara
13 County by virtue of the Defendants’ misappropriation of trade secrets, breach of contract, breach
14 of confidence and other illegal and wrongful acts as alleged in this Complaint. Venue is proper in
15 this Court because Plaintiff resides in this County, the harm caused by Defendants occurred in
16 this County, and the events that form the basis for this Complaint largely took place in this
17 County.

18 **FACTUAL BACKGROUND**

19 **Palantir’s Business and the Trade Secrets at Issue**

20 13. Palantir is a software and services company that specializes in data analytics. In
21 2004, Palantir was founded on a vision: to provide solutions not only to problems then faced by
22 business and government, but also solutions to problems that did not yet exist, but that would
23 surely come to be as part of our rapidly-evolving world. It sought to make this vision a reality by
24 the use of technology. And it embarked on an ambitious, time-consuming, and costly endeavor to
25 create a viable, successful business. As a result of hard work and investment, Palantir has
26 succeeded and is now a leader in its industry. Today, Palantir’s products are deployed at the most
27 critical government, commercial, and non-profit institutions in the world to solve problems the
28 company’s founders had not even dreamed of back in 2004.

1 14. In particular, at its founding Palantir set out to create products that would
2 transform the way organizations use, perhaps their most important asset in today's business
3 world, data. Palantir's mission has been and remains to develop flexible tools and services to
4 provide human-driven analysis of real-world data, with a focus on creating the world's best user
5 experience for working with data. To achieve this, Palantir builds platforms for integrating,
6 managing, and securing data, on top of which it layers applications for fully interactive, human-
7 driven, machine-assisted analysis. This means that Palantir develops programs and provides
8 services that allow businesses, governments and other entities to run their operations in a way that
9 corresponds with the reality of their marketplace and consumers.

10 15. Businesses and governments use Palantir's software to interpret and visualize large
11 quantities of information from various sources. For example, businesses use Palantir's software
12 to analyze their internal and externally available data to better assess cyber risks, and government
13 agencies use Palantir's software to analyze intelligence data to better understand emerging
14 threats.

15 16. Palantir's success is due in part to its early recognition that many organizations are
16 traditionally unable to identify problems and leverage insights from their internal data because the
17 data is held in separate silos that are often disconnected and have different access, security
18 controls, and privacy requirements. When information is siloed—that is, when important
19 information is stored in containerized, unrelated units—businesses and governments cannot fully
20 realize the potential of that data. Palantir provides software solutions that avoid this problem,
21 allowing users to run their businesses consistent with the actual environment in which they
22 operate. Thus, Palantir's products are used to fuse and analyze customer data across platforms
23 and sources and enable secure collaboration among analysts, while protecting data privacy and
24 security.

25 17. As is expected in this type of work, Palantir is also heavily involved in research
26 and development. Palantir spends millions of dollars each year to expand its business and seek
27 out new opportunities—and to stay ahead of the curve and atop the industry. This research and
28 development investment involves both creating new software, technologies and processes and

1 adapting existing products and technologies to new applications and uses.

2 18. As described in more detail below, this litigation concerns, among other things,
3 Defendants' misappropriation of Palantir's proprietary trade secret and business information
4 concerning Palantir's technologies and/or use cases for (i) interpreting and analyzing data in the
5 healthcare space for clinical drug trials and for health insurance risk assessments (the "Healthcare
6 Technology"); (ii) cyber insurance technology and related cybersecurity technology for use of
7 customer consortia to improve cybersecurity; (the "Cyber Insurance and Cybersecurity
8 Technology"); and (iii) interpreting and analyzing data in connection with natural resources
9 exploration and management (the "Natural Resources Exploration Technology"). It also concerns
10 Defendants' misappropriation of Palantir's trade secret business plans and customer lists related
11 to these technologies. Palantir employed reasonable efforts to maintain the secrecy of these trade
12 secrets, which have had substantial economic value because they were not generally known to the
13 public or others in the industry at the time of Defendants' misappropriation.

14 **Palantir Scrupulously Protects Its Confidential Information and Trade Secrets**

15 19. Palantir undertakes significant efforts to protect the confidentiality and security of
16 its trade secrets, property (including physical locations, intellectual property, and network
17 security), as well as sensitive and confidential business and financial information.

18 20. Palantir employs both technical and physical safety measures to maintain the
19 security of its property and confidential information. Among other things, Palantir restricts
20 employees' access to sensitive internal information such that individual employees can only
21 access such data after obtaining appropriate authorization and only to the extent necessary to
22 perform their jobs. Additionally, Palantir employs a multitude of technical security measures to
23 protect its systems and networks, including, among other methods: intrusion detection systems,
24 network monitoring tools, anti-malware software, network firewalls, and whole disk encryption
25 of employee computers. Palantir's network and security systems are also continually monitored
26 for potential security risks. To secure access to information and data no matter where employees
27 are, Palantir uses and requires complex password requirements and two-factor authentication for
28 access to its hardware and its network.

1 21. In addition to data and network security, physical access to Palantir's facilities is
2 also highly restricted. Palantir employees must use electronic badges to access Palantir facilities.
3 Access to certain sensitive areas of Palantir's facilities is further restricted to a small subset of
4 Palantir employees with a specific need for access (including, for example, Palantir facilities
5 containing network servers and security equipment, among others). Visitors must be invited to
6 Palantir facilities, must sign in and wear a visitor badge and are escorted at all times. In addition,
7 certain areas of Palantir's facilities are off limits to visitors, and Palantir deploys security guards
8 to protect its facilities.

9 22. Palantir also implements numerous measures and policies to ensure that its
10 employees safeguard the confidentiality and security of its trade secrets and sensitive and
11 confidential business information. As part of the hiring process, Palantir requires pre-
12 employment background checks for all new employees and also requires legal training for new
13 hires, covering confidentiality, information and data security, and compliance.

14 **Abramowitz's Relationship with Palantir**

15 23. Initial funding for Palantir came from a variety of sources, including the
16 company's founders who remain with Palantir today as shareholders of common shares of
17 Palantir stock. Abramowitz, through KT4 and other entities he controls, was an early investor in
18 Palantir, first investing in the company in 2005.

19 24. Through the years, Abramowitz was involved with the business of Palantir.
20 Rather than acting as a passive investor, he became a regular fixture at Palantir. Between 2010
21 and 2015, Abramowitz visited Palantir offices over thirty times. Indeed, Abramowitz spent so
22 much time at Palantir that in 2014 he requested an office at the company.

23 25. Abramowitz established relationships with the company's founders, officers, and
24 employees. As a result, he was viewed as a trusted investor and advisor by the company,
25 including several founders and senior employees. Abramowitz fostered these relationships of
26 confidence and held himself out as a friend of, advisor to, and investor in Palantir, whose interests
27 were completely aligned with the company. He made clear that he could be trusted to keep
28 confidences and act in the company's best interests. When Abramowitz had questions about

1 Palantir's business, including financial information, that were relevant to his status as a
2 shareholder and trusted advisor to the company, he was provided with the information.

3 26. In this context, Abramowitz often inquired about specific Palantir projects. On
4 several occasions, Palantir provided information to Abramowitz in his capacity as a shareholder
5 and advisor about concepts for new technology and use cases for technology that Palantir had
6 spent significant time and resources researching, developing and testing, including the Healthcare
7 Technology, Cyber Insurance and Cybersecurity Technology, and Natural Resources Exploration
8 Technology. At Abramowitz's request, Palantir also provided him with information about
9 proprietary business plans and customer lists for these technologies. Palantir always provided
10 any such information to Abramowitz with the express and reasonable expectation that
11 Abramowitz would maintain its confidentiality, that he would never pass Palantir's concepts and
12 trade secrets off as his own, and that he would never use the information to Palantir's detriment or
13 without Palantir's permission.

14 27. Consistent with the confidential nature of these communications, Palantir and
15 Abramowitz entered into confidentiality agreements.

16 28. For example, in a Preferred Stock Transfer Agreement, dated August 14, 2012,
17 Abramowitz agreed "to keep confidential and refrain from using or disclosing all agreements,
18 documents and other information regarding the Company or its securityholders provided or made
19 available to [Abramowitz]...in [his] capacity as a stockholder of the Company...." Abramowitz
20 renewed that confidentiality agreement in a Preferred Stock Transfer Agreement, dated June 17,
21 2015.

22 29. Similarly, in a Preferred Stock Transfer Agreement also dated June 17, 2015, KT4
23 agreed "to keep confidential and refrain from using or disclosing all agreements, documents and
24 other information regarding the Company or its securityholders provided or made available to
25 [Abramowitz]...in [his] capacity as a stockholder of the Company...."

26 30. Abramowitz also executed an NDA, dated July 12, 2014 (the "July 2014 NDA"),
27 covering "Proprietary Information," which is defined in the NDA as "non-public business,
28 technical or other information, materials and/or ideas of Palantir [including] anything you learn or

1 discover as a result of exposure to or analysis of any Proprietary Information.” The NDA
2 expressly forbids Abramowitz from using or revealing any of Palantir’s Proprietary Information.

3 **Abramowitz Misappropriation of Business Information and Trade Secrets**

4 31. By 2014, Abramowitz had embarked on an intentional and calculated scheme to
5 discover Palantir trade secrets and convert them for his own use and profit. Abramowitz violated
6 the trust Palantir put in him by, at a minimum, misappropriating the above-described trade secrets
7 related to the Healthcare Technology, the Cyber Insurance and Cybersecurity Technology, and
8 the Natural Resources Exploration Technology.

9 32. **The Healthcare Technology.** Since 2010, Palantir worked extensively to identify
10 the most effective way to enter and advance the clinical trial space. As a result of this work,
11 Palantir developed proprietary and trade secret technology and data analytics services to improve
12 the design of clinical trials of prescription drugs by pharmaceutical companies and academic
13 institutions. For example, this proprietary technology and data analytics services can interpret
14 and analyze various data for purposes of patient recruitment in clinical trial. In conjunction with
15 developing this technology, Palantir developed proprietary business plans, customer lists and use
16 cases that are also trade secrets. Palantir has made reasonable efforts to maintain the
17 confidentiality of these trade secrets.

18 33. In the healthcare space, Palantir also worked extensively to develop proprietary
19 technology and data analytic services to perform insurance risk assessments, including, for
20 example, patient diagnoses not accounted for by health insurance companies and healthcare fraud
21 risks. In conjunction with developing this technology, Palantir developed proprietary business
22 plans, customer lists and use cases that are also trade secrets. Palantir has made reasonable
23 efforts to maintain the confidentiality of these trade secrets.

24 34. As a trusted investor and advisor, Abramowitz learned proprietary trade secret
25 information concerning the Healthcare Technology through his communications with Palantir
26 about Palantir’s research and development work, technology, business plans, use cases, and
27 customer lists in this area.

28 35. At all times, Abramowitz knew that this information was confidential and

1 proprietary, and that he needed Palantir’s permission before disclosing any of it. As described
2 above, Abramowitz entered into confidentiality agreements with Palantir. Moreover, in his
3 communications with Palantir, Abramowitz made clear that he understood the information
4 Palantir provided to him was confidential.

5 36. In February 2014, Abramowitz sought to broker a deal between Palantir and a
6 customer. Had the introduction resulted in a finalized deal, Abramowitz would have received a
7 fee for the introduction. Consistent with the confidential nature of their communications, the
8 draft agreement between Abramowitz and Palantir for this fee contains a confidentiality
9 provision. Even though this potential customer understood that it was also obligated to maintain
10 the confidentiality of any information received, Palantir advised Abramowitz that he could
11 provide this potential customer only with limited information.

12 37. After it was clear that the introduction would not result in a finalized deal – and
13 despite knowing that Palantir invented the Healthcare Technology and that it was confidential
14 trade secret information – Abramowitz misappropriated Palantir’s inventions and trade secrets in
15 this space, has improperly disclosed them in an effort to profit from them, and has attempted to
16 patent them as his own.

17 38. On October 29, 2014, without Palantir’s knowledge or consent, Abramowitz filed
18 Provisional Application No. 62/072,368 with the United States Patent and Trademark Office
19 (“USPTO”) seeking to patent systems, methods and concepts concerning the Healthcare
20 Technology that were developed by Palantir and explained to Abramowitz in confidence. The
21 application falsely identifies Abramowitz as the sole inventor of the Healthcare Technology,
22 includes no mention of Palantir at all, and fails to list a single Palantir employee as an inventor.

23 39. On information and belief, in his effort to market the Healthcare Technology as his
24 own and to profit from it, Abramowitz has also improperly disclosed trade secret information
25 related to the Healthcare Technology to others.

26 40. In addition to misappropriating Palantir’s trade secret Healthcare Technology,
27 Defendants breached their confidentiality agreements when they filed the patent application and
28 disclosed Palantir’s confidential information to others.

1 41. **The Cyber Insurance and Cybersecurity Technology.** Palantir engaged in
2 research and development to build technology to assist companies in the cyber insurance and
3 cybersecurity space. Beginning in 2013, Palantir began developing trade secret systems and
4 methods for companies to better defend themselves against cyberattacks to their networks by
5 sharing cyberattack data among various participants in Palantir’s system. Palantir developed
6 trade secret technology, business plans, use cases, and customer lists to implement these
7 cybersecurity systems and methods. Palantir often referred to this project as “CyberMesh” or
8 “Cyber Consortium.” Additionally, Palantir developed related systems, methods, technologies,
9 business plans, uses cases, and customer lists that were specific to improving cyber insurance.
10 For example, Palantir expanded upon its existing cyber security technologies to develop
11 technology to more accurately measure the risk of a cyberattack and thus enable insurers to
12 provide products to protect customers against the risk of cyberattacks. Palantir has made
13 reasonable efforts to maintain the confidentiality of these trade secrets.

14 42. Abramowitz requested information and participated in discussions about Palantir’s
15 Cyber Insurance and Cybersecurity Technology trade secrets.

16 43. In June 2014, a Palantir executive disclosed to Abramowitz during a conversation
17 that Palantir was working on opportunities in the insurance industry, including opportunities
18 related to cyber insurance. When Abramowitz expressed interest in these concepts and requested
19 additional information, the Palantir executive arranged for Abramowitz to speak with another
20 Palantir executive, who sent Abramowitz trade secret information on these concepts via email and
21 invited Abramowitz to meet with him at Palantir’s offices to discuss them. During his June 2014
22 meeting with Abramowitz, this Palantir executive further described the two related concepts that
23 Palantir had developed relating to cyber insurance and the use of customer consortia to improve
24 cyber security.

25 44. When Abramowitz next met with Palantir on the subject, he indicated he was
26 interested in setting up a Palantir subsidiary that he would run to perform the insurance-related
27 function Palantir had revealed to him. This once again reflects that Abramowitz’s participation in
28 the discussions in June 2014 were confidential communications made solely for the benefit and

1 interest of Palantir. Palantir ultimately decided not pursue the subsidiary Abramowitz suggested.

2 45. After Palantir decided not to pursue the subsidiary Abramowitz desired – and
3 despite knowing that Palantir invented the Cyber Insurance and Cybersecurity Technology and
4 that it was confidential trade secret information – Abramowitz misappropriated Palantir’s
5 inventions and trade secrets in this space, has improperly disclosed them in an effort to profit
6 from them, and has attempted to patent them as his own.

7 46. Without Palantir’s knowledge, on October 21, 2014, Abramowitz filed Provisional
8 Application No. 62/066,716 at the USPTO attempting to patent systems, methods and concepts
9 related to Palantir’s Cyber Insurance and Cybersecurity Technology as his own, claiming to be
10 the invention’s sole owner and inventor. Once again, Abramowitz’s application fails to mention
11 Palantir and does not include a single Palantir employee as an inventor.

12 47. Presumably unbeknownst to Abramowitz, Palantir had filed its own patent
13 application on certain inventions related to the Cyber Insurance and Cybersecurity Technologies,
14 on May 16, 2014, months before Abramowitz learned of the systems, methods, techniques and
15 concepts from Palantir; that application resulted in United States Patent No. 9,009,827, dated
16 April 14, 2015, which is owned by Palantir and was invented by Palantir employees. During the
17 pendency of that application, the information contained in it remained confidential trade secret
18 information. Moreover, that patent application and patent does not disclose other trade secret
19 information related to the Cyber Insurance and Cybersecurity Technology (e.g., business plans,
20 use cases), which was disclosed to Abramowitz in confidence.

21 48. On information and belief, in his effort to market the Cyber Insurance and
22 Cybersecurity Technology as his own and to profit from it, Abramowitz has also improperly
23 disclosed trade secret information related to the Cyber Insurance and Cybersecurity Technology
24 to others.

25 49. In addition to misappropriating Palantir’s trade secret Cyber Insurance and
26 Cybersecurity Technology, Defendants breached their confidentiality agreements when
27 Abramowitz filed the patent application and disclosed Palantir’s confidential information to
28 others.

1 50. **The Natural Resources Exploration Technology.** Palantir engaged in research
2 and development to create a more effective way for natural resources exploration companies to
3 mine data. Palantir was able to adapt its existing data analysis technologies to develop this new
4 proprietary and trade secret technology. In conjunction with developing this valuable technology,
5 Palantir also developed proprietary business plans, use cases and customer lists that are also trade
6 secret. Palantir has made reasonable efforts to maintain the confidentiality of these trade secrets.

7 51. After discussions with Palantir employees concerning Palantir's work on adapting
8 its data analysis technology for use in oil and gas exploration, Abramowitz again sought to patent
9 Palantir's systems, methods and concepts by filing Provisional Application No. 62/094,888 with
10 the USPTO on December 19, 2014, and falsely claiming to be the sole owner and inventor. As
11 with his other applications described above, Abramowitz filed the application without Palantir's
12 knowledge or consent and failed to credit Palantir or its employees in any way.

13 52. On information and belief, in his effort to market the Natural Resources
14 Exploration Technology as his own and to profit from it, Abramowitz has also improperly
15 disclosed trade secret information related to the Natural Resources Exploration Technology to
16 others.

17 53. In addition to misappropriating Palantir's trade secret Natural Resources
18 Exploration Technology, Defendants breached their confidentiality agreements when they filed
19 the patent application and disclosed Palantir's confidential information to others.

20 54. After Palantir learned of one of Abramowitz's improper patent applications, a
21 Palantir employee asked him about it. At that time, Abramowitz claimed that he filed the patent
22 application for Palantir's benefit. That statement was plainly false, and was presumably designed
23 to induce Palantir to delay challenging Abramowitz's patent application and filing suit for
24 misappropriation of trade secrets and breach of contract. Indeed, Abramowitz has neither
25 withdrawn any of his improper patent applications nor amended them to indicate that Palantir is
26 the inventor and owner of the systems, methods and concepts described therein.

27 55. Through his scheme, Abramowitz intentionally abused his status as an investor
28 and trusted advisor in an attempt to profit at Palantir's expense by improperly using and

1 disclosing multiple Palantir trade secrets and improperly attempting to patent them as his own.
2 On information and belief, despite Abramowitz's lack of experience in these areas, he is
3 attempting to market them as his own. Additionally, he could, for example, attempt to use
4 Palantir's trade secrets to hold Palantir hostage in exchange for royalties. Abramowitz's actions
5 are causing Palantir irreparable harm, and Palantir is therefore separately seeking to have
6 Abramowitz's patent applications denied by the USPTO.

7 56. The foregoing facts are not the only indications that Abramowitz has sought to
8 profit from Palantir's trade secrets. As Abramowitz knows, Palantir's company name is inspired
9 by the "seeing stones" referenced in The Lord of the Rings. Without Palantir's knowledge,
10 Abramowitz filed for a trademark on the mark "Shire," which is also referenced in The Lord of
11 the Rings as the place where one of the main characters lives. It is clear that Abramowitz has
12 filed this trademark application in an attempt to further improperly associate himself with what he
13 views as the Palantir brand.

14 57. Significantly, Abramowitz filed this trademark application with an intent to use the
15 mark in connection with "underwriting and administration of cyber liability insurance;
16 underwriting and administration of cyber security insurance; insurance brokerage in the field of
17 cyber liability and cyber security insurance." This further reflects that Abramowitz is using, and
18 intends to continue to use, Palantir's trade secrets in these areas.

19 **Abramowitz Demands Information Under the Investors' Rights Agreement**

20 58. In furtherance of his scheme, on August 16, 2016, KT4, through counsel at
21 Williams & Connolly LLP, sent Palantir letter (the Demand Letter") demanding information
22 pursuant to the Investors' Rights Agreement (as amended most recently on September 1, 2016,
23 the "IRA"). Under the February 15, 2008 version of the IRA (the "February IRA") invoked by
24 Abramowitz in his letter, and the July 8, 2015 version in effect at the time Abramowitz sent his
25 letter (the "July IRA"), the agreement granted certain rights to receive information from Palantir
26 to anyone who was a "Major Investor" in Palantir, defined in Section 2.1 of the IRA as any
27 investor that holds "at least 5,000,000 shares of" certain types of Palantir stock.

28 59. In the Demand Letter, KT4 purports to be a Major Investor of Palantir and

1 demands that Palantir produce documents and provide information to its counsel pursuant to
2 Sections 2.1 and 2.2 of the February IRA. Neither IRA, however, provides any right for counsel
3 or anyone other than a Major Investor to receive the information.

4 60. Even if KT4 were a Major Investor (which Palantir does not concede) and even if
5 the IRA had not been amended as described below, Abramowitz’s breaches of his confidentiality
6 agreements and misappropriation of trade secrets – namely, his unclean hands – preclude him
7 from obtaining confidential and proprietary information through the IRA.

8 **Palantir and Major Investors Amend the IRA to Protect Palantir, its Employees, and**
9 **Shareholders from Malicious Actors**

10 61. Having discovered Abramowitz’s actions, his betrayal of Palantir’s trust, and his
11 misappropriation of its trade secrets—and fearing more such betrayals and breaches of confidence
12 that remain undiscovered—Palantir could no longer trust Abramowitz with its confidential
13 information, including the information demanded by KT4 in the Demand Letter.

14 62. To further protect Palantir—as well as its employees, former employees, investors,
15 and other shareholders—from the malicious acts of Defendants, on September 1, 2016, Palantir
16 and a group of its Major Investors holding a majority of the Registrable Securities held by Major
17 Investors invoked their rights under Section 3.7 of the July IRA to amend the agreement (the
18 “Amendment”). Even assuming KT4 was a Major Investor with rights under Sections 2.1 and 2.2
19 of the July IRA and even assuming that Defendants’ unclean hands did not preclude them from
20 receiving any confidential information through the IRA, KT4 has no such rights under the current
21 IRA; the Amendment is expressly retroactive in its effect, as permitted by Section 3.7 of the IRA.

22 63. Palantir did not take this action lightly, but after receiving the Demand Letter
23 following the nefarious activities of Defendants through their access as investors and
24 Abramowitz’s former status as an advisor, Palantir determined that it was necessary to act to
25 protect itself and others from the harmful actions of Defendants.

26 64. Palantir regularly and frequently works with investors, upon request, to provide
27 relevant information corresponding to their status as a shareholder, subject to confidentiality
28 obligations. As it has done in responding to Abramowitz’s reasonable questions in the past,

1 Palantir stands ready to do the same with KT4 upon a showing that such requests are being made
2 in good faith and with no improper purpose.

3 **Harm to Palantir**

4 65. As a result of Defendants' actions, Palantir has been and will continue to be
5 injured in an amount to be established according to proof.

6 66. As a result of Abramowitz's unauthorized copying, theft, and misappropriation of
7 Palantir's confidential and proprietary information and trade secrets, as well as his co-opting of
8 Palantir's work developing technology, systems, methods, and concepts and subsequently passing
9 them off as his own, Palantir has been and will continue to be injured absent equitable relief.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Contract – Against All Defendants)**

12 67. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
13 through 66.

14 68. Defendants' contracts with Palantir, including, *inter alia*, the Transfer Agreements
15 and the July 2014 NDA (the "Confidentiality Contracts"), imposed a contractual obligation on
16 Defendants to maintain the confidentiality of information learned or accessed as a result of
17 Defendants' investments in Palantir, Abramowitz's visits to Palantir's offices, and his discussions
18 with Palantir employees.

19 69. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
20 contract and all conditions precedent to its enforcement have been performed by Palantir.

21 70. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
22 precedent to its enforcement have been performed by Palantir.

23 71. Under the Confidentiality Contracts, Defendants agreed to hold in strictest
24 confidence, and not to use, except for the benefit of the company, any information they obtain or
25 access as investors or during visits or discussions.

26 72. As described above, Defendants breached the Confidentiality Agreements when
27 Abramowitz used the information he learned from Palantir employees to file patent applications
28 listing himself as sole inventor of Palantir's systems, methods and concepts that he learned in

1 confidence, as well as a trademark application on “Shire” that they intend to use in the cyber
2 insurance space. Defendants further breached their confidentiality obligations when they
3 disclosed confidential information to others in an improper effort to profit from Palantir’s
4 confidential information and trade secrets.

5 73. As a direct and proximate result of Defendants’ wrongful conduct, Palantir has
6 been harmed and is being forced to take expensive steps to reduce and mitigate that harm.

7 74. In addition to equitable relief, Palantir demands monetary damages, fees and costs,
8 where allowed.

9 **SECOND CAUSE OF ACTION**

10 **(Breach of the Implied Covenant of Good Faith and Fair Dealing– Against All Defendants)**

11 75. Plaintiff repeats and realleges paragraphs 1 through 74 above as though fully set
12 forth herein.

13 76. California law implies a covenant of good faith and fair dealing in all contracts.

14 77. The Transfer Agreements, signed by Abramowitz on behalf of the Trust, is a valid
15 contract and all conditions precedent to its enforcement have been performed by Palantir.

16 78. The July 2014 NDA, signed by Abramowitz, is a valid contract and all conditions
17 precedent to its enforcement have been performed by Palantir.

18 79. Defendants have unfairly interfered with Plaintiff’s right to receive the benefit of
19 the Transfer Agreements and July 2014 NDA by, among other things, misappropriating and using
20 Plaintiff’s proprietary, confidential, and trade secret information and falsely claiming to have
21 invented Palantir’s inventions.

22 80. In addition, the IRA, as amended, is a valid contract and all conditions precedent
23 to its enforcement have been performed by Palantir.

24 81. Defendants have unfairly interfered with Plaintiff’s right to receive the benefit of
25 the IRA by, among other things, using it to seek confidential information for improper purposes.
26 As a result, Palantir is being forced to take expensive steps to reduce and mitigate that harm.

27 82. Defendants have breached and violated its implied covenant of good faith and fair
28 dealing.

1 83. As a result of that breach by Defendants, Plaintiff has suffered monetary damages
2 in an amount to be quantified at trial.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of California's Unfair Competition Law,**

5 **Cal. Bus. & Prof. Code Section 17200 *et seq.* – Against All Defendants)**

6 84. Plaintiff Palantir repeats and realleges paragraphs 1 through 83 above as though
7 fully set forth herein.

8 85. Defendants have engaged in (and continues to engage in) the unlawful, fraudulent,
9 and unfair business acts and practices described throughout this Complaint in violation of
10 California's Unfair Competition Law (the "UCL"), California Business and Professions Code,
11 Section 17200, *et seq.*

12 86. Defendants' business acts and practices were unlawful under the UCL because
13 they resulted in the violations of state common law described herein, including breach of contract
14 and breach of the implied covenant of good faith and fair dealing.

15 87. Defendants' business acts and practices were fraudulent because a reasonable
16 person would likely be deceived by Defendant's false statements and claims, including that they
17 invented and own Palantir's inventions.

18 88. Defendants' business acts and practices are unfair because the harm suffered by
19 Palantir described herein outweighs any justification that Defendants may assert for engaging in
20 those acts and practices. Moreover, Palantir could not have avoided the harm it suffered as a
21 result of Defendants' unfair acts and practices because Defendants made every effort to obscure
22 and conceal from Palantir the existence and extent of its harmful acts and practices.

23 89. Defendants' unlawful, unfair and fraudulent business acts and practices were
24 carried out and effectuated in California and injured Plaintiff in California.

25 90. Plaintiff suffered harm as herein alleged as a direct and proximate result of
26 Defendants' unlawful, unfair and fraudulent business acts and practices.

27 91. Plaintiff is entitled to an injunction enjoining Defendants from such further
28 violations of the UCL. Any such injunction will benefit Plaintiff and the general public.

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of Cal. Civ. Code § 3426 et seq. – Against All Defendants)**

3 92. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
4 through 91.

5 93. Palantir’s confidential and proprietary information pertaining to its projects,
6 including those concerning use of data analysis in the Healthcare Technology, Cyber Insurance
7 and Cybersecurity Technology, and Natural Resources Exploration Technology, constitute
8 protectable trade secrets as set forth in California Civil Code § 3426.1(d).

9 94. Palantir’s confidential and proprietary information derives independent economic
10 value, actual or potential, from not being generally known to the public or to other persons who
11 can obtain economic value from their disclosure or use as set forth in California Civil Code
12 § 3426.1(d)(1).

13 95. Palantir’s confidential and proprietary information is the subject of efforts that are
14 reasonable under the circumstances to maintain their secrecy as set forth in California Civil Code
15 § 3426.1(d)(2).

16 96. Palantir did not consent to the use of any of its trade secrets by anyone other than
17 authorized employees using them for Palantir’s business purposes and customers bound by
18 confidentiality obligations.

19 97. Defendants willfully and intentionally misappropriated Palantir’s trade secrets
20 when, *inter alia*, he used them to develop patent and trademark applications claiming
21 inventorship and ownership of Palantir’s systems, methods and concepts. Palantir is informed
22 and believes that Defendants have used, and continues to use, Palantir’s trade secret, confidential,
23 and proprietary information to develop a competing business or in furtherance of that goal,
24 including those described in his trademark and patent applications.

25 98. Palantir is entitled to an injunction of both actual and threatened misappropriation
26 as set forth in California Civil Code § 3426.2(a).

27 99. Palantir also requests that the court take affirmative acts to protect Palantir’s trade
28 secrets, as set forth in California Civil Code § 3426.2(c), including ordering an inspection of

1 Defendants' computer(s), USB drives, email accounts, cloud storage accounts and other sources
2 and equipment by a forensics expert to determine the extent to which Palantir's trade secrets were
3 wrongfully taken and/or disseminated to others, and to ensure that no trade secrets belonging to
4 Palantir remain saved on those systems; and issue a writ of possession, a preliminary injunction,
5 and a permanent injunction ordering the return of Palantir's confidential information and
6 prohibiting Defendants from continuing his unlawful actions.

7 100. In addition to equitable relief, Palantir demands monetary damages, fees, and
8 costs, where allowed.

9 101. Defendants' conduct as alleged herein was willful, malicious and wanton, and
10 undertaken for the purpose of injuring or causing injury to Palantir. Palantir seeks exemplary and
11 punitive damages against Defendants.

12 **FIFTH CAUSE OF ACTION**

13 **(Declaratory Relief – Against All Defendants)**

14 102. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1
15 through 101.

16 103. There presently exists a real and actual controversy between Palantir and KT4
17 regarding whether KT4 is entitled under the IRA to the information sought through the Demand
18 Letter.

19 104. KT4 maintains that it is entitled to information under Sections 2.1 and 2.2 of the
20 IRA, and Palantir maintains that KT4 is neither a "Major Investor" under the IRA nor otherwise
21 entitled to such information under the IRA, as amended.

22 105. Additionally, Defendants have acted with unclean hands by, among other things,
23 misappropriating Palantir's trade secrets. For this independent reason, KT4 is not entitled to
24 information under Sections 2.1 and 2.2 of the IRA.

25 106. A declaratory judgment is necessary and appropriate at this time to resolve the
26 controversy between the parties. Palantir therefore specifically requests a judgment declaring that
27 KT4 has no right to any information pursuant to Sections 2.1 or 2.2 of the IRA.
28

PRAYER FOR RELIEF

WHEREFORE, Palantir respectfully requests the following relief:

1. Judgment in favor of Palantir and against all Defendants on all of Palantir’s claims asserted in the Complaint;

2. For a preliminary injunction and permanent injunction restraining Defendants, their officers, agents, servants, employees, and all persons acting in concert or participation with them from:

- a. perpetuating the wrongful acts and conduct as set forth above;
- b. continuing to pursue Defendants’ patent applications set forth above;
- c. directly or indirectly retaining, using or disclosing Palantir’s trade secret, confidential and/or proprietary information, and derivatives thereof;
- d. destroying any property, emails, documents or materials that are relevant or potentially relevant to this action;
- e. moving or transferring outside the United States Palantir’s property, emails, documents or materials that are relevant or potentially relevant to this action;

3. For an Order requiring that Palantir’s confidential, proprietary and trade secret information be returned to Palantir;

4. For an Order requiring all Defendants to divulge the identity of the individuals, groups and companies to whom they have disclosed Palantir’s confidential, proprietary and trade secret information;

5. For an Order requiring all Defendants to account for and pay to Palantir all ill-gotten gains, profits, and savings obtained or derived from their improper conduct;

6. For damages, unjust enrichment, and/or reasonable royalties in amounts to be proven at trial;

7. For an Order awarding Palantir punitive and/or exemplary damages in a sum to be determined at trial, on the basis of Defendants’ willful, deliberate, and malicious tortious conduct;

8. For restitution and disgorgement of all ill-gotten gains unjustly obtained and retained by Defendants through the acts complained of herein;

- 1 9. For prejudgment interest;
2 10. For an Order awarding Palantir its attorney's fees and all costs of suit incurred
3 herein; and
4 11. For such other and further relief as the Court deems just and proper.

5 Dated: September 23, 2016

BOIES, SCHILLER & FLEXNER LLP

6 By: _____
7 David Zifkin (SBN 232845)
8 (dzifkin@bsflp.com)
9 Shira Liu (SBN 274158)
10 (sliu@bsflp.com)
11 401 Wilshire Boulevard, Suite 850
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15 David Boies (*Pro Hac Vice* appl. pending)
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21 John T. Zach (*Pro Hac Vice* appl. pending)
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24 New York, NY 10022
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26 Facsimile: (212) 446-2350

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Oakland, CA 94612
Telephone: (510) 874-1000
Facsimile: (510) 874-1460

Attorneys for Plaintiff PALANTIR
TECHNOLOGIES INC.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury.

3 Dated: September 23, 2016

BOIES, SCHILLER & FLEXNER LLP

4 By: 
5 David Zitkin (SBN 232845)

(dzifkin@bsflp.com)

6 Shira Liu (SBN 274158)

(sliu@bsflp.com)

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26 *Attorneys for Plaintiff* PALANTIR

27 TECHNOLOGIES INC.

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Attorneys for Plaintiff PALANTIR TECHNOLOGIES INC.

E-FILED
9/23/2016 5:04:54 PM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

PALANTIR TECHNOLOGIES INC., a)
Delaware corporation,)
Plaintiff,)
v.)
MARC L. ABRAMOWITZ, in his individual)
capacity and as trustee of the MARC)
ABRAMOWITZ CHARITABLE TRUST NO.)
2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
inclusive,)
Defendants.)

Case No. 16CV299476
PROOF OF SERVICE
Complaint Filed: September 1, 2016
Trial Date: Not set

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401. On September 23, 2016 I served the following document(s):

- 1. FIRST AMENDED COMPLAINT FOR: (1) Breach of Contract (2) Breach of the Implied Covenant of Good Faith and Fair Dealing (3) Violation of Cal. Civ. Code § 3426 et seq. (4) Declaratory Relief (5) Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.**

I personally served the documents on the **persons** below, as follows:

MARC L. ABRAMOWITZ
3455 WASHINGTON STREET
SAN FRANCISCO, CA 94118

KT4 PARTNERS LLC
C/O AGENT FOR SERVICE:
INCorp SERVICES, INC.
919 NORTH MARKET STREET,
SUITE 425
WILMINGTON, DE 19801

The documents were served by the following means:

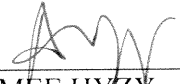
<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <ul style="list-style-type: none"> <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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	I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.
<input checked="" type="checkbox"/>	By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input type="checkbox"/>	By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i>
<input type="checkbox"/>	By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on September 23, 2016 at Santa Monica, California.



AIMEE HYZY

E-FILED
9/30/2016 10:43:28 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

PALANTIR TECHNOLOGIES, INC., a
Delaware corporation,

Plaintiff,

vs.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 16CV299476

**ORDER: CASE IS DEEMED
NOT COMPLEX AND COMPLEX
FEE REFUNDED TO PLAINTIFF**

WHEREAS the Complaint was filed by Plaintiff PALANTIR TECHNOLOGIES, INC.
in the Superior Court of California, County of Santa Clara, on September 1, 2016 and the
matter was assigned to Department 1, the Honorable Peter H. Kirwan presiding, pending a
ruling on the complexity issue;

///

///

1 IT IS HEREBY ORDERED that:

2 The Court determines that the above-referenced case is **NOT COMPLEX** within the
3 meaning of California Rules of Court 3.400.

4 The matter shall be, and is, reassigned to Department 9, the Hon. Mary E. Arand
5 presiding.

6 The Pro Hac Vice Application by John T. Zach, on behalf of Plaintiff, set for hearing on
7 October 21, 2016 is vacated and shall be reset on the Court's next available date.
8

9 The Pro Hac Vice Application by David Boies, on behalf of Plaintiff, set for hearing on
10 October 21, 2016 is vacated and shall be reset on the Court's next available date.
11

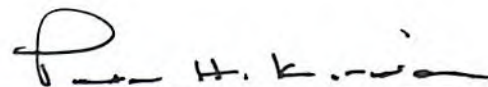
12 The Case Management Conference set for January 6, 2017 at 10:00 a.m. in Department
13 1 is vacated and shall be reset by the Court upon reassignment of the matter.

14 The Clerk of the Court shall refund the \$1,000 complex fee paid by Plaintiff Palantir
15 Technologies, Inc. on September 1, 2016, payable to the Law Office of Boies, Schiller &
16 Flexner, LLP, 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401, c/o
17 Attorney David Zifkin.
18

19 Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

20 SO ORDERED.
21

22
23 Dated: 9/29/16



Honorable Peter H. Kirwan
Judge of the Superior Court

PROOF OF SERVICE

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I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Superior Court, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113. On 9/30/16, I served the document entitled "Order: Case is Deemed Not Complex and Complex Fee Refunded to Plaintiff."

By placing a copy of the document(s) listed above for collection and mailing following the Court's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Jose, California addressed as set forth below.

David Zifkin
BOIES, SCHILLER & FLEXNER, LLP
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401


dzifkin@bsflp.com

By pdf transmission. These documents were transmitted via e-mail to the following e-mail address(es) as set forth above.

I am readily familiar with the Court's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party service, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, executed on 9/30/16, in San Jose, California.

David H. Yamasaki
Chief Executive Office, Clerk



Rowena Walker, Deputy Clerk

1 **BOIES, SCHILLER & FLEXNER LLP**
David Boies (*Pro Hac Vice* appl. pending)
2 (dboies@bsfllp.com)
3 333 Main Street
Armonk, NY 10504
4 Telephone: (914) 749-8200
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5 David Zifkin (SBN 232845)
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Shira Liu (SBN 274158)
7 (sliu@bsfllp.com)
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9 Telephone: (310) 752-2400
Facsimile: (310) 752-2490

10 *Additional counsel identified on signature page*

11 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SANTA CLARA**

15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **AMENDED NOTICE OF HEARING RE:**
19 v.) **VERIFIED APPLICATION OF DAVID**
20) **BOIES AND JOHN T. ZACH TO APPEAR**
21) **AS COUNSEL *PRO HAC VICE* FOR**
22) **PLAINTIFF PALANTIR**
23) **TECHNOLOGIES, INC.**
24)
25) Date: November 8, 2016
26) Time: 9:00 a.m.
27) Dept.: 9
28) Judge: Hon. Mary E. Arand
)
)
) Complaint Filed: September 1, 2016
) Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on November 8, 2016, in
3 Department 9 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Mary E. Arand, presiding, Plaintiff Palantir Technologies, Inc. ("Palantir")
5 will apply for an order permitting David Boies and John T. Zach of the law firm of Boies, Schiller
6 & Flexner LLP to appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 The Application is made pursuant to Rule 9.40 of the California Rules of Court and is
8 based on this Amended Notice and the Verified Applications filed by David Boies and John T.
9 Zach on September 19, 2016.

10 Dated: October 4, 2016

BOIES, SCHILLER & FLEXNER LLP

11 By: *H David Zifkin / FT*

12 David Zifkin (SBN232845)

(dzifkin@bsfllp.com)

13 Shira Liu (SBN 274158)

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20 Facsimile: (914) 749-8300

21 John T. Zach (*Pro Hac Vice* appl. pending)

(jzach@bsfllp.com)

22 575 Lexington Avenue, 7th Floor

New York, NY 10022

23 Telephone: (212) 446-2300

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26 401 East Las Olas Blvd., Suite 1200

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Attorneys for Plaintiff PALANTIR TECHNOLOGIES INC.

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Boies (*Pro Hac Vice* appl. pending)

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14 Telephone: (310) 752-2400

15 Facsimile: (310) 752-2490

16 *Additional counsel identified on signature page*

17 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SANTA CLARA**

20 **UNLIMITED JURISDICTION**

21 PALANTIR TECHNOLOGIES INC., a)

22 Delaware corporation,)

23 *Plaintiff,*)

24 v.)

25 MARC L. ABRAMOWITZ, in his individual)

26 capacity and as trustee of the MARC)

27 ABRAMOWITZ CHARITABLE TRUST NO.)

28 2, KT4 PARTNERS LLC, a Delaware limited)

liability company, and DOES 1 through 50,)

inclusive,)

Defendants.)

) Case No. 16CV299476

) [*Assigned to the Honorable Mary E. Arand*]

) **NOTICE OF ENTRY OF ORDER**

) Complaint Filed: September 1, 2016

) Trial Date: Not set

) Dept: 9

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD IN THIS ACTION:**

2 PLEASE TAKE NOTICE that on September 30, 2016, the Honorable Peter H. Kirwan
3 issued an Order, attached hereto as Exhibit A, deeming the above entitled case not complex and
4 vacating all hearings until further notice.

5 Dated: October 4, 2016

BOIES, SCHILLER & FLEXNER LLP

6 By: 

7 David Zifkin (SBN 232845)
(dzifkin@bsfllp.com)

8 Shira Liu (SBN 274158)
(sliu@bsfllp.com)

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25 Telephone: (510) 874-1000

26 Facsimile: (510) 874-1460

27 *Attorneys for Plaintiff* PALANTIR
28 TECHNOLOGIES INC.

EXHIBIT A

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E-FILED
9/30/2016 10:43:28 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA,
County of Santa Clara
16CV299476
Reviewed By:Rowena Walker

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

PALANTIR TECHNOLOGIES, INC., a
Delaware corporation,

Plaintiff,

vs.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive.

Defendants.

Case No.: 16CV299476

**ORDER: CASE IS DEEMED
NOT COMPLEX AND COMPLEX
FEE REFUNDED TO PLAINTIFF**

WHEREAS the Complaint was filed by Plaintiff PALANTIR TECHNOLOGIES, INC.
in the Superior Court of California, County of Santa Clara, on September 1, 2016 and the
matter was assigned to Department 1. the Honorable Peter H. Kirwan presiding, pending a
ruling on the complexity issue;

///

///

1 IT IS HEREBY ORDERED that:

2 The Court determines that the above-referenced case is **NOT COMPLEX** within the
3 meaning of California Rules of Court 3.400.

4 The matter shall be, and is, reassigned to Department 9, the Hon. Mary E. Arand
5 presiding.

6 The Pro Hac Vice Application by John T. Zach, on behalf of Plaintiff, set for hearing on
7 October 21, 2016 is vacated and shall be reset on the Court's next available date.
8

9 The Pro Hac Vice Application by David Boies, on behalf of Plaintiff, set for hearing on
10 October 21, 2016 is vacated and shall be reset on the Court's next available date.
11

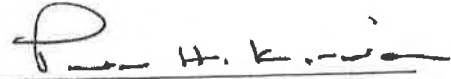
12 The Case Management Conference set for January 6, 2017 at 10:00 a.m. in Department
13 1 is vacated and shall be reset by the Court upon reassignment of the matter.

14 The Clerk of the Court shall refund the \$1,000 complex fee paid by Plaintiff Palantir
15 Technologies, Inc. on September 1, 2016, payable to the Law Office of Boies, Schiller &
16 Flexner, LLP, 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401, c/o
17 Attorney David Zifkin.
18

19 Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

20 SO ORDERED.

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23 Dated: 9/29/16


24 Honorable Peter H. Kirwan
25 Judge of the Superior Court
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PROOF OF SERVICE

E-FILED
9/30/2016 10:43:28 AM
David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA
County of Santa Clara
16CV299476
Reviewed By: Rowena Walker
Order: Case is

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Superior Court, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113. On 9/30/16, I served the document entitled "Deemed Not Complex and Complex Fee Refunded to Plaintiff."

By placing a copy of the document(s) listed above for collection and mailing following the Court's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Jose, California addressed as set forth below.

David Zifkin
BOIES, SCHILLER & FLEXNER, LLP
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401


dzifkin@bsflp.com

By pdf transmission. These documents were transmitted via e-mail to the following e-mail address(es) as set forth above.

I am readily familiar with the Court's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party service, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, executed on 9/30/16, in San Jose, California.

David H. Yamasaki
Chief Executive Office, Clerk



Rowena Walker, Deputy Clerk

1 **BOIES, SCHILLER & FLEXNER LLP**
David Boies (*Pro Hac Vice* appl. pending)
2 (dboies@bsflp.com)
3 333 Main Street
Armonk, NY 10504
4 Telephone: (914) 749-8200
Facsimile: (914) 749-8300

5 David Zifkin (SBN 232845)
6 (dzifkin@bsflp.com)
Shira Liu (SBN 274158)
7 (sliu@bsflp.com)
8 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,
9 Telephone: (310) 752-2400
Facsimile: (310) 752-2490

10 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.
11

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**
19 v.)
20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
24 inclusive,)
Defendants.)
25)
26)
27)
28)

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401. On September 19, 2016 I served the following document(s):

**AMENDED NOTICE OF HEARING RE: VERIFIED APPLICATION OF
DAVID BOIES AND JOHN T. ZACH TO APPEAR AS COUNSEL *PRO HAC*
VICE FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**

I personally served the documents on the **persons** below, as follows:

Marc L. Abramowitz
3455 Washington Street
SAN FRANCISCO, CA 94118

KT4 Partners LLC
c/o Agent For Service:
INCORP SERVICES, INC.
919 North Market Street,
Suite 425
Wilmington, DE 19801

Barry S. Simon
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005

Attorneys for KT4 Partners LLC

The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <ul style="list-style-type: none"> <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's

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	<p>practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.</p>
<input checked="" type="checkbox"/>	<p>By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on October 4, 2016 at Santa Monica, California.


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BOIES, SCHILLER & FLEXNER LLP
David Boies (*Pro Hac Vice* appl. pending)
(dboies@bsflp.com)
333 Main Street
Armonk, NY 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

David Zifkin (SBN 232845)
(dzifkin@bsflp.com)
Shira Liu (SBN 274158)
(sliu@bsflp.com)
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,
Telephone: (310) 752-2400
Facsimile: (310) 752-2490

Attorneys for Plaintiff PALANTIR TECHNOLOGIES INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

PALANTIR TECHNOLOGIES INC., a
Delaware corporation,

Plaintiff,

v.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

) Case No. 16CV299476

) **PROOF OF SERVICE**

) Complaint Filed: September 1, 2016
) Trial Date: Not set

PROOF OF SERVICE

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I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Boulevard, Suite 850, Santa Monica, California 90401. On September 19, 2016 I served the following document(s):

NOTICE OF ENTRY OF ORDER

I personally served the documents on the **persons** below, as follows:

Marc L. Abramowitz
3455 Washington Street
SAN FRANCISCO, CA 94118

KT4 Partners LLC
c/o Agent For Service:
INCORP SERVICES, INC.
919 North Market Street,
Suite 425
Wilmington, DE 19801

Barry S. Simon
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005

Attorneys for KT4 Partners LLC

The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <ul style="list-style-type: none"> <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's

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	<p>practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.</p>
<input checked="" type="checkbox"/>	<p>By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on October 4, 2016 at Santa Monica, California.



Elena Colle

Exhibit B

1 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

2 Jack P. DiCanio (SBN 138782)
3 525 University Avenue
4 Palo Alto, California 94301
5 Telephone: (650) 470-4660
6 E-mail: jack.dicano@skadden.com

7 *Attorneys for Defendants*

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 **PALANTIR TECHNOLOGIES INC.,**

12 Plaintiff,

13 v.

14 **MARC L. ABRAMOWITZ, in his**
15 **individual capacity and as trustee of the**
16 **MARC ABRAMOWITZ CHARITABLE**
17 **TRUST NO. 2, KT4 PARTNERS LLC,**
18 **and DOES 1 through 50, inclusive,**

19 Defendants.

Case No. _____

**DECLARATION OF MARC L.
ABRAMOWITZ IN SUPPORT
OF NOTICE OF REMOVAL**

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1 I, Marc L. Abramowitz, declare:

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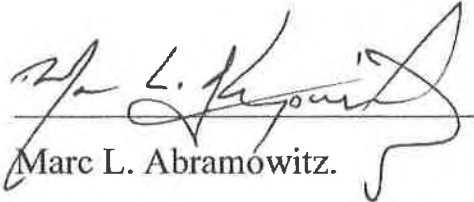
1. I am a named Defendant in the above-captioned action. I am also the Trustee of the Marc Abramowitz Charitable Trust No. 2 (the "Trust") and the Managing Member of KT4 Partners LLC ("KT4"), both of which are named Defendants in the above-captioned action. I have personal and firsthand knowledge of the facts stated in this declaration. If called upon to do so, I could and would testify competently thereto.

2. On September 9, 2016, KT4 was first served with a copy of the original complaint and summons in this case. On September 10, 2016, I was first served with a copy of the original complaint and summons in this case, both in my individual capacity and as Trustee of the Trust.

3. On September 26, 2016, I, along with the Trust and KT4, first received a copy of Plaintiff's First Amended Complaint.

4. On October 7, 2016, KT4 withdrew its request for information under the Investor Rights Agreement. A true and correct copy of the letter withdrawing that request is attached as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 11th day of October, in San Francisco, California.



Marc L. Abramowitz.

Exhibit 1

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

BARRY S. SIMON
(202) 434-5005
bsimon@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

October 7, 2016

By first-class mail and email

Alexander Karp, CEO
Palantir Technologies, Inc.
c/o John Zach
Boies, Schiller & Flexner LLP
575 Lexington Avenue
7th Floor
New York, NY 10022
jzach@bsflp.com

Re: Withdrawal of August 16, 2016 Inspection and Interview Demand

Dear Mr. Karp:

In light of Palantir's claim to have amended the Investors' Rights Agreement ("IRA") retroactively to terminate the rights of KT4 Partners LLC ("KT4") under the IRA, and its representation that KT4 has no contractual right to financial information despite its ownership of over 5,000,000 preferred shares of Palantir stock, KT4, through undersigned counsel, hereby withdraws the Inspection and Interview Demand sent on August 16, 2016 pursuant to the then-operative IRA. Particularly in light of Palantir's refusal to provide a copy of the purported current version of the IRA, and in the absence of information regarding who purportedly amended the IRA or how such a purported amendment was accomplished, KT4 does not concede that the purported retroactive amendment to the IRA is valid or was effected for any valid purpose.

As you are aware, in part because of Palantir's extraordinary actions and its continuing refusal to provide financial information to disfavored investors, KT4 is instead

WILLIAMS & CONNOLLY LLP

Alexander Karp

October 7, 2016

Page 2

pursuing its rights as a substantial Palantir investor pursuant to Delaware law. For the avoidance of confusion, KT4 does not withdraw its demand for information by letter dated September 20, 2016.

Sincerely yours,

A handwritten signature in black ink, appearing to read "B. Simon", with a horizontal line extending to the right.

Barry S. Simon

cc: Marc L. Abramowitz

Exhibit C

1 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

2 Jack P. DiCano (SBN 138782)
3 525 University Avenue
4 Palo Alto, California 94301
5 Telephone: (650) 470-4660
6 E-mail: jack.dicano@skadden.com

7 *Attorneys for Defendants*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10 **UNLIMITED CIVIL JURISDICTION**

11 **PALANTIR TECHNOLOGIES INC.,**

12 **Plaintiff,**

13 **v.**

14 **MARC L. ABRAMOWITZ, in his individual**
15 **capacity and as trustee of the MARC**
16 **ABRAMOWITZ CHARITABLE TRUST NO.**
17 **2, KT4 PARTNERS LLC, and DOES 1 through**
18 **50, inclusive,**

19 **Defendants.**

Case No. 16CV299476

**NOTICE OF FILING NOTICE OF
REMOVAL**

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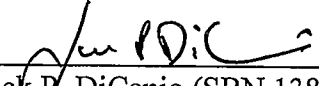
1 Please take notice that on October 11, 2016, Defendants Marc L. Abramowitz, Marc
2 Abramowitz Charitable Trust No. 2, KT4 Partners LLC (collectively, "Defendants"), by their
3 undersigned attorney, removed this case to the United States District Court for the Northern District
4 of California. A true and correct copy of Defendants' Notice of Removal is attached hereto as
5 Exhibit 1.

6 Please take further notice that the filing of this Notice removes this action to the federal
7 court, and this Court may "proceed no further unless and until the case is remanded." 28 U.S.C. §
8 1446(d).

9
10 Dated: October 11, 2016

**SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP**

11
12 By: _____


13 Jack P. DiCanio (SBN 138782)
14 525 University Avenue
15 Palo Alto, California 94301
16 Telephone: (650) 470-4660
17 E-mail: jack.dicano@skadden.com

Attorneys for Defendants

1 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

2 Jack P. DiCanio (SBN 138782)
3 525 University Avenue
4 Palo Alto, California 94301
Telephone: (650) 470-4660
E-mail: jack.dicanio@skadden.com

5 *Attorneys for Defendants*

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SANTA CLARA**
9 **UNLIMITED CIVIL JURISDICTION**

10 PALANTIR TECHNOLOGIES INC.,

11 Plaintiff,

12 v.

13 MARC L. ABRAMOWITZ, in his individual
14 capacity and as trustee of the MARC
15 ABRAMOWITZ CHARITABLE TRUST NO.
16 2, KT4 PARTNERS LLC, and DOES 1 through
50, inclusive,

17 Defendants.

Case No. 16CV299476

PROOF OF SERVICE

1 I, Alissa Turnipseed, declare:

2 I am a resident of the State of California and over the age of eighteen years and not a party
3 to the within-entitled action; my business address is 525 University Avenue, Palo Alto, California
4 94301. On October 11, 2016, I served the following document(s) described as:

5

6 **NOTICE OF FILING NOTICE OF REMOVAL**

7

8 X By U.S. mail. I enclosed the document(s) listed above in a sealed envelope with
9 postage thereon fully pre-paid, and deposited the sealed envelope with the U.S. Postal
Service to:

10

11 David Boies
Boies, Schiller & Flexner LLP
33 Main Street
12 Armonk, NY 10504

13

14 David Zifkin
Boies, Schiller & Flexner LLP
401 Wilshire Boulevard, Suite 850
15 Santa Monica, CA 90401

16

17 John Zach
Boies, Schiller & Flexner LLP
575 Lexington Avenue
18 7th Floor
New York, NY 10022

19

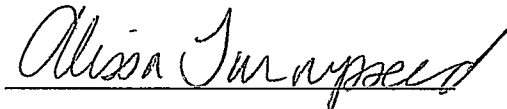
20 *Attorneys for Plaintiff Palantir Technologies*

21

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct. Executed at Palo Alto, California on October 11, 2016.

23

24



25

Alissa Turnipseed

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1 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

2 Jack P. DiCanio (SBN 138782)

3 525 University Avenue

4 Palo Alto, California 94301

5 Telephone: (650) 470-4660

6 E-mail: jack.dicanio@skadden.com

7 *Attorneys for Defendants*

ENDORSED

2016 OCT 11 P 3:12

FILED
COURT CLERK
SANTA CLARA COUNTY
CALIFORNIA

A. Ramirez

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10 **UNLIMITED CIVIL JURISDICTION**

11 PALANTIR TECHNOLOGIES INC.,

12 Plaintiff,

13 v.

14 MARC L. ABRAMOWITZ, in his individual
15 capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
17 2, KT4 PARTNERS LLC, and DOES 1 through
18 50, inclusive,

19 Defendants.

Case No. 16CV299476

PROOF OF SERVICE

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1 I, Alissa Turnipseed, declare:

2 I am a resident of the State of California and over the age of eighteen years and not a party
3 to the within-entitled action; my business address is 525 University Avenue, Palo Alto, California
4 94301. On October 11, 2016, I served the following document(s) described as:

5
6 **NOTICE OF FILING NOTICE OF REMOVAL**

7
8 X By U.S. mail. I enclosed the document(s) listed above in a sealed envelope with
9 postage thereon fully pre-paid, and deposited the sealed envelope with the U.S. Postal
Service to:

10 David Boies
11 Boies, Schiller & Flexner LLP
12 33 Main Street
Armonk, NY 10504

13 David Zifkin
14 Boies, Schiller & Flexner LLP
15 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401

16 John Zach
17 Boies, Schiller & Flexner LLP
18 575 Lexington Avenue
7th Floor
New York, NY 10022

19 *Attorneys for Plaintiff Palantir Technologies*

20
21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct. Executed at Palo Alto, California on October 11, 2016.

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25 Alissa Turnipseed

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BOIES, SCHILLER & FLEXNER LLP
David Boies (*Pro Hac Vice* appl. pending)
(dboies@bsfllp.com)
333 Main Street
Armonk, NY 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

David Zifkin (SBN 232845)
(dzifkin@bsfllp.com)
Shira Liu (SBN 274158)
(sliu@bsfllp.com)
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401
Telephone: (310) 752-2400
Facsimile: (310) 752-2490

Additional counsel identified on signature page

Attorneys for Plaintiff PALANTIR TECHNOLOGIES INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

PALANTIR TECHNOLOGIES INC., a)
Delaware corporation,)
)
 Plaintiff,)
)
 v.)
)
 MARC L. ABRAMOWITZ, in his individual)
 capacity and as trustee of the MARC)
 ABRAMOWITZ CHARITABLE TRUST NO.)
 2, KT4 PARTNERS LLC, a Delaware limited)
 liability company, and DOES 1 through 50,)
 inclusive,)
)
 Defendants.)
)
 _____)

Case No. 16CV299476
**NOTICE OF ENTRY OF ORDER
REMANDING CASE**
Complaint Filed: September 1, 2016
Trial Date: Not set

FILED
2017 MAR 10 P 1:40
CLERK OF THE COURT
A. Ramirez

W
BY FAX

1 **TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD IN THIS**
2 **ACTION:**

3 PLEASE TAKE NOTICE that on March 9, 2017, the Honorable Phyllis J. Hamilton,
4 United States District Judge for the Northern District of California, issued an Order, attached
5 hereto as Exhibit A, granting Plaintiff Palantir Technologies Inc.'s motion to remand the above
6 entitled matter to the Superior Court of California, County of Santa Clara.

7 Dated: March 10, 2017

BOIES, SCHILLER & FLEXNER LLP

8 

9 By: _____
10 David Zifkin (SBN 232845) (dzifkin@bsflp.com)
11 Shira Liu (SBN 274158) (sliu@bsflp.com)
12 401 Wilshire Boulevard, Suite 850
13 Santa Monica, CA 90401
14 Telephone: (310) 752-2400; Facsimile: (310) 752-2490

15 David Boies (*Pro Hac Vice* appl. pending)
16 (dboies@bsflp.com)
17 333 Main Street, Armonk, NY 10504
18 Telephone: (914) 749-8200; Facsimile: (914) 749-8300

19 John T. Zach (*Pro Hac Vice* appl. pending)
20 (jzach@bsflp.com)
21 575 Lexington Avenue, 7th Floor
22 New York, NY 10022
23 Telephone: (212) 446-2300; Facsimile: (212) 446-2350

24 Carlos M. Sires (*Pro Hac Vice* to be filed)
25 (csires@bsflp.com)
26 401 East Las Olas Blvd., Suite 1200
27 Fort Lauderdale, FL 33301
28 Telephone: (954) 356-0011; Facsimile: (954) 356-0022

Kaitlyn Murphy (SBN 293309) (kmurphy@bsflp.com)
1999 Harrison Street, Suite 900
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I, the undersigned, declare as follows:

I am employed in the County of Alameda. At the time of service I was over 18 years of age and not a party to this action. My business address is 1999 Harrison Street, Suite 900, Oakland, Ca 94612. On March 10, 2017 I served the following document(s):

NOTICE OF ENTRY OF ORDER REMANDING CASE

I personally served the documents on the persons below, as follows:

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Attorneys for Defendants KT4 Partners LLC and Marc Abramowitz

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<input checked="" type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input checked="" type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's

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	<p>practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Oakland, California.</p>
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<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on March 10, 2017 at Oakland, California.



Imelda Rivera

EXHIBIT A

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PALANTIR TECHNOLOGIES INC.,
Plaintiff,
v.
MARC L. ABRAMOWITZ, et al.,
Defendants.

Case No. 16-cv-5857-PJH

**ORDER GRANTING MOTION TO
REMAND**

The motion of plaintiff Palantir Technologies, Inc. ("Palantir") to remand the above-entitled action to the Superior Court of California, County of Santa Clara, came on for hearing before this court on February 15, 2017. Palantir appeared by its counsel John Zach, David Zifkin, Fiona Tang, and Adam Eltoukhy. Defendants Marc L. Abramowitz ("Abramowitz"), Marc Abramowitz Charitable Trust No. 2, and KT4 Partners LLC ("KT4") appeared by their counsel Jonathan Pitt. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby GRANTS the motion.

BACKGROUND

Palantir, which is based in Palo Alto, California, is a "software and services company that specializes in data analytics." First Amended Complaint ("FAC") ¶¶ 8, 13. Founded in 2004, it is "a leader in its industry." FAC ¶ 13. Palantir's products are used by government, and by commercial and non-profit institutions "to solve problems the company's founders had not even dreamed of back in 2004." *Id.* Palantir focuses on developing and building "platforms for integrating, managing, and securing data, on top of

1 which it layers applications for fully interactive, human-driven machine-assisted analysis."
2 FAC ¶ 14. Palantir is also involved in research and development, and it spends millions
3 of dollars each year to "expand its business and seek out new opportunities." FAC ¶ 17.

4 According to Palantir, this litigation relates to defendants' misappropriation of
5 Palantir's proprietary trade secret and business information, concerning technologies for

6 (i) interpreting and analyzing data in the healthcare space for
7 clinical drug trials and for health insurance risk assessments
8 (the "Healthcare Technology"); (ii) cyber insurance technology
9 and related cybersecurity technology for use of customer
10 consortia to improve cybersecurity (the "Cyber Insurance and
11 Cybersecurity Technology"); and (iii) interpreting and
12 analyzing data in connection with natural resources
13 exploration and management (the "Natural Resources
14 Exploration Technology").

15 FAC ¶ 18. It also relates to defendants' "misappropriation of Palantir's trade secret
16 business plans and customer lists related to these technologies." Id.

17 Palantir's initial funding came from a variety of sources, including the company's
18 founders. FAC ¶ 23. Abramowitz was an early investor in Palantir, through KT4 and
19 "other entities he controls." Id. Allegedly, "[t]hrough the years, Abramowitz was involved
20 with the business of Palantir." FAC ¶ 24. However, "[r]ather than acting as a passive
21 investor, he became a regular fixture[,] visiting Palantir more than 30 times between
22 2010-2015. Id. Indeed, "Abramowitz spent so much time at Palantir that in 2014 he
23 requested an office at the company." Id.

24 Abramowitz developed relationships with the company's founders, officers, and
25 employees, and was allegedly "viewed as a trusted investor and advisor" by the founders
26 and senior employees. FAC ¶ 25. According to Palantir, Abramowitz "often inquired
27 about specific Palantir projects" and on several occasions, the company provided him –
28 in his capacity as a shareholder and advisor – with information about technology
including the Healthcare Technology, the Cyber Insurance and Cybersecurity
Technology, and the Natural Resources Exploration Technology. FAC ¶ 26. Palantir
asserts that it also provided Abramowitz – at his request – with information about
proprietary business plans and customer lists for these technologies. Id.

United States District Court
Northern District of California

1 Palantir and Abramowitz entered into confidentiality agreements. FAC ¶ 27.
2 These agreements included provisions in Preferred Stock Transfer Agreements in 2012
3 and 2015, and a Nondisclosure Agreement in 2014. FAC ¶¶ 28-30. Palantir asserts,
4 however, by 2014, Abramowitz had embarked on a scheme to discover Palantir trade
5 secrets and convert them for his own use and profit – in particular, trade secrets related
6 to the Healthcare, Cyber Insurance and Cybersecurity, and Natural Resources
7 Exploration Technologies. FAC ¶ 31; see also FAC ¶¶ 32-40 (Healthcare Technology),
8 ¶¶ 41-40 (Cyber Insurance and Cybersecurity Technology); ¶¶ 50-57 (Natural Resources
9 Exploration Technology).

10 For example, Palantir alleges, in October and December 2014, Abramowitz filed
11 patent applications (“the Patent Applications”) with the U.S. Patent and Trademark Office
12 (“USPTO”), seeking to patent “systems, methods, and concepts” concerning Palantir’s
13 Healthcare Technology, Cyber Insurance and Cybersecurity Technology, and Natural
14 Resources Exploration Technology, for which he falsely claimed to be the sole owner and
15 inventor. FAC ¶¶ 38, 46-47, 51.

16 Palantir asserts that “[i]n furtherance of [Abramowitz’s] scheme,” KT4 sent Palantir
17 a letter through counsel on August 16, 2016, demanding information pertaining to the
18 Investors’ Rights Agreement (“IRA”). FAC ¶ 58. Under the February 15, 2008 version of
19 the IRA (the version invoked in the letter) and the July 8, 2015 version (the version in
20 effect at the time Abramowitz sent the letter), the agreement granted certain rights to
21 receive information from Palantir to anyone who was a “Major Investor” in Palantir
22 (defined in the IRA as anyone with at least 5 million shares of certain types of Palantir
23 stock). Id. In the August 16, 2016, KT4 stated that it was a Major Investor of Palantir,
24 and demanded that Palantir produce documents and provide information to its counsel
25 pursuant to the February 2008 IRA. FAC ¶ 59.

26 Palantir asserts, however, that the IRA provides for Major Investors to receive
27 such information, but does not allow for counsel or anyone other than a Major Investor to
28 receive the information. Id. Palantir adds that even were KT4 a Major Investor (which

United States District Court
Northern District of California

1 Palantir disputes), and even had the IRA not been again amended effective September 1,
2 2016, Abramowitz's breaches of confidentiality and misappropriation of trade secrets
3 would preclude him from obtaining confidential and proprietary information through the
4 IRA. FAC ¶¶ 60-64.

5 Palantir filed the original complaint on September 1, 2016, in Santa Clara Superior
6 Court, and filed the FAC on September 23, 2016, alleging five state-law causes of action
7 – (1) breach of contract (breach of confidentiality agreements); (2) breach of the implied
8 covenant of good faith and fair dealing; (3) unfair competition, in violation of California
9 Business & Professions Code § 17200 ("UCL"); (4) misappropriation of trade secrets in
10 violation of California Civil Code § 3426, et seq.; and (5) declaratory relief (seeking a
11 judicial declaration that KT4 is not entitled to Palantir's financial information pursuant to
12 the IRA).

13 Defendants removed the case on October 11, 2016, asserting federal question
14 jurisdiction. Defendants allege that the FAC is "artfully pled as a series of putative state-
15 law claims[.]" Notice of Removal ¶ 2. They contend that Palantir seeks to have itself
16 declared the sole inventor of three technologies that were in fact invented and developed
17 by Abramowitz as the sole or joint inventor, and that involve no inventive contribution by
18 Palantir or anyone working on Palantir's behalf; that it seeks an order enjoining
19 Abramowitz from continuing to pursue the three Patent Applications filed with the
20 USPTO; and that it premises such relief, and the purported state-law causes of action,
21 upon the assertion that it was Palantir, not Abramowitz, who invented the technologies at
22 issue, and that Abramowitz's alleged contrary representations to the USPTO were false.
23 Id. Based on this, defendants claim that Palantir's claims necessarily raise substantial
24 questions of federal patent law that can be resolved only by a federal court. Id.

25 On November 11, 2016, Palantir filed the present motion to remand, asserting that
26 the FAC does not allege any federal claims, that its claims do not arise under federal law
27 or raise a "substantial" issue of federal law, and that no issue of federal law is "actually
28 disputed." Palantir also seeks attorney's fees and costs pursuant to 28 U.S.C. § 1447(c).

1 DISCUSSION

2 A. Legal Standard

3 A defendant may remove a civil action filed in state court if the action could have
4 originally been filed in federal court. 28 U.S.C. § 1441. Federal courts are courts of
5 limited jurisdiction, possessing only that power authorized by the Constitution and statute.
6 Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994). A plaintiff may
7 seek to have a case remanded to the state court from which it was removed if the district
8 court lacks jurisdiction or if there is a defect in the removal procedure. 28 U.S.C.
9 § 1447(c). The district court must remand the case if it appears before final judgment
10 that the court lacks subject matter jurisdiction. Id.

11 The removal statutes are construed restrictively, so as to limit removal jurisdiction.
12 See Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941). There is a
13 "strong presumption" against removal jurisdiction. Gaus v. Miles, Inc., 980 F.2d 564, 566
14 (9th Cir. 1992). This means that the burden of establishing federal jurisdiction for
15 purposes of removal is on the party seeking removal. Hunter v. Philip Morris USA, 582
16 F.3d 1039, 1042 (9th Cir. 2009). Doubts as to removability are resolved in favor of
17 remanding the case to state court. Matheson v. Progressive Specialty Ins. Co., 319 F.3d
18 1089, 1090 (9th Cir. 2003).

19 B. Plaintiff's Motion

20 Palantir contends that the FAC does not assert any federal claims, and that the
21 five state-law claims arise from the misappropriation of its trade secrets by Abramowitz
22 and KT4, which occurred prior to the filing of the Patent Applications. Palantir asserts
23 that removal was improper, as the court lacks federal question jurisdiction over the state-
24 law claims.

25 Defendants oppose the motion, arguing that the case was properly removed.
26 They assert that, while the "artfully pled complaint . . . carefully avoids calling any of its
27 causes of action or demanded relief 'federal' in nature," Palantir is seeking to have itself
28 declared to be the sole inventor of three technologies actually invented by Abramowitz as

1 sole or joint inventor. Specifically, defendants point to the request for injunctive relief in
2 the prayer for relief, and to the UCL claim. Defendants assert that Palantir is attempting
3 to use the state courts to enjoin Abramowitz from pursuing protection in the USPTO for
4 technologies he developed.

5 In the prayer for relief, Palantir requests a preliminary and permanent injunction
6 restraining defendants from (among other things) "continuing to pursue [d]efendants'
7 patent applications[.]" Defendants refer to this as "the PTO injunction." In their
8 opposition to Palantir's motion, defendants contend that only federal patent law can
9 supply the substantive rules and procedures governing patent applications. They argue
10 that because Palantir seeks this relief on the basis that it is the true inventor of the
11 technologies in the Patent Applications,¹ any court deciding whether to grant the "PTO
12 Injunction" must therefore resolve the issue of inventorship.

13 In the UCL claim, Palantir alleges that defendants' business acts and practices
14 were fraudulent "because a reasonable person would likely be deceived by [d]efendant's
15 [sic] false statements and claims, including that they invented and own Palantir's
16 inventions." FAC ¶ 38. Defendants argue that the FAC provides only one basis on which
17 defendants could be found liable under the "fraudulent" prong of the UCL claim –
18 Abramowitz's alleged false statements to the USPTO regarding his inventorship of the
19 technologies listed in the Patent Applications. In addition, although they have not moved
20 to dismiss any of the claims asserted in the FAC, defendants also contend in their
21 opposition to Palantir's motion that allegations of trade secret misappropriation cannot
22 support an unfair competition claim under Business & Professions Code § 17200.

23 The court finds that the motion to remand must be GRANTED. Federal courts

24
25 ¹ Defendants point to FAC ¶ 38 (alleging that the Patent Applications "falsely identif[y]
26 Abramowitz as the "sole inventor"); FAC ¶ 3 (alleging that Abramowitz "made false claims
27 to the [PTO]"); FAC ¶ 46 (asserting that the Patent Application based on the Cyber
28 Insurance and Cybersecurity Technologies "fails to mention Palantir and does not include
a single Palantir employee as an inventor"); FAC ¶ 51 (alleging that the Patent
Application based on the Natural Resources Exploration Technology "falsely claim[ed]
that he was the "sole owner and inventor").

1 have original and exclusive jurisdiction in “any civil action arising under any Act of
2 Congress relating to patents.” 28 U.S.C. § 1338(a). “Under the well-pleaded complaint
3 rule, . . . whether a claim arises under patent law must be determined from what
4 necessarily appears in the plaintiff’s statement of his own claim . . . , unaided by anything
5 alleged in anticipation or avoidance of defenses which it is thought the defendant may
6 interpose.” Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 809 (1988).

7 A case can “arise under federal law” in two ways. Gunn v. Minton, 133 S.Ct. 1059,
8 1064 (2013). First, “a case arises under federal law when federal law creates the cause
9 of action asserted.” Id. This “creation test” accounts for “the vast bulk of suits that arise
10 under federal law[.]” Id. (citation omitted). Second, even when a claim “finds its origins in
11 state rather than federal law,” the claim nevertheless arises under federal law where it
12 “necessarily raise[s] a stated federal issue, actually disputed and substantial, which a
13 federal forum may entertain without disturbing any congressionally approved balance of
14 federal and state judicial responsibilities.” Id. at 1064-65; see also Christianson v. Colt
15 Indus. Operating Corp., 486 U.S. 800, 809 (1988).

16 Here, Palantir asserts claims of breach of contract, breach of the implied covenant,
17 misappropriation of trade secrets under California law, declaratory relief, and unfair
18 competition under California law. Federal law does not create any of these causes of
19 action. Thus, the first means of determining federal subject matter jurisdiction does not
20 apply, and only the second means is at issue in the present motion. As explained in
21 Gunn, a state law claim provides a basis for federal jurisdiction where a federal issue is
22 “(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution
23 in federal court without disrupting the federal-state balance approved by Congress.” Id.,
24 133 S.Ct. at 1065. All four of these requirements must be met. Id.

25 To begin, the court considers the first factor – whether resolution of a federal issue
26 is “necessary” to Palantir’s case. The only federal issue identified by defendants is the
27 “patent law issue” of inventorship – whether Abramowitz is or is not the inventor and
28 owner of the technology that is the subject of the pending patent applications, and

1 whether in filing the Patent Applications, he has falsely claimed to be the inventor.

2 Defendants do not claim that any federal issue is implicated in the causes of action
3 for breach of contract, breach of the implied covenant, misappropriation of trade secrets,
4 or declaratory relief. They assert only that the "patent law issue" of inventorship is placed
5 at issue by the request in the Prayer for Relief that the court enjoin defendants from
6 "continuing to pursue [d]efendants' patent applications," and by the allegation in the UCL
7 cause of action that "[d]efendants' business acts and practices were fraudulent because
8 a reasonable person would likely be deceived by [d]efendants' false statements and
9 claims, including that they invented and owned Palantir's inventions."

10 A prayer for relief, standing alone, is not sufficient to create federal question
11 jurisdiction. See Carter v. Health Net of Cal., Inc., 374 F.3d 830, 834 (9th Cir. 2004)
12 ("[t]he valid exercise of federal question jurisdiction . . . depend[s] upon the substantive
13 claims raised[,] not on any remedy requested). Moreover, the Prayer for Relief is
14 broader than defendants suggest. For example, Palantir also seeks an order restraining
15 defendants from "perpetuating the wrongful acts and conduct as set forth [in the FAC]",
16 and from "directly or indirectly retaining, using or disclosing Palantir's trade secret[s],
17 confidential and/or proprietary information, and derivatives thereof."

18 Further, in the fourth cause of action for violation of California's Trade Secrets Act,
19 Cal. Civ. Code § 3426, et seq., Palantir requests that the court "take affirmative acts to
20 protect Palantir's trade secrets," which includes "ordering an inspection of [d]efendants'
21 [document and data depositories] to determine the extent to which Palantir's trade
22 secrets were wrongfully taken and/or disseminated[;]" "ordering the return of Palantir's
23 confidential information[;]" and "prohibiting [d]efendants from continuing [their] unlawful
24 actions." FAC ¶ 99.

25 Palantir is plainly not seeking to compel any action by the USPTO, and does not
26 request any declaration regarding inventorship. Rather, it seeks injunctive relief
27 preventing defendants from using and disclosing its trade secrets in violation of California
28 law. Palantir's prayer for relief in this case is similar to the relief requested in Altavion,

United States District Court
Northern District of California

1 Inc., v. Konica-Minolta Sys. Lab., Inc., 2008 WL 2020593 (N.D. Cal. May 8, 2008). In
2 that case, the plaintiff filed suit in state court, alleging that the defendants had
3 misappropriated its trade secrets, and had caused patent applications to be filed with the
4 PTO, which were related to the plaintiff's trade secrets. The defendants removed the
5 case, alleging that substantial questions of patent law existed. The plaintiff moved to
6 remand.

7 The claims asserted were all created by state statutes and common law. The
8 court found that if there was federal jurisdiction over the case, it could be found – if at all
9 – only if the plaintiff's right to relief "necessarily depend[ed] on resolution of a substantial
10 question of federal patent law, in that patent law is a necessary element of the well-
11 pleaded claims." Id. 2008 WL 2020593 at *2-3. The court rejected the plaintiff's theory
12 that its request for injunctive relief "necessarily depends on a resolution of 'inventorship'"
13 noting that "each of plaintiff's claims may be a adjudicated and appropriate monetary and
14 injunctive relief may be awarded without resolution of 'inventorship' in the technical sense
15 used in patent law." Id. at *7. Similarly, in this case, Abramowitz's conduct before the
16 USPTO may simply provide evidence supporting the state-law claims asserted in this
17 case, but such evidence does not convert this action into a case "arising under" federal
18 patent laws.

19 Nor does the UCL claim necessarily raise a federal issue sufficient to confer
20 federal question jurisdiction. Defendants assert that the "only" basis for the UCL claim is
21 Abramowitz's alleged false statements to the USPTO. The court notes, however, that the
22 FAC alleges that defendants' conduct violated the "unlawful" prong of § 17200 because it
23 resulted in violations of state common law, including breach of contract and breach of the
24 implied covenant, as part of an improper effort to deceive and mislead third parties by
25 marketing Palantir's non-trade secret confidential information as their own, see FAC
26 ¶¶ 49, 86, 88; that defendants misled Palantir when they promised not to use or disclose
27 such information "except for the benefit of the company[,]" see FAC ¶¶ 28-30, 71; and
28 that Abramowitz sought to fraudulently associate himself with Palantir by filing a

1 trademark on "Shire," a term from the same fictional universe as "Palantir," in an attempt
2 to suggest a connection with a company where none existed, see FAC ¶ 56.

3 These allegations are independent of the trade secret misappropriation claims,
4 have nothing to do with the Patent Applications, and are unrelated to Abramowitz's
5 alleged false statements to the USPTO. The mere fact that the FAC alleges that
6 defendants improperly used and disclosed Palantir's trade secrets in the Patent
7 Applications is not sufficient to create federal jurisdiction over the UCL claim. This is
8 because resolution of the issue of inventorship is not necessary to resolution of the
9 entirety of the UCL claim, which alleges that defendants' business acts and practices
10 were "unlawful" under the UCL because they resulted in "violations of state common law
11 . . . including breach of contract and breach of the implied covenant of good faith and fair
12 dealing[.]" FAC ¶ 86, and were "fraudulent" because "a reasonable person would likely be
13 deceived by [d]efendants' false statements and claims," FAC ¶ 87, which included false
14 representations that they would maintain Palantir's confidentiality and would not pass
15 Palantir's trade secrets off as their own, FAC ¶¶ 18, 28-30, 45, 48, 52, 55.

16 As in the Altavion case, "[d]efendants' allegedly fraudulent conduct before the
17 USPTO will no doubt be a large part of the proceedings in this action," but the
18 defendants' conduct before the USPTO does not form the exclusive theory upon which
19 Palantir's claims are based. See id., 2008 WL 2020593 at *6. In general, if a cause of
20 action asserted in a well-pleaded complaint can succeed on any theory that does not
21 implicate or require a resolution of an issue of federal patent law, that cause of action
22 does not arise under the patent laws for purposes of § 1338(a), even if other theories of
23 recovery are directly dependent on patent law. See Christianson, 486 U.S. at 810 (citing
24 Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for So. Cal.,
25 463 U.S. 1, 26 (1983)).

26 As for defendants' contention that a claim under § 17200 cannot be premised on
27 an allegation of misappropriation of trade secrets, and their argument at the hearing that
28 Palantir's UCL claim is therefore "dismissible" and "needs to be dismissed by a federal

United States District Court
Northern District of California

1 court on that basis," see Hearing Transcript, Feb. 15, 2017 (Doc. 39) at 14, the court
2 notes that defendants have not filed a motion to dismiss. The same is true with regard to
3 defendants' contention that the UCL is not pled with sufficient particularity, as required by
4 Federal Rule of Civil Procedure 9(b). The question whether the UCL cause of action
5 states a claim is not before the court in the present motion for remand, and the court
6 declines to base its ruling on a legal theory that has not been properly presented.

7 Turning to the second factor, the court finds that the FAC does not create an
8 "actually disputed" issue of federal law. See Gunn, 133 S.Ct. at 1065-66. There is no
9 "actually disputed" issue of federal law because the issue of inventorship under federal
10 patent law cannot be decided in this action. As discussed below, the appropriate vehicle
11 for resolving issues of inventorship is a "derivation proceeding" before the USPTO, where
12 Palantir claims it has already initiated a proceeding as to one of the Patent Applications.
13 Accordingly, inventorship – the only federal patent issue raised by defendants in their
14 papers – is not "actually disputed" in this case.

15 Turning to the third factor, the court finds that the FAC does not raise any federal
16 issue that is "substantial." See Gunn, 133 S.Ct. at 1065-66. Federal question jurisdiction
17 "demands not only a contested federal issue, but a substantial one, indicating a serious
18 federal interest in claiming the advantages thought to be inherent in a federal forum."
19 Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 313 (2005). This
20 inquiry looks to "the importance of the issue to the federal system as a whole," rather
21 than "the importance of the issue to the plaintiff's case." Gunn, 133 S.Ct. at 1066.

22 Here, defendants contend that the FAC raises claims related to the legal question
23 of "inventorship" under federal law. The Federal Circuit has articulated three
24 nonexclusive factors that "may help to inform the substantiality inquiry" under the Gunn
25 test – (1) whether a "pure issue of federal law" is "dispositive of the case;" (2) whether
26 "the court's resolution of the issue will control 'numerous other cases;'" and (3) "whether
27 'the Government has a direct interest in the availability of a federal forum to vindicate its
28 own administrative action.'" See NeuroRepair, Inc. v. The Nath Law Grp., 781 F.3d 1340,

United States District Court
Northern District of California

1 1345 (Fed. Cir. 2015). Because defendants bear the burden of showing that removal
2 was proper, it is also defendants' burden to show that these factors support jurisdiction in
3 this case. However, they have failed to do so.

4 Palantir's state-law causes of action for misappropriation of trade secrets and
5 breach of contract do not raise any "substantial" issue related to the federal system of
6 patent law. There is no "pure issue of federal law" which is dispositive of any of Palantir's
7 claims, because all the claims are state statutory or common-law claims, which can be
8 resolved without reaching the issue of inventorship. Further, the outcome of the state-law
9 issues at stake here will have little or no impact on another case, particularly a case
10 brought in federal court, and there is no question of governmental interest here.

11 Turning to the fourth factor, the court finds that allowing Palantir's case to remain
12 in federal court would disrupt the federal-state balance of power. See Gunn, 133 S.Ct. at
13 1068; see also Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308,
14 313-14 (2005). "Arising under" jurisdiction exists only "where the vindication of a right
15 under state law necessarily turn[s] some construction of federal law[.]" Merrell Dow
16 Pharms. Inc. v. Thompson, 478 U.S. 804, 808 (1986), and it is not enough that the court
17 may have to interpret federal laws or regulations. Improper disclosure of trade secrets
18 constitutes an independent violation of California's Uniform Trade Secrets Act, and
19 California courts may enjoin such actual or threatened trade secret misappropriation. As
20 previously noted, the Patent Applications may provide evidence of defendants'
21 misappropriations of trade secrets, but that that does not transform the state-law claims
22 into the small category of cases in which "arising under" jurisdiction lies. See Gunn, 133
23 S.Ct. at 1064.

24 Finally, and in the court's view, most importantly, defendants have not explained
25 how this case could be maintained in federal court under the court's exclusive jurisdiction
26 over patent claims when no patent has issued on the applications filed by Abramowitz.
27 Defendants accuse Palantir of having "artfully pled" the complaint to include only state
28 law claims, see Notice of Removal ¶ 2, but they do not specify a federal cause of action

1 that Palantir should or could have pled. While it is true that "issues of inventorship,
2 infringement, validity, and enforceability present sufficient substantial questions of federal
3 patent law to support jurisdiction under section 1338(a)," see Bd. of Regents, Univ. of
4 Tex. Sys. v. Nippon Tel. & Tel., 414 F.3d 1358, 1363 (Fed. Cir. 2005), a dispute involving
5 a request for equitable relief relating to a claim of inventorship in connection with a
6 pending patent application can only be resolved by the Director of the USPTO. See HIF
7 Bio, Inc. v. Yung Shin Pharms. Indus. Co., Ltd., 600 F.3d 1347, 1353 (Fed. Cir. 2010).

8 Palantir could not have asserted a claim of correction of inventorship, as no patent
9 has issued. 35 U.S.C. § 116. There is no private right of action to challenge inventorship
10 of pending patent applications. See HIF Bio, 600 F.3d at 1354. Under 35 U.S.C. § 116,
11 "[w]henver through error a person is named in an application for patent as the inventor,
12 or through error an inventor is not named in an application, the Director may permit the
13 application to be amended accordingly, under such terms as he prescribes." The text of
14 § 116 grants the Director of the USPTO the authority to take certain actions, but plainly
15 does not create a cause of action in the district courts to modify inventorship on pending
16 patent applications. See Eli Lilly & Co. v. Aradigm Corp., 376 F.3d 1352, 1357 n.1 (Fed.
17 Cir. 2004). On the other hand, once the patent issues, the statute that allows the Director
18 of the USPTO to correct the named inventor on a patent, 35 U.S.C. § 116, also provides
19 a private right of action to challenge inventorship, within the original jurisdiction of the
20 federal district court. See HIF Bio, 600 F.3d at 1354.

21 There can thus be no "inventorship" challenge under the procedural facts of this
22 case. And, in any event, the state-law claims must necessarily be resolved without
23 reliance on patent law because patent law is not a necessary element of any of the
24 claims as pled. See Christianson, 486 U.S. at 809. The fact that Palantir's proposed
25 remedy may tangentially involve issues touching on patent ownership does not convert
26 the state law claims into federal law claims – particularly where no patents have issued.
27 Moreover, this court lacks the authority to determine inventorship of patent applications.
28 Removal was improper, and the case must be remanded.

CONCLUSION

In accordance with the foregoing, the motion to remand is GRANTED. The motion for fees and costs is DENIED.

IT IS SO ORDERED.

Dated: March 9, 2017



PHYLLIS J. HAMILTON
United States District Judge

United States District Court
Northern District of California

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16 *Additional counsel identified on signature page*

17 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SANTA CLARA**
20 **UNLIMITED JURISDICTION**

21 PALANTIR TECHNOLOGIES INC., a)
22 Delaware corporation,)

23 *Plaintiff,*)

24 v.)

25 MARC L. ABRAMOWITZ, in his individual)
26 capacity and as trustee of the MARC)
27 ABRAMOWITZ CHARITABLE TRUST NO.)
28 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
inclusive,)

29 *Defendants.*)

Case No. 16CV299476

**AMENDED NOTICE OF HEARING RE:
VERIFIED APPLICATIONS OF DAVID
BOIES AND JOHN T. ZACH TO
APPEAR AS COUNSEL *PRO HAC VICE*
FOR PLAINTIFF PALANTIR
TECHNOLOGIES INC.**

Date: May 2, 2017
Time: 9:00 a.m.
Dept.: 9
Judge: Hon. Mary E. Arand

Complaint Filed: September 1, 2016
Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on May 2, 2017, in
3 Department 9 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Mary E. Arand, presiding, Plaintiff Palantir Technologies Inc. ("Palantir")
5 will apply for orders permitting David Boies and John T. Zach of the law firm of Boies, Schiller
6 & Flexner LLP to appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 These Applications are made pursuant to Rule 9.40 of the California Rules of Court and
8 are based on this Amended Notice and the Verified Applications filed by David Boies and John
9 T. Zach on September 19, 2016.

10 Defendants have informed Plaintiff that they do not oppose these Applications.

11
12 Dated: March 24, 2017

**BOIES, SCHILLER & FLEXNER LLP
KIRKLAND & ELLIS LLP**

13
14
15 By: 

16 David Zifkin (SBN232845)

(dzifkin@bsflp.com)

17 Shira Liu (SBN 274158)

(sliu@bsflp.com)

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12 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**
19 v.)
20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
24 inclusive,)
Defendants.)

25 _____

PROOF OF SERVICE

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I, the undersigned, declare as follows:

I am employed in the County of Los Angeles. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Blvd., Suite 850, Santa Monica, CA 90401. On March 24, 2017 I served the following document(s):

- 1. AMENDED NOTICE OF HEARING RE: VERIFIED APPLICATIONS OF DAVID BOIES AND JOHN T. ZACH TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES, INC.**

I personally served the documents on the **persons** below, as follows:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Jack P. DiCanio (SBN 138782)
525 University Avenue
Palo Alto, California 94301
Telephone: (650) 470-4660
E-mail: jack.dicano@skadden.com

Attorneys for Defendants KT4 Partners LLC and Marc Abramowitz

The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	<p>By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:</p> <p><input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.</p> <p><input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.</p>

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<input checked="" type="checkbox"/>	By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input type="checkbox"/>	By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i>
<input type="checkbox"/>	By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on March 24, 2017 at Santa Monica, California.



AIMEE MANDEL

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20 *Additional counsel identified on signature page*

21 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF SANTA CLARA**
24 **UNLIMITED JURISDICTION**

25 PALANTIR TECHNOLOGIES INC., a)
26 Delaware corporation,)

27 *Plaintiff,*

28 v.

29 MARC L. ABRAMOWITZ, in his individual)
30 capacity and as trustee of the MARC)
31 ABRAMOWITZ CHARITABLE TRUST NO.)
32 2, KT4 PARTNERS LLC, a Delaware limited)
33 liability company, and DOES 1 through 50,)
34 inclusive,)

35 *Defendants.*

Case No. 16CV299476

) **NOTICE AND VERIFIED**
) **APPLICATION OF NATHANIEL J.**
) **KRITZER TO APPEAR AS COUNSEL**
) **PRO HAC VICE FOR PLAINTIFF**
) **PALANTIR TECHNOLOGIES INC.**

) Date: June 1, 2017

) Time: 9:00 a.m.

) Dept.: 9

) Judge: Hon. Mary E. Arand

) Complaint Filed: September 1, 2016

) Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on June 1, 2017, in
3 Department 9 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Mary E. Arand, presiding, Plaintiff Palantir Technologies Inc. (“Palantir”)
5 will apply for an order permitting Nathaniel J. Kritzer of the law firm of Kirkland & Ellis LLP to
6 appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 The application is made pursuant to Rule 9.40 of the California Rules of Court and is
8 based on this Notice and the attached Application. Rule 9.40 provides that a person “who is not a
9 member of the State Bar of California but who is a member in good standing of and eligible to
10 practice before the Bar of any United States Court or the highest court in any state,” and “who has
11 been retained to appear in a particular cause pending in a court of this state, may in the discretion
12 of the court be permitted upon written application to appear as counsel *pro hac vice*, provided that
13 an active member of the State Bar of California is associated as counsel of record.”

14 This Application is necessary because Palantir anticipates that the participation and
15 appearance of Nathaniel J. Kritzer of Kirkland & Ellis LLP will be required on its behalf. As set
16 forth in the attached Application of Nathaniel J. Kritzer, all requirements of Rule 9.40 have been
17 met. Proper and timely notice of this Application will be given to the Defendants and to the State
18 Bar of California at its San Francisco address. A copy of the letter to the State Bar of California
19 attaching this Application and payment of the requisite fee to the State Bar of California is
20 attached to the Declaration of David L. Zifkin. Defendants have informed Plaintiff that they do
21 not oppose this Application.

22 Accordingly, Nathaniel J. Kritzer respectfully requests permission to appear as counsel
23 *pro hac vice* in the above-captioned matter on behalf of Palantir.

24 //

25 //

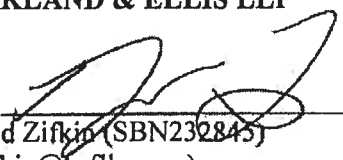
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1 Dated: April 17, 2017

**BOIES, SCHILLER & FLEXNER LLP
KIRKLAND & ELLIS LLP**

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3 By: 
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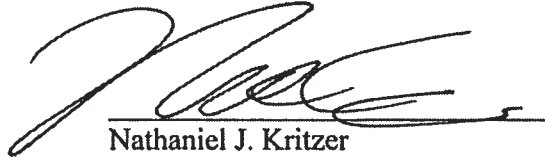
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Attorneys for Plaintiff PALANTIR TECHNOLOGIES
INC.

1 of America that the foregoing is true and correct.

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Executed on April 10, 2017, at New York, New York.



Nathaniel J. Kritzer

Attachment 1

COURT	DATE ADMITTED
United States District Court for the District of Colorado	11/1/2016
United States Court of Appeals for the Third Circuit	9/3/2015
United States Court of Appeals for the Eleventh Circuit	7/21/2015
United States District Court for the Eastern District of New York	12/23/2014
United States Court of Appeals for the Second Circuit	3/22/2013
United States Court of Appeals for the Fifth Circuit	8/10/2012
United States District Court for the Southern District of New York	10/19/2010

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12 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**
16 **UNLIMITED JURISDICTION**

17 PALANTIR TECHNOLOGIES INC., a)
18 Delaware corporation,)
19 *Plaintiff,*)

20 v.)

21 MARC L. ABRAMOWITZ, in his individual)
22 capacity and as trustee of the MARC)
23 ABRAMOWITZ CHARITABLE TRUST NO.)
2, KT4 PARTNERS LLC, a Delaware limited)
24 liability company, and DOES 1 through 50,)
inclusive,)

25 *Defendants.*)
26 _____)

Case No. 16CV299476

) **DECLARATION OF DAVID L. ZIFKIN**
) **IN SUPPORT OF VERIFIED**
) **APPLICATION OF NATHANIEL J.**
) **KRITZER TO APPEAR AS COUNSEL**
) **PRO HAC VICE**

) Date: June 1, 2017
) Time: 9:00 a.m.
) Dept.: 9
) Judge: Hon. Mary E. Arand

) Complaint Filed: September 1, 2016
) Trial Date: Not set

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I, David L. Zifkin, declare and state as follows:

I am an attorney duly admitted to practice law in the State of California and am a partner with the law firm Boies, Schiller & Flexner LLP, counsel for Plaintiff Palantir Technologies Inc. I make this declaration in support of the Verified Application of Nathaniel J. Kritzer to Appear as Counsel *Pro Hac Vice*. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently with respect thereto.

2. I am a member in good standing of the State Bar of California.

3. Copies of the Verified Application of Nathaniel J. Kritzer to Appear as Counsel *Pro Hac Vice*, as well as the Notice of the Application, and this Declaration are being timely served upon Defendants and on the State Bar of California's San Francisco office. Additionally, I am causing all applicable fees to be paid. Attached hereto as Exhibit A is a copy of the letter to the State Bar of California attaching this application and payment of the requisite fee to the State Bar of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of April, 2017, at Santa Monica, California.



David L. Zifkin

EXHIBIT A

April 17, 2017

VIA FEDERAL EXPRESS

The State Bar of California
Office of Certification
180 Howard Street
San Francisco, CA 94105

Re: *Palantir Technologies Inc. v. Marc L. Abramowitz, et al.*
Santa Clara Superior Court Case No. 16CV299476

Dear Sir or Madam:

Enclosed please find the following documents for the Verified Application of Nathaniel J. Kritzer of the law firm Kirkland & Ellis LLP to appear *pro hac vice* on behalf of Plaintiff Palantir Technologies Inc., in the above-entitled action, along with a check for \$50.00.

1. Notice of Hearing and Verified Application of Nathaniel J. Kritzer to Appear as Counsel *Pro Hac Vice*;
2. [Proposed] Order Permitting Nathaniel J. Kritzer to Appear as Counsel *Pro Hac Vice*; and
3. Proof of Service.

Sincerely,



David L. Zifkin

Enclosures

SECURITY FEATURES INCLUDE: HIDE WATERMARK PAPER, HEAT SENSITIVE ICON AND FOLIO HOLOGRAM

2389

BOIES SCHILLER & FLEXNER LLP
LA EXPENSE ACCOUNT
401 WILSHIRE BLVD STE 850
SANTA MONICA, CA 90407-1463

WELLS FARGO BANK, N.A.
www.wellsfargo.com
01-110/211

PAY TO THE ORDER OF
FIFTY AND 00/100 Dollar(s)
The State Bar of California

DATE
04/04/17

AMOUNT
\$50.00



AUTHORIZED SIGNATURE


⑆0000002389⑆ ⑆021101108⑆ 3520711535⑆

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12 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**
19 v.)
20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
24 inclusive,)
Defendants.)

PROOF OF SERVICE

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I, the undersigned, declare as follows:

I am employed in the County of Los Angeles. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Blvd., Suite 850, Santa Monica, CA 90401. On April 17, 2017 I served the following document(s):

1. **NOTICE AND VERIFIED APPLICATION OF JAY P. LEFKOWITZ TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES INC.**
2. **DECLARATION OF DAVID L. ZIFKIN IN SUPPORT OF VERIFIED APPLICATION OF JAY P. LEFKOWITZ TO APPEAR AS COUNSEL *PRO HAC VICE***
3. **[PROPOSED] ORDER PERMITTING JAY P. LEFKOWITZ TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES INC.**
4. **NOTICE AND VERIFIED APPLICATION OF NATHANIEL J. KRITZER TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES INC.**
5. **DECLARATION OF DAVID L. ZIFKIN IN SUPPORT OF VERIFIED APPLICATION OF NATHANIEL J. KRITZER TO APPEAR AS COUNSEL *PRO HAC VICE***
6. **[PROPOSED] ORDER PERMITTING NATHANIEL J. KRITZER TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF PALANTIR TECHNOLOGIES INC.**

I personally served the documents on the **persons** below, as follows:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Jack P. DiCanio (SBN 138782)
525 University Avenue
Palo Alto, California 94301
Telephone: (650) 470-4660
E-mail: jack.dicanio@skadden.com

Attorneys for Defendants KT4 Partners LLC and Marc Abramowitz

The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
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<input checked="" type="checkbox"/>	<p>By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:</p> <p><input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.</p> <p><input checked="" type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.</p>
<input type="checkbox"/>	<p>By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on April 17, 2017 at Santa Monica, California.



AIMEE MANDEL

1 **BOIES, SCHILLER & FLEXNER LLP**
David Boies (*Pro Hac Vice* appl. pending)
2 (dboies@bsflp.com)
333 Main Street
3 Armonk, NY 10504
Tel: (914) 749-8200; Fax: (914) 749-8300
4

David Zifkin (SBN 232845) (dzifkin@bsflp.com)
5 Shira Liu (SBN 274158) (sliu@bsflp.com)
401 Wilshire Boulevard, Suite 850
6 Santa Monica, CA 90401
Tel: (310) 752-2400; Fax: (310) 752-2490
7

KIRKLAND & ELLIS LLP
8 Jay P. Lefkowitz (*Pro Hac Vice* to be filed)
(lefkowitz@kirkland.com)
9 Nathaniel J. Kritzer (*Pro Hac Vice* to be filed)
(nathaniel.kritzer@kirkland.com)
10 601 Lexington Ave
New York, NY 10022
11 Tel: (212) 446-4800; Fax: (212) 446-4900

12 *Additional counsel identified on signature page*
13 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SANTA CLARA**
17 **UNLIMITED JURISDICTION**

18 PALANTIR TECHNOLOGIES INC., a	)	Case No. 16CV299476
Delaware corporation,)	
	)	NOTICE AND VERIFIED
19 <i>Plaintiff,</i>	)	APPLICATION OF JAY P.
	)	LEFKOWITZ TO APPEAR AS
20 v.	)	COUNSEL <i>PRO HAC VICE</i> FOR
	)	PLAINTIFF PALANTIR
21 MARC L. ABRAMOWITZ, in his individual	)	TECHNOLOGIES INC.
capacity and as trustee of the MARC)	
22 ABRAMOWITZ CHARITABLE TRUST NO.	)	Date: June 1, 2017
2, KT4 PARTNERS LLC, a Delaware limited	)	Time: 9:00 a.m.
23 liability company, and DOES 1 through 50,	)	Dept.: 9
inclusive,	)	Judge: Hon. Mary E. Arand
)	
24 <i>Defendants.</i>)	
)	
25	)	Complaint Filed: September 1, 2016
26	)	Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 9:00 a.m. or soon thereafter, on June 1, 2017, in
3 Department 9 of the above referenced Court located at 191 N. First Street, San Jose, California
4 95113, the Honorable Mary E. Arand, presiding, Plaintiff Palantir Technologies Inc. (“Palantir”)
5 will apply for an order permitting Jay P. Lefkowitz of the law firm of Kirkland & Ellis LLP to
6 appear in this action and be admitted to the bar of this Court *pro hac vice*.

7 The application is made pursuant to Rule 9.40 of the California Rules of Court and is
8 based on this Notice and the attached Application. Rule 9.40 provides that a person “who is not a
9 member of the State Bar of California but who is a member in good standing of and eligible to
10 practice before the Bar of any United States Court or the highest court in any state,” and “who has
11 been retained to appear in a particular cause pending in a court of this state, may in the discretion
12 of the court be permitted upon written application to appear as counsel *pro hac vice*, provided that
13 an active member of the State Bar of California is associated as counsel of record.”

14 This Application is necessary because Palantir anticipates that the participation and
15 appearance of Jay P. Lefkowitz of Kirkland & Ellis LLP will be required on its behalf. As set
16 forth in the attached Application of Jay P. Lefkowitz, all requirements of Rule 9.40 have been
17 met. Proper and timely notice of this Application will be given to the Defendants and to the State
18 Bar of California at its San Francisco address. A copy of the letter to the State Bar of California
19 attaching this application and payment of the requisite fee to the State Bar of California is
20 attached to the Declaration of David L. Zifkin. Defendants have informed Plaintiff that they do
21 not oppose this Application.

22 Accordingly, Jay P. Lefkowitz respectfully requests permission to appear as counsel *pro*
23 *hac vice* in the above-captioned matter on behalf of Palantir.

24 //

25 //

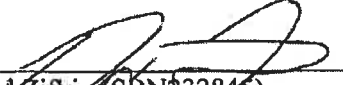
26 //

27 //

28

1 Dated: April 17, 2017

**BOIES, SCHILLER & FLEXNER LLP
KIRKLAND & ELLIS LLP**

2
3 By: 
4 David Zifkin (SBN 232845)
(dzifkin@bsflp.com)

5
6 Shira Liu (SBN 274158)
(sliu@bsflp.com)
7 BOIES, SCHILLER & FLEXNER LLP
401 Wilshire Boulevard, Suite 850
8 Santa Monica, CA 90401
Telephone: (310) 752-2400
9 Facsimile: (310) 752-2490

10 David Boies (*Pro Hac Vice* appl. pending)
(dboies@bsflp.com)
11 BOIES, SCHILLER & FLEXNER LLP
12 333 Main Street
Armonk, NY 10504
13 Telephone: (914) 749-8200
14 Facsimile: (914) 749-8300

15 John T. Zach (*Pro Hac Vice* appl. pending)
(jzach@bsflp.com)
16 BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue, 7th Floor
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Telephone: (212) 446-2300
18 Facsimile: (212) 446-2350

19 Carlos M. Sires (*Pro Hac Vice* to be filed)
(csires@bsflp.com)
20 BOIES, SCHILLER & FLEXNER LLP
21 401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
22 Telephone: (954) 356-0011
23 Facsimile: (954) 356-0022

24 Kaitlyn Murphy (SBN 293309)
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25 1999 Harrison St., Suite 900
26 Oakland, CA 94612
27 Telephone: (510) 874-1108
28 Facsimile: (510) 874-1460

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Jay P. Lefkowitz (*Pro Hac Vice* to be filed)
(lefkowitz@kirkland.com)
Nathaniel J. Kritzer (*Pro Hac Vice* to be filed)
(nathaniel.kritzer@kirkland.com)
KIRKLAND & ELLIS LLP
601 Lexington Ave
New York, NY 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Plaintiff PALANTIR TECHNOLOGIES
INC.

1 VERIFIED APPLICATION TO APPEAR *PRO HAC VICE*

2 I, Jay P. Lefkowitz, apply for admission to practice before this Court *pro hac vice*, in
3 order to represent Plaintiff Palantir Technologies Inc. (“Palantir”) in this action. In support of this
4 application, I state the following:

5 1. I have been retained by Palantir to appear in this action as an attorney on its behalf.

6 2. I am not a resident of the State of California. I do not regularly practice law in the
7 State of California. I am not regularly employed in the State of California or engaged in any
8 substantial business, professional, or other activities in the State of California.

9 3. My residential address is 1175 Park Avenue #13C, New York, NY 10128.

10 4. My business address is Kirkland & Ellis LLP, 601 Lexington Avenue, New York,
11 NY 10022.

12 5. I was admitted to the Bar of the State of New York on March 21, 1988 (State Bar
13 No. 2192425). I have also been admitted to the bars of numerous federal courts, as set forth in
14 Attachment 1.

15 6. I am a member in good standing of the bars of all courts to which I have been
16 admitted.

17 7. I am not suspended or disbarred in any court.

18 8. In the preceding two years, I have applied to appear *pro hac vice* in the following
19 matters pending in California state court: *D.S. v. J.P.*, California 2nd District Court of Appeal,
20 Case No. BC268319 (application granted December 21, 2015); *Cipro Cases I and II*, Superior
21 Court of California for the County of San Diego, Case No. JCCP4154 (application granted June
22 10, 2016); and *K12, Inc. v. Olin Virtual Academy, Inc.*, Superior Court of California for the
23 County of Los Angeles, Case No. BC566922 (application granted September 18, 2015).

24 9. In the preceding two years, I have not applied to appear *pro hac vice* in any matters
25 pending in federal courts located in California.

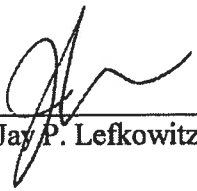
26 10. David L. Zifkin (State Bar No. 232845) of Boies, Schiller & Flexner LLP is an
27 attorney of record for Palantir in this action. His business address and telephone number are as
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follows: 401 Wilshire Boulevard, Suite 850, Santa Monica, CA 90401; 310-752-2400.

11. The matters stated herein are true based on my own personal knowledge. I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on April 10, 2017, at New York, New York.



Jay P. Lefkowitz

Attachment 1

COURT	DATE ADMITTED
United States Supreme Court	1/19/93
United States Tax Court	5/1/06
United States District Court for the District of Columbia	12/2/96
United States District Court for the Southern District of New York	8/8/89
United States District Court for the Eastern District of Michigan	8/26/94
United States District Court for the Eastern District of New York	1/1/09
United States District Court for the Eastern District of Wisconsin	2/7/97
United States District Court for the District of Colorado	5/21/07
United States Court of Appeals for the Federal Circuit	12/9/11
United States Court of Appeals for the District of Columbia Circuit	6/14/00
United States Court of Appeals for the First Circuit	10/1/15
United States Court of Appeals for the Second Circuit	2/23/96
United States Court of Appeals for the Third Circuit	6/29/12
United States Court of Appeals for the Fourth Circuit	2/14/92
United States Court of Appeals for the Fifth Circuit	8/9/07
United States Court of Appeals for the Sixth Circuit	11/13/13
United States Court of Appeals for the Seventh Circuit	11/6/15
United States Court of Appeals for the Eighth Circuit	4/19/99
United States Court of Appeals for the Ninth Circuit	2/14/01
United States Court of Appeals for the Tenth Circuit	4/15/10
United States Court of Appeals for the Eleventh Circuit	12/13/06

1 **BOIES, SCHILLER & FLEXNER LLP**
David Boies (*Pro Hac Vice* appl. pending)
2 (dboies@bsflp.com)
333 Main Street
3 Armonk, NY 10504
4 Tel: (914) 749-8200; Fax: (914) 749-8300

5 David Zifkin (SBN 232845) (dzifkin@bsflp.com)
6 Shira Liu (SBN 274158) (sliu@bsflp.com)
401 Wilshire Boulevard, Suite 850
7 Santa Monica, CA 90401
Tel: (310) 752-2400; Fax: (310) 752-2490

8 **KIRKLAND & ELLIS LLP**
9 Jay P. Lefkowitz (*Pro Hac Vice* to be filed)
(lefkowitz@kirkland.com)
10 Nathaniel J. Kritzer (*Pro Hac Vice* to be filed)
(nathaniel.kritzer@kirkland.com)
601 Lexington Ave
11 New York, NY 10022
Tel: (212) 446-4800; Fax: (212) 446-4900

12 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**
16 **UNLIMITED JURISDICTION**

17 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
18 Delaware corporation,)
19 *Plaintiff,*) **DECLARATION OF DAVID L. ZIFKIN**
20 v.) **IN SUPPORT OF VERIFIED**
21) **APPLICATION OF JAY P. LEFKOWITZ**
22) **TO APPEAR AS COUNSEL *PRO HAC***
23) ***VICE***
24)
25) Date: June 1, 2017
26) Time: 9:00 a.m.
27) Dept.: 9
28) Judge: Hon. Mary E. Arand
MARC L. ABRAMOWITZ, in his individual)
capacity and as trustee of the MARC)
ABRAMOWITZ CHARITABLE TRUST NO.)
2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
inclusive,)
Defendants.)
Complaint Filed: September 1, 2016
Trial Date: Not set

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I, David L. Zifkin, declare and state as follows:

I am an attorney duly admitted to practice law in the State of California and am a partner with the law firm Boies, Schiller & Flexner LLP, counsel for Plaintiff Palantir Technologies Inc. I make this declaration in support of the Verified Application of Jay P. Lefkowitz to Appear as Counsel *Pro Hac Vice*. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently with respect thereto.

2. I am a member in good standing of the State Bar of California.

3. Copies of the Verified Application of Jay P. Lefkowitz to Appear as Counsel *Pro Hac Vice*, as well as the Notice of the Application, and this Declaration are being timely served upon Defendants and on the State Bar of California's San Francisco office. Additionally, I am causing all applicable fees to be paid. Attached hereto as Exhibit A is a copy of the letter to the State Bar of California attaching this application and payment of the requisite fee to the State Bar of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of April, 2017, at Santa Monica, California.

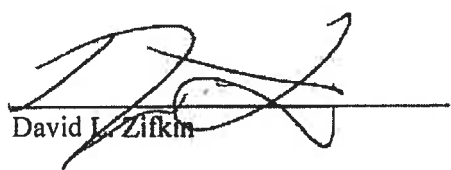

David L. Zifkin

EXHIBIT A

April 17, 2017

VIA FEDERAL EXPRESS

The State Bar of California
Office of Certification
180 Howard Street
San Francisco, CA 94105

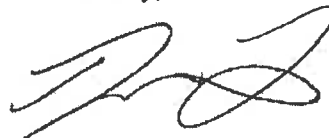
Re: Palantir Technologies Inc. v. Marc L. Abramowitz, et al.
Santa Clara Superior Court Case No. 16CV299476

Dear Sir or Madam:

Enclosed please find the following documents for the Verified Application of Jay P. Lefkowitz of the law firm Kirkland & Ellis LLP to appear *pro hac vice* on behalf of Plaintiff Palantir Technologies Inc., in the above-entitled action, along with a check for \$50.00.

1. Notice of Hearing and Verified Application of Jay P. Lefkowitz to Appear as Counsel *Pro Hac Vice*;
2. [Proposed] Order Permitting Jay P. Lefkowitz to Appear as Counsel *Pro Hac Vice*; and
3. Proof of Service.

Sincerely,



David L. Zifkin

Enclosures

SECURITY FEATURES INCLUDE THE WATERMARK PAPER HEAT SENSITIVE VOID AND FOLIO SECURITY

2390

BOIES SCHILLER & FLEXNER LLP
LA EXPENSE ACCOUNT
401 WILSHIRE BLVD STE 860
SANTA MONICA, CA 90401-1453

WELLS FARGO BANK, N.A.
www.wellsfargo.com
61-110711

PAY
TO THE
ORDER
OF

FIFTY AND 00/100 Dollar(s)
The State Bar of California

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AUTHORIZED SIGNATURE
[Handwritten Signature]

DATE
04/04/17

AMOUNT
\$50.00

Security Features Included



Details on Back

1 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

2 Jack P. DiCano (SBN 138782)

3 525 University Avenue

4 Palo Alto, California 94301

5 Telephone: (650) 470-4660

6 E-mail: jack.dicano@skadden.com

7 *Attorneys for Defendants*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10 **UNLIMITED CIVIL JURISDICTION**

11 PALANTIR TECHNOLOGIES INC.,

12 Plaintiff,

13 v.

14 MARC L. ABRAMOWITZ, in his individual
15 capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
17 2, KT4 PARTNERS LLC, and DOES 1 through
18 50, inclusive,

19 Defendants.

Case No. 16CV299476_

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR
LEAVE TO FILE A SECOND
AMENDED COMPLAINT**

Date: May 2, 2017

Time: 9:00 a.m.

Dept. 9

Judge: Hon. Mary E. Arand

Complaint filed: September 1, 2016

Trial date: not set


20 Defendants Marc L. Abramowitz, Marc L. Abramowitz Charitable Trust No. 2, and KT4
21 Partners LLC respectfully submit this Response to Plaintiff Palantir Technologies, Inc.'s
22 ("Palantir") Motion for Leave To File a Second Amended Complaint ("Motion"). Palantir's
23 various unsworn assertions and its purported reasons for seeking to amend its complaint—set forth
24 in an 18-page Motion that reads more like a statement issued for the benefit of the press than a
25 brief seeking leave to file a third complaint in this Action—are either inaccurate, misleading,
26 irrelevant to any issue properly before this Court, or all three. Given the legal standard for
27 consideration of motions for leave to amend at this stage, Defendants take no position on Palantir's
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1 request for leave to file its third complaint in this action, and will address the inadequacies of
2 Palantir's allegations when they file their demurrer to the operative complaint.

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Dated: April 19, 2017

Respectfully submitted,

By: 
Jack P. DiCano (SBN 138782)
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
525 University Avenue
Palo Alto, California 94301
Telephone: (650) 470-4660
E-mail: jack.dicano@skadden.com

Attorneys for Defendants

2 I am employed in the County of Santa Clara, State of California. I am over the age of 18
3 and not a party to the within action; my business address is 525 University Avenue, Palo Alto, CA
94301; and my email address is marilyn.garibaldi@skadden.com.

4 On April 19, 2017, I caused to be served the following document(s) described as:

5 **DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A**
6 **SECOND AMENDED COMPLAINT**

7 on the interested parties in this action by placing a true copy thereon enclosed/attached in/to a
sealed envelope/facsimile cover sheet addressed as follows:

8 COUNSEL FOR PLAINTIFF

9 Boies, Schiller & Flexner LLP
10 David Boies
333 Main Street
11 Armonk, NY 10504

Kirkland & Ellis LLP
Jay P. Lefkowitz
Nathaniel J. Kritzer
601 Lexington Avenue
New York, NY 1002

12 David Zifkin
Shira Liu
13 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401


14 // (BY EMAIL) I am readily familiar with the firm's practice of email transmission; on this
15 date, I caused the above-referenced document(s) to be transmitted by email as noted above
and that the transmission was reported as complete and without error.

16 // (BY MAIL) I am readily familiar with the firm's practice for the collection and processing
17 of correspondence for mailing with the United States Postal Service and the fact that the
correspondence would be deposited with the United States Postal Service that same day in
18 the ordinary course of business; on this date, the above-referenced correspondence was
placed for deposit at Palo Alto, California and placed for collection and mailing following
19 ordinary business practices. (AS NOTED)

20 /x/ (BY FEDERAL EXPRESS IN THE ORDINARY COURSE OF BUSINESS) I placed the
above document(s) in sealed envelope(s) addressed to the above person(s). I placed the
21 envelope(s) for collection and processing for delivery by Federal Express in Palo Alto,
Santa Clara County, California, following the firm's ordinary practice with which I am
22 readily familiar. On the same day correspondence is placed for collection and mailing, it is
deposited in the ordinary course of business with Federal Express.

23 /x/ (STATE/FEDERAL) I declare under penalty of perjury under the laws of the State of
24 California that the above is true and correct.

25 Executed on April 19, 2017, at Palo Alto, California.

26 

27 Marilyn Garibaldi
28

1 **BOIES, SCHILLER & FLEXNER LLP**

2 David Boies (*Pro Hac Vice* appl. pending)
3 (dboies@bsfllp.com)
4 333 Main Street
Armonk, NY 10504
Tel: (914) 749-8200; Fax: (914) 749-8300

5 David Zifkin (SBN 232845) (dzifkin@bsfllp.com)
6 Shira Liu (SBN 274158) (sliu@bsfllp.com)
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8 **KIRKLAND & ELLIS LLP**

9 Jay P. Lefkowitz (*Pro Hac Vice* appl. pending)
10 (lefkowitz@kirkland.com)
11 Nathaniel J. Kritzer (*Pro Hac Vice* appl. pending)
12 (nathaniel.kritzer@kirkland.com)
601 Lexington Ave
New York, NY 10022
Tel: (212) 446-4800; Fax: (212) 446-4900

13 *Additional counsel identified on signature page*

14 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SANTA CLARA**

17 **UNLIMITED JURISDICTION**

18 PALANTIR TECHNOLOGIES INC., a
19 Delaware corporation,

20 *Plaintiff,*

21 v.

22 MARC L. ABRAMOWITZ, in his individual
23 capacity and as trustee of the MARC
24 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

25 *Defendants.*

Case No. 16CV299476

**PLAINTIFF’S MOTION FOR
PROTECTIVE ORDER GOVERNING
THE PROTECTION AND EXCHANGE
OF CONFIDENTIAL MATERIAL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF SHIRA R. LIU**

Date: June 13, 2017

Time: 9:00 a.m.

Dept.: 9

Judge: Hon. Mary E. Arand

Complaint Filed: September 1, 2016

Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION:**

2 PLEASE TAKE NOTICE THAT on June 13, 2017 at 9:00 AM, or as soon thereafter as
3 the matter may be heard, before the Honorable Mary E. Arand in Department 9 of the above
4 referenced Court located at 191 N. First Street, San Jose, California 95113, Plaintiff Palantir
5 Technologies Inc. (“Plaintiff” or “Palantir”) will move the Court for entry of a Protective Order in
6 this case.

7 This motion is made on the ground that discovery in this action will involve the
8 production of confidential and highly confidential materials and deposition testimony concerning
9 confidential and highly confidential matters, the treatment of which should be governed by the
10 terms of a Protective Order entered by the Court. Plaintiff’s proposed Protective Order is
11 attached as Exhibit 1 to the Declaration of Shira R. Liu (“Liu Decl.”).

12 The parties met and conferred about the proposed Protective Order. While both parties
13 agreed that a Protective Order was warranted and there was agreement on many terms of such an
14 order, they reached an impasse on two critical issues that are needed to protect highly confidential
15 information, including trade secrets and competitively sensitive information. First, Plaintiff’s
16 proposed Protective Order includes a multi-tiered confidentiality designation that is needed to
17 ensure the protection of trade secret and competitively sensitive information. Second, Plaintiff’s
18 proposed Protective Order includes a provision requiring the parties to give notice before
19 disclosing highly confidential materials to outside experts or expert consultants. This provision is
20 needed to ensure that highly confidential materials are not shared with an expert or expert
21 consultant who, for example, works or consults for a competitor.

22 The motion is based upon this notice, Plaintiff’s Memorandum of Points and Authorities;
23 the Declaration of Shira R. Liu; the Court’s file in this matter; and such further evidence and
24 arguments as may be presented at the hearing of this matter.

25 ///
26 ///
27 ///
28 ///

1 Dated: April 21, 2017

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TABLE OF CONTENTS

I. Entry of a Protective Order is Necessary to Protect the Parties’ Confidential and Trade Secret Information 8

A. Attorneys’ Eyes Only Designations Are Standard Provisions in a Protective Order, Especially In Trade Secret Cases Among Competitors. 8

B. An AEO Designation Is Necessary To Protect Disclosure of Palantir’s Most Sensitive Information to a Direct Competitor Accused of Misappropriating Similar Information and Breaching Confidentiality Agreements..... 10

C. The Harm Palantir Faces from Inadvertent Disclosure Outweighs Any Incidental Prejudice to Defendants..... 13

D. The Protective Order Should Require Notice Before the Parties Disclose Highly Confidential Information to Experts or Expert Consultants..... 15

II. Conclusion 16

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *1221122 Ontario Ltd. v. TCP Water Sols., Inc.*
4 (N.D. Ill. June 23, 2011, No. 10 C 4942) 2011 WL 2516531..... 12

5 *Brown Bag Software v. Symantec Corp.*
6 (9th Cir. 1992) 960 F.2d 1465..... 8, 10, 11

7 *Calcor Space Facility, Inc. v. Sup. Ct.*
8 (1997) 53 Cal.App.4th 216 13

9 *Dynetix Design Sols., Inc. v. Synopsys, Inc.*
10 (N.D. Cal. Apr. 12, 2012, No. C-11-05973 PSG) 2012 WL 1232105..... 12

11 *GT, Inc. v. Sup. Ct. of Santa Cruz Cnty.*
12 (1984) 151 Cal.App.3d 748..... 8, 10, 11, 14

13 *Hitz Entm't Corp. v. Mosley*
14 (N.D. Ill. Feb. 1, 2017, No. 16 C 1199) 2017 WL 444073 8

15 *In re Providian Credit Card Cases*
16 (2002) 96 Cal.App.4th 292 12

17 *In re The City of N.Y.*
18 (2d Cir. 2010) 607 F.3d 923..... 12

19 *Intel Corp. v. VIA Techs., Inc.*
20 (N.D. Cal. 2000) 198 F.R.D. 525 14

21 *Jagex Ltd. v. Impulse Software*
22 273 F.R.D. 357 12

23 *Littlebear v. Advanced Bionics, LLC*
24 (N.D. Okla. July 20, 2012, No. 11-CV-418-GKF-PJC) 2012 WL 2979023 14

25 *Moskowitz v. Superior Court*
26 (1982) 137 Cal.App.3d 313..... 10

27 *Nuratech, Inc. v. Syntech (SSPF) Int'l, Inc.*
28 (C.D. Cal. 2007) 242 F.R.D. 552 13

ST Sales Tech Holdings, LLC v. Daimler Chrysler Co.
(E.D.Tex. Mar. 14, 2008, No. 6:07-CV-346) 2008 WL 5634214 13

Stout v. Remetronix, Inc.
(S.D. Ohio 2014) 298 F.R.D. 531 8

1 *Tailored Lighting, Inc. v. Osram Sylvania Prods, Inc.*
(W.D.N.Y. 2006) 236 F.R.D. 146..... 9, 11

2 *Vesta Corset Co. v. Carmen Found., Inc.*
3 (S.D.N.Y. Jan. 13, 1999, No. 97 CIV. 5139 (WHP)) 1999 WL 13257 9, 15

4 *Voice Domain Techs., LLC v. Apple, Inc.*
5 (D. Mass. Oct. 8, 2014, No. CIV.A. 13-40138-TSH) 2014 WL 5106413..... 11, 12, 14

STATUTES

6 Civ. Code § 3426.1(d)..... 8

7 Civ. Code § 3426.5 8, 12

8 Civ. Proc. Code § 2025.420 12

9 Civ. Proc. Code § 2030.090 12

10 Civ. Proc. Code § 2031.060 12

11 Civ. Proc. Code § 2033.080 12

12

OTHER AUTHORITIES

13

14 Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8C-5..... 9

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Palantir Technologies Inc. (“Plaintiff” or “Palantir”) respectfully submits this
3 memorandum of points and authorities in support of its motion for entry of a Protective Order on
4 the ground that discovery in this action will involve the production of and testimony about
5 confidential and highly confidential information. Plaintiff’s proposed Protective Order is
6 attached as Exhibit 1 to the Declaration of Shira Liu (“Liu Decl.”).

7 During their meet and confer regarding this motion, the parties agreed that the entry of a
8 Protective Order is appropriate in this case and agreed on most of the terms. (Liu Decl. ¶ 3.)
9 However, the parties were not able to agree on certain critical provisions that Plaintiff has
10 proposed to protect highly confidential information, including trade secrets and competitively
11 sensitive information.¹ (Liu Decl. ¶ 4.)

12 First, Plaintiff’s proposed Protective Order includes a multi-tiered confidentiality
13 designation that includes the following designations: “Confidential,” “Highly Confidential –
14 Attorneys’ Eyes Only,” and “Highly Confidential Software.” This provision is necessary because
15 this case is between competitors (e.g., Defendants have filed patent applications in direct
16 competition with Plaintiff), concerns highly confidential trade secrets and competitively sensitive
17 information, and may concern highly confidential software. Defendants desire a single-tiered
18 “Confidential” designation that would allow Defendants, including Mr. Abramowitz, to review
19 Plaintiff’s trade secrets and competitively sensitive information. In other words, Defendants
20 propose a provision that would allow them to continue to misappropriate Plaintiff’s trade secrets
21 and highly confidential information. Such a provision would obviously be highly prejudicial to
22 Plaintiff. It would also be contrary to case law and model protective orders that provide for
23 multi-tiered designations in trade secret cases and in cases among competitors. Both factual
24 circumstances are present here.

25 Second, Plaintiff’s proposed Protective Order includes a provision requiring the parties to

26 _____
27 ¹ It is Palantir’s understanding that Defendants anticipate submitting their own proposed
28 protective order in accordance with a briefing schedule about which the parties are currently
meeting and conferring. (Liu Decl. ¶ 5.)

1 give notice before disclosing materials subject to the Protective Order to outside experts or expert
2 consultants and providing a brief period in which the other party could object for good cause.
3 This provision is needed for similar reasons as the first. It is needed to ensure that highly
4 confidential information is not shared with an expert or expert consultant who, for example,
5 works or consults for a competitor. In opposing this provision, Defendants again appear to be in
6 denial that this case involves claims for breach of confidentiality agreements and
7 misappropriation of trade secrets. But it is, and this provision is common in such cases.

8 **I. Entry of a Protective Order is Necessary to Protect the Parties' Confidential and**
9 **Trade Secret Information**

10 **A. Attorneys' Eyes Only Designations Are Standard Provisions in a Protective**
11 **Order, Especially In Trade Secret Cases Among Competitors.**

12 This action is a trade secret case among competitors involving highly confidential trade
13 secret and competitively sensitive information. In California, a trade secret means information
14 that “[d]erives independent economic value, actual or potential, *from not being generally known*
15 *to the public or to other persons who can obtain economic value from its disclosure or use*” and
16 “is the subject of efforts that are reasonable under the circumstances to maintain its *secrecy*.”
17 (Civ. Code § 3426.1(d) [emphasis added].) In such cases and in cases among competitors,
18 Attorneys' Eyes' Only (“AEO”) provisions are necessary to protect trade secret information and
19 similar competitively sensitive information. Indeed, California courts are required by statute to
20 “preserve the secrecy of an alleged trade secret by reasonable means, which may include granting
21 protective orders in connection with discovery proceedings.” (Civ. Code § 3426.5.)

22 Consistent with courts throughout the country, California courts have held that AEO
23 provisions are common in actions like this where the parties are competitors and the claims
24 involve confidential and trade secret information. (See e.g., GT, Inc. v. Sup. Ct. of Santa Cruz
25 Cnty. (1984) 151 Cal.App.3d 748, 755-56 [upholding “counsel only” protective order in case
26 between competitors]; Brown Bag Software v. Symantec Corp. (9th Cir. 1992) 960 F.2d 1465,
27 1470-71 [upholding outside counsel only protective order in case between competitors]; see also,
28 e.g., Hitz Entm't Corp. v. Mosley (N.D. Ill. Feb. 1, 2017, No. 16 C 1199) 2017 WL 444073, at *7
[“pricing and strategic information . . . is commonly designated as AEO”]; Stout v. Remetronix,

1 Inc. (S.D. Ohio 2014) 298 F.R.D. 531, 534, 536 [recognizing that “[a] Protective Order with an
2 AEO designation serves to limit disclosure of trade secret information” and ordering an AEO
3 designation for sensitive business information]; Tailored Lighting, Inc. v. Osram Sylvania Prods.,
4 Inc. (W.D.N.Y. 2006) 236 F.R.D. 146, 148 [“Indeed, in cases involving the disclosure of trade
5 secrets, courts often issue protective orders limiting access to the most sensitive information to
6 counsel and their experts.”]; Vesta Corset Co. v. Carmen Found., Inc. (S.D.N.Y. Jan. 13, 1999,
7 No. 97 CIV. 5139 (WHP)) 1999 WL 13257, at *3 [“Protective orders that limit access to certain
8 documents to counsel and experts are commonly entered in litigation involving trade secrets and
9 other confidential research, development, or commercial information.”]; Cal. Prac. Guide Civ.
10 Pro. Before Trial Ch. 8C-5 [“Indeed, an ‘attorney’s eyes only’ provision is common in stipulated
11 protective orders.”].)

12 The provisions are so routine that, for example, the Northern District of California
13 includes AEO designations in its model protective order for trade secret cases (Liu Decl., Ex. 2 ¶
14 7.3); the Los Angeles Superior Court has a model protective order that includes AEO
15 designations (Liu Decl., Ex. 3 ¶ 8; the California Bar Intellectual Property Section has a model
16 protective order that includes AEO designations (Liu Decl., Ex. 4 ¶ 3); and the San Mateo
17 Superior Court has a model protective order that treats trade secrets as AEO (Liu Decl. Ex. 5 ¶¶ 1,
18 5.). There is no reason to deviate from such a standard practice in this litigation.

19 Palantir’s proposed Protective Order includes a multi-tier confidentiality provision where
20 documents “that a party believes would create a substantial risk of serious financial or other
21 injury if disclosed to another Party or non-Party, and that such risk cannot be avoided by less
22 restrictive means” could be designated “Highly Confidential – Attorneys’ Eyes Only” (“AEO”).”
23 (Liu Decl., Ex 1 ¶ 2.) Only the following information, if non-public, would be presumed to merit
24 a “Highly Confidential” designation because they are highly confidential and competitively
25 sensitive information: “trade secrets, pricing information, financial data, sales information, sales
26 or marketing forecasts or plans, business plans or strategy, sales or marketing plans or strategy,
27 product and business development information, engineering documents, testing documents,
28 employee information, personal financial information, offerings, sales or purchases of sock or

1 securities, and other non-public information of similar competitive and business sensitivity.” (Id.)
2 The proposed Protective Order also includes a designation for “Highly Confidential Software,”²
3 only to be used for “extremely sensitive highly confidential information or items representing
4 computer software or code . . . , disclosure of which . . . would create a substantial risk of harm
5 that could be avoided by less restrictive means.” (Id. ¶ 3.)³

6 The parties’ outside counsel and experts will have full access to these materials. (Id. ¶ 6.)
7 Palantir’s proposed protective order contains safeguards against over-designation to ensure that
8 the parties limit AEO protection to only those documents that warrant it. Specifically, if any
9 party believes materials have been improperly designated as AEO, the protective order includes
10 procedures to challenge the designation. (Id. ¶ 18.) These balanced provisions are reasonably
11 necessary to protect trade secret information and similar competitively sensitive information that
12 derives value from being confidential, especially from competitors.

13 **B. An AEO Designation Is Necessary To Protect Disclosure of Palantir’s Most**
14 **Sensitive Information to a Direct Competitor Accused of Misappropriating**
Similar Information and Breaching Confidentiality Agreements.

15 It is well-established that AEO designations are warranted to protect against prejudice and
16 undue burden to the parties, and “‘undue burden’ in discovery . . . includ[es] protection from
17 misuse of trade secrets by competitors.” (Brown Bag Software, supra, 960 F.2d 1465, 1470.) In
18 this case, there is a substantial risk that Palantir will be required to produce some of its most
19 sensitive information in discovery or that Palantir will be required to use such information as
20 evidence in support of its causes of action. As a California appellate court has explained,
21 preventing protective orders from including AEO designations “would invite misuse of . . . legal
22 proceedings to obtain trade secrets or other confidential information” about competitors. (GT,
23 Inc., supra, 151 Cal.App.3d at 755; *see also* Moskowitz v. Superior Court (1982) 137 Cal.App.3d
24 313, 319) [issuing writ of mandate to vacate trial court’s denial of protective order]; GT, Inc.,

25 _____
26 ² This provision is also AEO, but includes some additional protections for software, such as
requiring inspection at the offices of the producing party’s counsel.

27 ³ Palantir collectively refers to the “Highly Confidential—Attorneys’ Eyes Only” designation and
28 the “Highly Confidential Software” designation as “AEO” designations.

1 supra, 151 Cal.App.3d 748, 754 n.2 [listing reasons why protective order at issue in Moskowitz
2 likely included an AEO designation].)

3 This is a valid concern in this case. Here, Palantir alleges Abramowitz was a “respected
4 confidant and advisor to Palantir” who “betrayed the trust they bestowed upon him,” “stole th[eir]
5 secrets, engaged in methodical deception of Palantir’s senior executives, and made false claims to
6 the United States Patent and Trademark Office,” for his own profit. (First Amended Complaint
7 for Damages ¶¶ 2, 3, 27-31, 72, 82, 85, 97.) Palantir has also alleged that Abramowitz has
8 breached confidentiality agreements regarding both trade secret information and other highly
9 sensitive competitive information. If Abramowitz is permitted to gain access to Palantir’s
10 competitively sensitive information through discovery, there is a risk that he may misappropriate
11 this information as he has done in the past or otherwise misuse or disclose it.

12 The Court need not determine whether Abramowitz has committed the acts Palantir
13 alleges in order to find good cause for the multi-tier protective order. It is indisputable that
14 Abramowitz holds himself out as an inventor and that he submitted several patent applications in
15 areas in which Palantir does business. Courts have clearly held that, standing alone, the “risk of
16 *inadvertent* use of confidential information if disclosed to inventors, engineers, and scientists” is
17 good cause for an AEO designation. (Voice Domain Techs., LLC v. Apple, Inc. (D. Mass. Oct. 8,
18 2014, No. CIV.A. 13-40138-TSH) 2014 WL 5106413, at *4 [imposing AEO designation in
19 protective order] [emphasis added].) Even when the court credits a party’s integrity and good
20 faith, it must consider whether the party can “lock-up trade secrets in his mind, safe from
21 inadvertent disclosure . . . once he ha[s] read the documents.” (Brown Bag Software, supra, 960
22 F.2d 1465, 1471.) Abramowitz’s status as a purported inventor of technologies in the same field
23 as Palantir makes this the type of case where the risk of inadvertent disclosure is at its highest
24 because “it seems unreasonable to expect that anyone working to further his own scientific and
25 technical interests would be able assuredly to avoid even the subconscious use of confidential
26 information revealed through discovery that is relevant to those interests.” (Tailored Lighting,
27 Inc., supra, 236 F.R.D. 146, 149 [imposing an AEO designation even when the court “ha[d] no
28 reason to question the integrity of plaintiff’s president and patent inventor”]; see also Voice

1 Domain, *supra*, 2014 WL 5106413, at *5 [“While the Court has no cause to doubt [employee]’s
2 integrity, it questions whether it is possible to avoid the subconscious use of [defendant]’s
3 confidential material in his future endeavors.”].)

4 Moreover, AEO designations are especially appropriate in cases like this one involving
5 trade secrets where the court has a statutory duty to preserve the secrecy of an alleged trade
6 secret. (Civ. Code § 3426.5.) California’s statutes governing protective orders specifically
7 contemplate this issue and provide a “protective order may include . . . [t]hat a trade secret or
8 other confidential research, development, or commercial information not be disclosed, or be
9 disclosed only to specified persons or only in a specified way.” (Civ. Proc. Code § 2031.060(b)(5)
10 [document production]; *see also id.* § 2025.420(b)(13) [depositions]; *id.* § 2030.090(b)(6)
11 [interrogatories]; *id.* § 2033.080(b)(4) [requests for admission].) Under UTSA, the court is vested
12 with broad discretion to protect an alleged trade secret from dissemination. (*In re Providian*
13 *Credit Card Cases* (2002) 96 Cal.App.4th 292, 298 [mandatory confidentiality requirement
14 imposed “in actions initiated pursuant to the Uniform Trade Secrets Act for misappropriation of
15 trade secrets”].) Federal courts also routinely implement AEO designations in trade secret cases.
16 (*See, e.g., In re The City of N.Y.* (2d Cir. 2010) 607 F.3d 923, 935 [“The disclosure of
17 confidential information on an ‘attorneys’ eyes only’ basis is a routine feature of civil litigation
18 involving trade secrets.”]; *1221122 Ontario Ltd. v. TCP Water Sols., Inc.* (N.D. Ill. June 23,
19 2011, No. 10 C 4942) 2011 WL 2516531, at *5 [finding an AEO designation “necessary to give
20 ‘sufficient protection’ to the parties’ trade secrets during the discovery process” and ordering the
21 parties to amend their stipulated protective order to add an AEO designation].) Courts also
22 protect source code under an AEO designation. (*See, e.g., Liu Decl. Ex. 2 ¶ 2.9* [Northern
23 District of California Model Protective Order including provisions for source code]; *Dynetix*
24 *Design Sols., Inc. v. Synopsis, Inc.* (N.D. Cal. Apr. 12, 2012, No. C-11-05973 PSG) 2012 WL
25 1232105, at *2 *aff’d* 473 Fed. App’x 896 (Fed. Cir. 2012) [applying the source code provisions of
26 the Northern District of California Model Protective Order]; *Jagex Ltd. v. Impulse Software*, 273
27 F.R.D. 357, 358 (D. Mass. 2011) [recognizing source code can constitute a trade secret]).
28

1 Beyond trade secrets, AEO designations are required to prevent the inadvertent disclosure
2 of the parties' confidential financial and business information and "courts should be particularly
3 sensitive to the potential for creating an unfair commercial advantage to a party seeking discovery
4 of [trade secret] materials." (Calcor Space Facility, Inc. v. Sup. Ct. (1997) 53 Cal.App.4th 216,
5 226.) As a result, "[c]ourts commonly issue protective orders limiting access to sensitive
6 information," such as pricing information, customer lists and supply lists, "to counsel and their
7 experts." (Nutratch, Inc. v. Syntech (SSPF) Int'l, Inc. (C.D. Cal. 2007) 242 F.R.D. 552, 555
8 [customer and supplier lists]; see also, e.g., Stout, supra, 298 F.R.D. 531, 536 [pricing
9 information].)

10 The need to protect confidential financial and business information extends even beyond
11 direct competitors to parties that could compete in the future. (Nutratch, Inc., supra 242 F.R.D.
12 552, 555 ["legitimate" "fear of competitive harm" warranted AEO designation where, although
13 the parties "currently sell[] to different buyers," the party opposing the AEO designation could
14 "choose to become a direct competitor of [the other party] in the future"]; ST Sales Tech
15 Holdings, LLC v. Daimler Chrysler Co. (E.D.Tex. Mar. 14, 2008, No. 6:07-CV-346) 2008 WL
16 5634214, at *6 ["Moreover, it is somewhat disingenuous to argue Sales Tech is not Defendants'
17 competitor Plaintiff and Defendants all seek to utilize, in one manner or another, intellectual
18 property as part of a business model for pecuniary gain."].) The need to protect this type of
19 information is particularly pronounced in this case because Abramowitz and Palantir are
20 competitors – Palantir researches, invests, and performs business in the same commercial areas
21 for which Abramowitz applied for patent applications and in which Abramowitz claims to be an
22 inventor.

23 **C. The Harm Palantir Faces from Inadvertent Disclosure Outweighs Any**
24 **Incidental Prejudice to Defendants.**

25 Any incidental prejudice Defendants incur from a multi-tiered protective order is
26 outweighed by the prejudice Palantir will suffer if its trade secrets and highly confidential
27 business information are made available to a competitor. First, as courts have widely recognized,
28 litigants are fully able to use confidential information produced in discovery when their attorneys

1 and experts have access to that information. (See, e.g., Intel Corp. v. VIA Techs., Inc. (N.D. Cal.
2 2000) 198 F.R.D. 525, 529 [“The party seeking access [to confidential information] must
3 demonstrate that its ability to litigate will be prejudiced, not merely its ability to manage outside
4 litigation counsel Requiring a party to rely on its competent outside counsel does not create
5 an ‘undue and unnecessary burden.’”].) Defendants’ outside counsel and expert witnesses will
6 have access to materials with an AEO designation. (Liu Decl., Ex. 1, ¶ 6.) Defendants are
7 represented by counsel from Skadden, Arps, Slate, Meagher & Flom LLP and Williams &
8 Connolly. (Liu Decl., ¶ 2.) There can be no doubt that Defendants’ outside counsel is competent
9 to defend this action.

10 Second, this argument is especially strong where, as here, the party opposing the AEO
11 designation is an individual Palantir alleges has already violated his confidentiality agreements
12 with Palantir. Abramowitz’s role as the supposed inventor of technologies that *compete* with
13 Palantir make him “especially situated to take positions directly harmful and antagonistic to”
14 Palantir. (See Voice Domain, *supra*, 2014 WL 5106413, at *4, *5 [employee who wore “many
15 hats” at plaintiff company, including founder and inventor who was, according to defendant,
16 “synonymous” with plaintiff,]” could be prevented from accessing defendant’s documents
17 because the employee “was especially situated to take positions directly harmful and antagonistic
18 to [defendant]” even where the “Court ha[d] no cause to doubt [employee]’s integrity”].) That he
19 is an individual does not change the fact that he is a *competitor* who has already improperly used
20 and disclosed Palantir’s trade secret and competitively sensitive information.

21 Third, any prejudice to Defendants is mitigated because there is no risk Abramowitz will
22 be prevented from accessing materials that are not AEO since Plaintiff’s proposed protective
23 order strictly defines “Highly Confidential” and “Highly Confidential Software” information and
24 includes procedures for disputing an AEO designation. (Liu Decl., Ex. 1, ¶ 18; see also GT. Inc.,
25 *supra*, 151 Cal.App.3d at 756 n.4 [authorizing AEO designation and noting procedure to seek
26 relief from protective order when “some form of disclosure to the clients would be warranted”];
27 Littlebear v. Advanced Bionics, LLC (N.D. Okla. July 20, 2012, No. 11-CV-418-GKF-PJC) 2012
28 WL 2979023, at *3 [ordering a protective order with AEO designations despite plaintiff’s

1 “concerns regarding the potential misuse” because “the protective order provides Plaintiff with a
2 remedy to prevent and/or resolve any type of potential misuse”].)

3 Although Plaintiff and Defendants have competing interests, their positions “are not
4 irreconcilable” since “a balance may be struck which limits the dissemination [of highly
5 confidential information] to counsel and experts” through a multi-tiered confidentiality
6 designation. (Vesta Corset Co., *supra*, 1999 WL 13257, at *3.)

7 **D. The Protective Order Should Require Notice Before the Parties Disclose**
8 **Highly Confidential Information to Experts or Expert Consultants.**

9 The second point of dispute between the parties concerns Plaintiff’s proposal that the
10 Protective Order require the parties to give each other notice and an opportunity to object before
11 disclosing “Highly Confidential” information or “Highly Confidential Software” to experts or
12 expert consultants. (Liu Decl., Ex. 1, ¶ 9.) This provision is necessary to protect the parties from
13 the same type of prejudice described above. Experts and consultants may work for Plaintiff’s
14 competitors outside of their roles as testifying/consulting experts, or because of his purported
15 status as an inventor, Abramowitz may seek to serve as his own expert. In such circumstances,
16 these experts could make use of Palantir’s “Highly Confidential” information or “Highly
17 Confidential Software” in their work with Palantir’s competitors, because the experts could not
18 un-learn the information they review in this case. An expert’s knowledge of Palantir’s trade
19 secrets or financials or business plans, for example, is a bell that cannot be un-rung.

20 The provision proposed by Plaintiff would safeguard against this risk by requiring the
21 parties to give each other notice and five days to object before disclosing “Highly Confidential
22 Software” or “Highly Confidential” information to experts or consultants. Any objection raised
23 by a party would have to be grounded by an “objectively reasonable concern that the outside
24 expert or expert consultant will, intentionally or inadvertently, use or disclose ‘Highly
25 Confidential Material—Attorneys’ Eyes Only’ or ‘Highly Confidential Software’” information in
26 ways inconsistent with the Protective Order. (Liu Decl. Ex. 1, ¶ 9.) For instance, Plaintiff would
27 have a serious—and “objectively reasonable”—concern if one of Defendants’ experts had an
28 employment or ongoing consulting relationship with one of Plaintiff’s competitors outside the

1 context of litigation. This provision will not impose any significant burden on the parties, and
2 will ensure that the production of “Highly Confidential” information and “Highly Confidential
3 Software” in discovery does not prejudice the parties or non-parties drawn into this litigation.
4 This type of provision is not unusual in cases that involve discovery of highly confidential
5 information, such as trade secrets. (*See* Liu Decl., Ex. 2, ¶ 7.4(a)(2) [N.D. Cal. Model Protective
6 Order].) Accordingly, Palantir respectfully requests the Court require the proposed expert
7 disclosures in this case.

8 **II. Conclusion**

9 For the foregoing reasons, Plaintiff respectfully requests the Court enter Plaintiff’s
10 proposed Protective Order. (Liu Decl. Ex. 1.)

11 Dated: April 21, 2017

BOIES, SCHILLER & FLEXNER LLP
KIRKLAND & ELLIS LLP

12
13
14 By: 

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Attorneys for Plaintiff PALANTIR TECHNOLOGIES
INC.

1 **DECLARATION OF SHIRA R. LIU**

2 I, Shira R. Liu, declare as follows:

3 1. I am an attorney duly admitted to practice law in the State of California and am an
4 associate with the law firm of Boies Schiller Flexner LLP, counsel to Plaintiff Palantir
5 Technologies Inc. (“Plaintiff” or “Palantir”). I make this declaration in support of the Plaintiff’s
6 Motion for Entry of a Protective Order. I have personal knowledge of the facts set forth herein, or
7 am informed and believe them to be true. If called as a witness, I could and would competently
8 testify to the matters stated herein.

9 2. During our meet and confer process, Defendants have been represented by counsel
10 from Skadden, Arps, Slate, Meagher & Flom LLP and Williams & Connolly.

11 3. The parties have met and conferred regarding the terms of a Protective Order in
12 this case. During the meet and confer, Defendants agreed with Palantir that a Protective Order is
13 appropriate in this case.

14 4. However, the parties have reached an impasse regarding two primary aspects of
15 the Protective Order. First, Palantir proposes a multi-tiered Protective Order that includes an
16 Attorneys’ Eyes Only designation. Defendants propose a single-tier Protective Order that would
17 allow Marc Abramowitz to see all documents produced by Palantir in this case. Second, Palantir
18 proposed to require the parties to give other notice and an opportunity to object before disclosing
19 “Confidential,” “Highly Confidential” information or “Highly Confidential Software” to experts
20 or expert consultants. Defendants object to this provision. Palantir’s proposed Protective Order
21 requires the parties to give other notice and an opportunity to object before disclosing “Highly
22 Confidential” information or “Highly Confidential Software” to experts or expert consultants.

23 5. It is my understanding that Defendants intend to submit their own proposed order
24 in connection with briefing of these issues.

25 6. Attached as Exhibit 1 is Plaintiff’s proposed Protective Order.

26 7. Attached as Exhibit 2 is a true and correct copy of the Northern District of
27 California’s Model Protective Order for Litigation Involving Patents, Highly Sensitive
28 Confidential Information and/or Trade Secrets. I downloaded this document from

1 http://www.cand.uscourts.gov/filelibrary/776/ND_Cal_Patent_Highly_Sensitive_Model_Prot_Order_Revised.docx.


2
3 8. Attached as Exhibit 3 is a true and correct copy of the Los Angeles Superior Court
4 Model Protective Order – Confidential and Highly Confidential. I downloaded this document
5 from <http://www.lacourt.org/division/civil/pdf/FormProtectiveOrder2HighlyConfidential.doc>.

6 9. Attached as Exhibit 4 is a true and correct copy of the California Bar Intellectual
7 Property Section’s model protective order. I scanned this document from Randall E. Key,
8 Rebecca Edelson & Robert Milligan, Trade Secret Litigation and Protection in California, Third
9 Edition, published by The Intellectual Property Section of the State Bar of California (2014),
10 beginning on page 782.

11 10. Attached as Exhibit 5 is a true and correct copy of the San Mateo Superior Court’s
12 model Stipulation and Protective Order Regarding Confidentiality (Double Level of
13 Confidentiality). I downloaded this document from
14 https://www.sanmateocourt.org/documents/complex_civil_litigation/spo_double.pdf.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed this 20th day of April, 2017, in Santa Monica, California.

18
19 
20 _____
21 Shira R. Liu

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EXHIBIT

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

PALANTIR TECHNOLOGIES INC., a
Delaware corporation,

Plaintiffs,

v.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 16CV299476

**[PROPOSED] PROTECTIVE ORDER
GOVERNING THE PROTECTION AND
EXCHANGE OF CONFIDENTIAL
MATERIAL**

Judge Mary E. Arand
Trial Date: Not Set
Dept.: 9

**[PROPOSED] PROTECTIVE ORDER GOVERNING THE
PROTECTION AND EXCHANGE OF CONFIDENTIAL MATERIAL**

IT IS HEREBY ORDERED that this Protective Order shall govern the handling of
any information produced or disclosed by any party named in the above captioned litigation or
any non-party (the "Producing Party") in connection with the above captioned litigation
(hereinafter "Litigation" or "Action"), including documents or electronic files exchanged, things
viewed, depositions, deposition exhibits, interrogatory responses, responses to requests for
admission, pretrial and trial testimony, and all copies, extracts, summaries, compilations,

1 designations and portions of any of the foregoing (such information shall hereinafter be referred
2 to as “Discovery Material”). This Order is entered in the exercise of this Court’s inherent power
3 to manage litigation for the express purpose of facilitating discovery and the exchange of
4 documents. This Order is made without prejudice to the right of any party to apply to the Court
5 for modification of this Order on good cause shown, or to challenge the application of this order
6 to any particular Discovery Material produced during the course of discovery in this case.

7 1. “Confidential” Information. Any Producing Party may designate any Discovery Material
8 as “Confidential” under the terms of this Protective Order if such Producing Party in good faith
9 believes that such Discovery Material contains “Confidential Information.” The term
10 “Confidential Information” shall be interpreted to mean confidential, proprietary, and/or
11 commercially sensitive information or information entitled to confidential treatment under
12 applicable law.

13 2. “Highly Confidential—Attorneys’ Eyes Only” Information. Any Producing Party may
14 designate any Discovery Material as “Highly-Confidential—Attorneys’ Eyes Only” if such
15 Producing Party in good faith believes that such Discovery Material contains Highly Confidential
16 Information. “Highly Confidential” means those subsets of Confidential Information that a party
17 believes would create a substantial risk of serious financial or other injury if disclosed to another
18 Party or non-Party, and that such risk cannot be avoided by less restrictive means. The following
19 information, if non-public, shall be presumed to merit the “Highly Confidential—Attorneys’ Eyes
20 Only” designation: trade secrets, pricing information, financial data, sales information, sales or
21 marketing forecasts or plans, business plans or strategy, sales or marketing plans or strategy,
22 product and business development information, engineering documents, testing documents,
23 employee information, personal financial information, offerings, sales or purchases of stock or
24 securities, and other non-public information of similar competitive and business sensitivity.

25 3. “Highly Confidential Software” Information. Any Producing Party may designate
26 information “Highly Confidential Software” if such Producing Party in good faith believes that
27 such Discovery Material contains Highly Confidential Software Information. “Highly
28

1 Confidential Software” Information means extremely sensitive highly confidential information or
2 items representing computer software or code and associated comments and revision histories,
3 formulas, engineering specifications, or schematics that define or otherwise describe in detail the
4 algorithms or structure of software or hardware designs, disclosure of which to another Party or
5 Non-Party would create a substantial risk of serious harm that could not be avoided by less
6 restrictive means.

7 4. Use of “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” or “Highly
8 Confidential Software” Discovery Material. “Confidential,” “Highly Confidential—Attorneys’
9 Eyes Only,” or “Highly Confidential Software” Discovery Material, and information derived
10 therefrom, shall be used solely for purposes of this Action and shall not be used for any other
11 purpose, including, without limitation, any business, proprietary, commercial or governmental
12 purpose. “Confidential,” “Highly Confidential—Attorneys’ Eyes Only,” or “Highly Confidential
13 Software” Discovery Material shall not be given, shown, made available to or communicated in
14 any way to any person other than as permitted by this Protective Order.

15 5. Manner of Designating Materials. The designation of Discovery Material as
16 “Confidential,” “Highly Confidential—Attorneys’ Eyes Only,” or “Highly Confidential
17 Software” for purposes of this Protective Order shall be made in the following manner by the
18 Producing Party.

- 19 a. In the case of documents, including any and all exhibits, briefs, memoranda,
20 interrogatory responses, responses to request for admission, or other materials
21 (apart from transcripts or recordings of oral testimony from any deposition, which
22 is subject to Paragraph 5(e) below), by affixing the legend “Confidential,” “Highly
23 Confidential—Attorneys’ Eyes Only,” or “Highly Confidential Software” to all
24 pages of any document containing “Confidential,” “Highly Confidential—
25 Attorneys’ Eyes Only,” or “Highly Confidential Software” Discovery Materials,
26 respectively. The legend shall not obscure or interfere with the legibility of the
27 designated information.

- 1 b. In the case of documents produced electronically as a “TIF” or similar image
2 format, by affixing the legend “Confidential,” “Highly Confidential—Attorneys’
3 Eyes Only,” or “Highly Confidential Software” to all pages of the imaged
4 document containing any “Confidential,” “Highly Confidential—Attorneys’ Eyes
5 Only,” or “Highly Confidential Software” Discovery Materials, respectively.
- 6 c. In the case of documents produced electronically in their native format, by
7 appending the legend “Confidential,” “Highly Confidential—Attorneys’ Eyes
8 Only,” or “Highly Confidential Software” to the Bates number associated with the
9 document. It is the responsibility of any person producing a hard copy or image of
10 a native file produced in this fashion to affix the Bates number and the legend
11 “Confidential” or “Highly Confidential” to the hard copy document or image.
- 12 d. In the case of video tapes, audio tapes, and electronic media such as computer
13 disks or compact discs (CD), which contain or include “Confidential,” “Highly
14 Confidential—Attorneys’ Eyes Only,” or “Highly Confidential Software”
15 Discovery Material, by affixing the required legend on the package thereof.
- 16 e. For deposition testimony, in one of the following manners:
- 17 i. At any deposition, counsel for the person providing testimony may
18 designate their entire transcript “Confidential,” “Highly Confidential—
19 Attorneys’ Eyes Only,” or “Highly Confidential Software” at any time
20 during the proceeding, including at the outset. In addition, upon any
21 inquiry with regard to the content of Discovery Material marked
22 “Confidential,” “Highly Confidential—Attorneys’ Eyes Only,” or “Highly
23 Confidential Software” or when counsel for a person (party or nonparty)
24 deems that the answer to a question may result in the disclosure of
25 “Confidential,” “Highly Confidential—Attorneys’ Eyes Only,” or “Highly
26 Confidential Software” Information of his or her client within the meaning
27 of this Protective Order, counsel for the person whose information is
28

1 involved, at his or her option, may state on the record before or during the
2 deposition that such testimony shall be treated as “Confidential,” “Highly
3 Confidential—Attorneys’ Eyes Only,” or “Highly Confidential Software”
4 Discovery Material, respectively, and, in lieu of taking other steps available
5 in such situation, may direct that the question and answer be transcribed
6 separately from the remainder of the deposition or proceeding and be filed
7 in a sealed envelope marked in the manner set forth in Paragraph 10 hereof.
8 When such a direction has been given, the disclosure of the testimony shall
9 be limited in the manner specified within this Protective Order, and the
10 information contained herein shall not be used for any purpose other than
11 for purposes of this suit. Counsel for the person whose “Confidential,”
12 “Highly Confidential—Attorneys’ Eyes Only,” or “Highly Confidential
13 Software” Information is involved may also request that all persons other
14 than the reporter, the Court and its personnel, counsel, and authorized
15 individuals leave the deposition during the confidential portion of the
16 deposition. The failure of such other persons to comply with a request to
17 leave the deposition, unless the Court orders the testimony to go forward,
18 shall constitute substantial justification for counsel to advise the witness
19 that he or she need not answer the question.

- 20 ii. Within 21 days from the receipt of a final transcript or recording of the
21 deposition, counsel of record may designate the testimony or portions
22 thereof as “Confidential,” “Highly Confidential—Attorneys’ Eyes Only,”
23 or “Highly Confidential Software” Discovery Material and give written
24 notice to opposing counsel. The parties shall treat all depositions and
25 rough drafts or other transcripts of depositions as “Confidential,” “Highly
26 Confidential—Attorneys’ Eyes Only,” or “Highly Confidential Software”
27 Discovery Material until 21 days after receiving a copy of a rough or draft
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1 transcript thereof. After 21 days, only those portions of the transcript
2 designated in writing (or on the record at the deposition or proceeding) as
3 “Confidential,” “Highly Confidential—Attorneys’ Eyes Only,” or “Highly
4 Confidential Software” shall be deemed “Confidential,” “Highly
5 Confidential—Attorneys’ Eyes Only,” or “Highly Confidential Software”
6 Discovery Material, respectively. Counsel for the party designating a
7 transcript, recording, or portions thereof “Confidential,” “Highly
8 Confidential—Attorneys’ Eyes Only,” or “Highly Confidential Software”
9 shall be responsible for notifying the court reporter and opposing counsel
10 in writing of those portions of the transcript that are “Confidential,”
11 “Highly Confidential—Attorneys’ Eyes Only,” or “Highly Confidential
12 Software.” The parties may modify this procedure for any other particular
13 deposition, through agreement on the record at such deposition or
14 proceeding or otherwise by written stipulation, without further order of the
15 Court.

- 16 f. In the case of documents and things being made available for inspection, at the
17 request of counsel for the Producing Party, all documents and things produced for
18 inspection during discovery shall initially be considered to contain, at a minimum,
19 wholly Confidential information, and shall be produced for inspection only to
20 persons representing the Receiving Party who fall within the category described in
21 Paragraph 6(a) of this Protective Order. At the initial (or any subsequent)
22 inspection of the original documents and things, if requested by the Producing
23 Party, the Receiving Party shall not make copies of the documents produced.
24 Copies of documents and copies or photographs of things requested by the
25 Receiving Party shall be made, Bates-numbered and delivered to the Receiving
26 Party; such process shall be performed as promptly as reasonably practicable and
27 shall not await the production or inspection of other documents and things. After
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1 the Receiving Party has designated documents or things for copying, and before
2 copies are transmitted to the Receiving Party, counsel for the Producing Party shall
3 designate and mark the documents and things, as appropriate, as “Confidential,”
4 “Highly Confidential—Attorneys’ Eyes Only,” or “Highly Confidential Software”
5 in accordance with Paragraphs 1-3 of this Order. Except as provided below in this
6 Paragraph, documents and things not so designated shall be considered thereafter
7 outside the provisions of this Protective Order. Failure to so designate and mark as
8 provided above in this Paragraph shall not preclude the Producing Party from
9 thereafter in good faith making such designation and requesting the Receiving
10 Party to so mark and treat such documents and things so designated. After such
11 designations, such documents and things shall be fully subject to this Protective
12 Order. The Receiving Party, however, shall incur no liability for disclosures made
13 prior to notice of such designations.

- 14 6. Who May Access “Confidential” Information. Discovery Materials designated
15 “Confidential” may be disclosed, summarized, described, or otherwise communicated or made
16 available in whole or in part only to the following:
- 17 a. Outside counsel, together with secretaries, paralegals, document clerks, and other
18 support staff reporting directly to them and who are necessary to assist counsel
19 with the preparation or trial of this Action;
 - 20 b. For each party:
 - 21 i. Any counsel who is a member of the party’s respective in-house legal staff,
22 along with secretaries, paralegals and similar support staff assisting in-
23 house counsel with the management of files relating to this Action. Each
24 party hereto represents that such in-house counsel has been (or will be prior
25 to receiving Confidential Discovery Material) informed of the terms of this
26 Protective Order and has agreed to be bound by its terms and conditions;
27 and

1 ii. Those officers, directors, partners, members, or employees of all non-
2 designating Parties, such number which shall be limited to five individuals
3 that counsel for such Parties deems reasonably necessary to aid counsel in
4 the prosecution and defense of this Action; provided, however, that prior to
5 the Disclosure of Confidential materials to any such officer, director,
6 partner, member, or employee, counsel for the Party making the disclosure
7 shall deliver a copy of this Protective Order to such person, shall explain
8 that such person is bound to follow the terms of such Order, and shall
9 secure the signature of such person on a statement in the form attached
10 hereto as Exhibit A; and witnesses, subject to and conditioned upon the
11 witness's acceptance of and compliance with the terms and conditions of
12 this Protective Order; and

13 c. Consultants or experts specifically retained for this Action, together with their
14 assistants; provided, however, that prior to the Disclosure of Confidential materials
15 to any such consultant or expert or any assistant to any such consultant or expert,
16 counsel for the Party making the disclosure shall deliver a copy of this Protective
17 Order to such person, shall explain that such person is bound to follow the terms of
18 such Order, and shall secure the signature of such person on a statement in the
19 form attached hereto as Exhibit A; and

20 d. The Court and its staff, the jury, any discovery referee or Special Master appointed
21 by the Court to assist in resolving discovery disputes, reporters retained in
22 connection with depositions, to the extent necessary to transcribe the testimony
23 and identify exhibits marked in the course of the testimony subject to Paragraph
24 5(e) of this Protective Order; and

25 e. Commercial copy services, translators, data entry and computer support
26 organizations, and graphics, translation, design and/or trial consulting services,
27 hired by and assisting outside counsel for a party, provided that outside counsel
28

1 shall secure the signature of a duly authorized representative of each such service
2 in the form attached hereto as Exhibit A and maintain the original of Exhibit A;
3 and

4 f. Court reporters in this Proceeding (whether at depositions, hearings, or any other
5 proceeding); and

6 g. Mock jury participants, provided, however, that prior to the Disclosure of
7 Confidential Materials to any such mock jury participant, counsel for the Party
8 making the disclosure shall deliver a copy of this Protective Order to such person,
9 shall explain that such person is bound to follow the terms of such Order, shall
10 secure the signature of such person on a statement in the form attached hereto as
11 Exhibit A, and shall maintain the original of Exhibit A; and

12 h. Any mediator who is assigned or retained to hear this matter, and his or her staff;
13 provided, however, that counsel for the Party making any Disclosure shall deliver
14 a copy of this Protective Order to such person, shall explain that such person is
15 bound to follow the terms of such Order, shall secure the signature of such person
16 on a statement in the form attached hereto as Exhibit A, shall maintain the original
17 of Exhibit A; and

18 i. Such other persons as hereafter may be designated by written agreement in this
19 Action or by order of the Court.

20 7. Who May Access “Highly Confidential—Attorneys’ Eyes Only” Information. Discovery

21 Materials designated “Highly Confidential—Attorneys’ Eyes Only” may be disclosed,
22 summarized, described, or otherwise communicated or made available in whole or in part on the
23 same terms as set forth in Paragraphs 6(a), (d), (e), (f), (g), (h), and (i) of this Protective Order.

24 Such Discovery Material may not be disclosed to persons representing the Receiving Party who
25 fall within the categories described in Paragraph 6(b) of this Protective Order. Discovery

26 Materials designated “Highly Confidential—Attorneys’ Eyes Only” may be disclosed,
27 summarized, described, or otherwise communicated or made available in whole or in part on the
28

1 same terms as set forth in Paragraphs 6(c) to consultants or experts specifically retained for this
2 Action, together with their assistants, provided that the notification procedures described in
3 Paragraph 9 have been complied with.

4 8. Access to “Highly Confidential Software” Information. Discovery Materials designated
5 “Highly Confidential Software” shall be subject to all of the protections afforded to “Highly
6 Confidential—Attorneys’ Eyes Only” information, and may be disclosed only to the individuals
7 to whom “Highly Confidential—Attorneys’ Eyes Only” information may be disclosed, and only
8 on the terms under which “Highly Confidential—Attorneys’ Eyes Only” information may be
9 disclosed to those persons.

10 a. Any software or source code to be disclosed in discovery shall be made available
11 for inspection, in a format allowing it to be reasonably reviewed and searched,
12 during normal business hours or at other mutually agreeable times, at an office of
13 the Producing Party’s counsel or another mutually agreed upon location. The
14 software or source code shall be made available for inspection on a secured
15 computer in a secured room without Internet access or network access to other
16 computers, and the Receiving Party shall not copy, remove, or otherwise transfer
17 any portion of the software or source code onto any recordable media or
18 recordable device. The Producing Party may visually monitor the activities of the
19 Receiving Party’s representatives during any software or source code review, but
20 only to ensure that there is no unauthorized recording, copying, or transmission of
21 the software or source code.

22 b. The Receiving Party may request paper copies of limited portions of software or
23 source code that are reasonably necessary for the preparation of court filings,
24 pleadings, expert reports, or other papers, or for deposition or trial, but shall not
25 request paper copies for the purposes of reviewing the software or source code
26 other than electronically as set forth in Paragraph 8(a) in the first instance. The
27 Producing Party shall provide all such software or source code in paper form
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1 including bates numbers and the label “Highly Confidential Software.” The
2 Producing Party may challenge the amount of software or source code requested in
3 hard copy. If the Producing Party makes such a challenge, it shall not be required
4 to produce the disputed hard copies until the Court resolves the dispute.

5 c. The Receiving Party shall maintain a log indicating the names of any individual
6 who has inspected any portion of the software or source code in electronic or paper
7 form, the dates and times of inspection, and the names of any individuals to whom
8 paper copies of portions of software or source code were provided.—The Receiving
9 Party shall maintain all paper copies of any printed portions of the software or
10 source code in a secured, locked area. The Receiving Party shall not create any
11 electronic or other images of the paper copies and shall not convert any of the
12 information contained in the paper copies into any electronic format. The
13 Receiving Party shall only make additional paper copies if such additional copies
14 are (1) necessary to prepare court filings, pleadings, or other papers (including a
15 testifying expert’s expert report), provided that the Receiving Party provides notice
16 to the Producing Party before including “Highly Confidential Software”
17 information in a court filing, pleading, or expert report, (2) necessary for
18 deposition, or (3) otherwise necessary for the preparation of its case. Any paper
19 copies used during a deposition shall be retrieved by the Producing Party at the
20 end of each day and must not be given to or left with a court reporter or any other
21 individual.

22 9. Experts and Consultants. Prior to disclosing any “Highly Confidential Materials—
23 Attorneys’ Eyes Only” or “Highly Confidential Software” Discovery Materials to any person
24 under Paragraph 6(c), the Party seeking to disclose such information shall provide the designating
25 party or parties written notice that includes (i) the name of the outside expert or expert consultant,
26 (ii) an up-to-date curriculum vitae of the outside expert or expert consultant; (iii) the present
27 employer and title of the outside expert or expert consultant; (iv) an identification of all of the
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1 outside expert's or expert consultant's past and current employment and consulting relationships,
2 including direct relationships and relationships through entities owned or controlled by the
3 outside expert or expert consultant, including but not limited to an identification of any individual
4 or entity with or for whom the person is employed; and (v) a list of the cases in which the outside
5 expert or expert consultant has testified at deposition or trial within the last five years.

6 Within five days of receipt of the disclosure of the outside expert or expert consultant, the
7 designating party or parties may object by electronic mail to the outside expert for good cause. In
8 the absence of an objection at the end of the five-day period, the outside expert or expert
9 consultant shall be deemed approved under this Protective Order. There shall be no disclosure of
10 "Highly Confidential Materials—Attorneys' Eyes Only" or "Highly Confidential Software,"
11 Discovery Materials to the outside expert or expert consultant prior to expiration of this five-day
12 period. If the designating party objects to disclosure to the outside expert or expert consultant
13 within such five-day period, the Parties shall meet and confer via telephone or in person within
14 five days following the objection and attempt in good faith to resolve the dispute on an informal
15 basis. If the dispute is not resolved, the Party objecting to the disclosure will have five days from
16 the date of the meet and confer to seek relief from the Court. If relief is not sought from the
17 Court within that time, the objection shall be deemed withdrawn. If relief is sought, designated
18 materials shall not be disclosed to the person in question until the Court resolves the objection.

19 For purposes of this section, "good cause" shall include an objectively reasonable concern
20 that the outside expert or expert consultant will, intentionally or inadvertently, use or disclose
21 "Highly Confidential Materials—Attorneys' Eyes Only" or "Highly Confidential Software"
22 materials in a way or ways that are inconsistent with the provisions contained in this Protective
23 Order.

- 24 a. An initial failure to object to a Person under this section shall not preclude a Party
25 from later objecting to continued access by that Person for good cause. If an
26 objection is made, the Parties shall meet and confer via telephone or in person
27 within five days following the objection and attempt in good faith to resolve the
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1 dispute on an informal basis. If the dispute is not resolved, the Party objecting to
2 the disclosure will have five days from the date of the meet and confer to seek
3 relief from the Court. The designated person may continue to have access to
4 information that was provided to that person prior to the date of the objection but
5 no additional “Highly Confidential Materials—Attorneys’ Eyes Only” or “Highly
6 Confidential Software” materials shall be disclosed to that person until the Court
7 resolves the matter or the objecting party withdraws its objection. Notwithstanding
8 the foregoing, if the objecting party fails to move for a protective order within five
9 days after the meet and confer, the objection shall be deemed withdrawn.

10 10. Filings with the Court:

- 11 a. Discovery Motions. Any party that files or otherwise submits to the Court any
12 “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,” or
13 “Highly Confidential Software” material that is subject to this Protective Order, or
14 includes any portion of such material in any pleading, motion, exhibit or other
15 paper filed or submitted to the Court, in connection with a Discovery Motion, must
16 file all such documents in sealed envelopes or other appropriate sealed containers.
17 On the outside of the envelopes or other containers, a copy of the first page of the
18 documents shall be attached. If Confidential Material is included in the first page
19 attached to the outside of the envelopes or other containers, it may be deleted from
20 the outside copy. The words “CONFIDENTIAL,” “HIGHLY
21 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “HIGHLY
22 CONFIDENTIAL SOFTWARE” shall be stamped on the envelopes or other
23 containers and a statement substantially similar to the following shall also be
24 clearly printed on the envelopes or other containers:

25 “This envelope [or other container] is sealed pursuant to Order of the
26 Court, contains Confidential Information, and is not to be opened or the
27 contents revealed, except by Order of the Court or agreement by the
28 parties. The contents of this envelope [or other container] are being

1 submitted in connection with a Discovery Motion or for a purpose other
2 than the adjudication of a material controversy or use at trial and, therefore,
3 are not subject to the California Sealed Records Rules, California Rule of
4 Court 2.550, *et seq.*”

5 The foregoing statement will provide a sufficient basis for filing the materials
6 under seal in the manner described above, with no need for further briefing or
7 motion practice. Any party objecting to maintaining any such materials under seal
8 shall present its arguments pursuant to duly noticed motion with the Court.

- 9 b. For purposes of this Protective Order, a “Discovery Motion” is a motion, along
10 with responsive briefing and supporting materials, directed at resolving a dispute
11 concerning a party’s rights or access to discovery in the prosecution and/or defense
12 of the claims in this Action, and includes, but is not limited to, any motion or
13 proceeding relating to a party’s right to access information in the custody or
14 control of another person or entity, to take any person’s or entity’s deposition, to
15 compel any person’s or entity’s admission or denial of an alleged fact or
16 contention, to compel the testimony of any person or entity, to compel the
17 disclosure of any document or communication, or to use any other tool or method
18 of discovery allowed. A “Discovery Motion” excludes any motion that seeks
19 adjudication or resolution of any claim or defense or any portion thereof, or any
20 factual or legal issue; or seeks any substantive procedural change.

- 21 11. All Other Filings. With respect to all filings not categorized as “Discovery Motions” as
22 defined in Paragraph 10(b) above, any party that files or intends to file “Confidential,” “Highly
23 Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential Software” Discovery
24 Material with the Court, regardless of whether that party intends to request the Court to have
25 material sealed, must comply with the requirements of California Rule of Court 2.551(b)(3) and:
26 (i) lodge the unredacted material subject to this Protective Order and any pleadings,
27 memorandums, declarations, and other documents that disclose the contents of such material, in
28 the manner stated in California Rule of Court 2.551(d); (ii) file copies of the documents under (i)

1 that are redacted so that they do not disclose the contents of the material subject to this Protective
2 Order; and (iii) give written notice to the Producing Party that the records and other documents
3 lodged under (i) will be placed in the public court file unless that party files a timely motion or
4 application to seal the records pursuant to California Rule of Court 2.551(b)(1)-(2).

5 If the Producing Party was served with written notice as provided above and fails to file a
6 motion or an application to seal the records within 10 days or to obtain a Court order extending
7 the time to file such a motion or an application, the Court clerk will promptly remove all the
8 documents lodged conditionally under seal pursuant to (i) above (California Rule of Court
9 2.551(b)(3)(A)(i),(d)) from the envelope or container where they were located and place them in
10 the public file. If the Producing Party does file a motion or an application to seal within 10 days
11 or such later time as the Court has ordered, the records and other documents are to remain
12 “lodged” conditionally under seal until the Court rules on the motion or application and thereafter
13 are to be filed as ordered by the Court. The parties agree that prior to trial in this Action, they
14 will work together in good faith to propose, for the Court’s consideration and approval,
15 mechanism(s) providing an opportunity for the reasonable advance notice and orderly resolution
16 of any disputed over the confidentiality of materials in advance of their use at trial.

17 12. No Admission or Prejudice. Producing or receiving “Confidential,” “Highly Confidential
18 Materials—Attorneys’ Eyes Only,” or “Highly Confidential Software” Discovery Material
19 under, or otherwise acting in accordance with the terms of this Protective Order, or failing to
20 object thereto, shall not:

- 21 a. Operate as an admission by any party that any particular information does or does
22 not comprise or reflect trade secrets, proprietary or commercially sensitive
23 information or any other type of confidential information;
- 24 b. Operate as an admission by any party that the restrictions and procedures set forth
25 herein constitute adequate protection for any particular information deemed by and
26 party to be “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes
27 Only,” or “Highly Confidential Software” information;

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- c. Prejudice or waive in any way the rights of the parties to object to the production of documents they consider not subject to discovery for any reason;
- d. Prejudice or waive in any way the rights of any party to object to the authenticity or admissibility into evidence of any documents, testimony or other evidence subject to this Protective Order;
- e. Prejudice or waive in any way the rights of a party of seek determination by the Court whether any Discovery Material should or should not be subject to the terms of this Protective Order;
- f. Prejudice or waive in any way the rights of a party to petition the Court for a further protective order relating to any purportedly confidential information;
- g. Prejudice or waive in any way any claim, cross-claim or defense in this Action;
- h. Prevent the parties to this Protective Order from agreeing in writing or on the record during a deposition or hearing in this Action to alter or waive the provisions or protections provided for herein with respect to any particular Discovery Material;
- i. Operate as a consent to any discovery; or
- j. Prejudice or waive in any way the rights of any party to contest, under Paragraph 18 of this Order, to the other party’s designation of any material as “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential Software.”

13. Materials Which Are “Exempt”. This Protective Order has no effect upon, and shall not apply to, a Producing Party’s use or disclosure of its own “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential Software” Discovery Material for any purpose. Nothing contained herein shall impose any restrictions on the use or disclosure by a Receiving Party of documents, materials or information designated as “Confidential” or “Highly Confidential Materials—Attorneys’ Eyes Only” obtained lawfully by such party independently of any proceeding in this Action, or which:

- 1 a. Was already known or obtained by such Receiving Party by lawful means prior to
2 acquisition from, or disclosure by, another party in this Action;
- 3 b. Is or becomes publically known through no fault or act of the Receiving Party; or
- 4 c. Is rightfully obtained by the Receiving Party from a third party which has authority
5 to provide such “Confidential” or “Highly Confidential Materials—Attorneys’
6 Eyes Only” information to the Receiving Party without restriction as to disclosure
7 by the Receiving Party.

8 14. Joinder of Parties. In the event additional parties join or are joined in this Action, each
9 additional party shall not have access to “Confidential,” “Highly Confidential Materials—
10 Attorneys’ Eyes Only,” or “Highly Confidential Software” Discovery Material until the newly-
11 joined party or its counsel has executed and, at the request of any party, filed with the Court its
12 agreement to be fully bound by this Protective Order or an alternative protective order which is
13 satisfactory to all parties and the Court.

14 15. Applicability to Third Parties. The terms of this Protective Order shall apply to any third
15 party that produces Discovery Material that is designated by such third party as “Confidential,”
16 “Highly Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential Software.”
17 Nothing in this Paragraph permits a party to designate as “Confidential,” “Highly Confidential
18 Materials—Attorneys’ Eyes Only,” or “Highly Confidential Software” any Discovery Materials
19 produced in this litigation by a third party which that third party did not itself designate as
20 “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential
21 Software” unless the third party has “Confidential,” “Highly Confidential Materials—Attorneys’
22 Eyes Only,” or “Highly Confidential Software” information of a party and it is demonstrated that
23 the third party is legally obligated to maintain the materials as confidential. If the parties dispute
24 whether a third party is legally obligated to maintain the materials as confidential, the materials in
25 question shall be deemed “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes
26 Only,” or “Highly Confidential Software” as designated by the party seeking confidentiality
27 protections, until the Court resolves the dispute.

1 16. Governance of Action; Modification. The provisions of this Protective Order shall govern
2 discovery and all proceedings in this Action and any appeals therefrom. Each of the parties
3 hereto is entitled to seek modification of this Protective Order by application to the Court on
4 notice to the other parties thereto for good cause.

5 17. Termination. The provisions of this Protective Order shall, absent written permission
6 from the Producing Party or further order of the Court, continue to be binding throughout and
7 after the conclusion of this Action, including, without limitation, any appeals therefrom. Within
8 60 days after receiving notice of the entry of an order, judgment or decree finally disposing of this
9 Action, including any appeals therefrom, all persons having received “Confidential,” “Highly
10 Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential Software” Discovery
11 Material shall, at the option of the Receiving Party, either destroy or return to counsel for the
12 Producing Party such information and all copies thereof (including summaries and excerpts) that
13 are maintained in hard copy form or in any readily accessible data locations and all active media.
14 Nothing in this Protective Order will require the Receiving Party to search inactive media
15 (including, but not limited to, backup tapes and/or disaster-recovery tapes or media) to destroy
16 from such sources Discovery Material covered by this Order. Counsel shall make reasonable
17 efforts to ensure that any consultants it has retained abide by this provision. Counsel for the
18 Receiving Party shall provide a certification in writing to counsel for the Producing Party that all
19 “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential
20 Software” Discovery Materials in its possession has been destroyed or returned pursuant to this
21 Paragraph, or otherwise certify to the opposing party that reasonable efforts have been taken to
22 destroy or return the records. Outside counsel of record from the Receiving Party shall be entitled
23 to retain papers submitted by any other party to the Court, deposition and trial transcripts and
24 exhibits, and attorney work product (including filings, transcripts, and attorney work product that
25 contains “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,” or “Highly
26 Confidential Software” Discovery Material), provided that such counsel, and employees of such
27 counsel, shall not disclose any such Discovery Material contained in such filings, transcripts, or
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1 attorney work product to any person or entity except pursuant to a written agreement with the
2 Producing Party. All materials returned to the parties or their counsel by the Court likewise shall
3 be disposed of in accordance with this Paragraph.

4 18. Disputing a Designation. If the Receiving Party disagrees with a “Confidential,” “Highly
5 Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential Software” designation,
6 it may notify the Producing Party in writing of such disagreement, and both parties will thereupon
7 confer in good faith as to the proper status of such Discovery Material. If the parties are unable to
8 reach agreement within 10 business days, the parties shall file a Joint Statement with the Court
9 setting forth their respective positions concerning the disputed designation or designations. Upon
10 receipt of the parties’ Joint Statement, the Court will set briefing schedules and/or schedule
11 further proceedings relating to the disputed designations as it deems appropriate. Pending
12 resolution of the disputed designations by the Court, the Receiving Party shall treat such
13 Discovery Material as required under this Protective Order. No party shall be obligated to
14 challenge the propriety of a confidential designation, and a failure to do so during or after this
15 litigation shall not preclude a subsequent attack on the propriety of such designation. The
16 provisions of this Protective Order are not intended to shift the burden of establishing
17 confidentiality.

18 19. Other Court Proceedings / Subpoena or Legal Process / Disclosure to Government
19 Agency. By entering this Order and limiting the disclosure of information in this case, the Court
20 does not intend to preclude another court from finding that information may be relevant and
21 subject to disclosure in another case. If any Receiving Party is (a) subpoenaed in another action,
22 (b) served with a legally binding demand in another action to which it is a party, (c) served with
23 any legal process by one not a party to this Action, or (d) legally obligated to disclose materials,
24 and if such subpoena or obligation would require the production of Discovery Material which was
25 produced or designated as “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes
26 Only,” or “Highly Confidential Software” by someone other than the Receiving Party, the
27 Receiving Party, upon determining that such Discovery Materials are called for, shall (i) give
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1 actual written notice, at the earliest practicable time, by hand or electronic mail transmission, of
2 such subpoena, demand or legal process, to those who produced or designated the material
3 “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,” or “Highly Confidential
4 Software” and (ii) set forth the existence of this Protective Order and request the highest form of
5 confidentiality treatment allowed for the Discovery Material produced. In the event the party that
6 produced or designated the material “Confidential,” “Highly Confidential Materials—Attorneys’
7 Eyes Only,” or “Highly Confidential Software” seeks, within ten (10) days of the actual notice
8 discussed above, to intervene in the action or proceeding in which the materials are sought for the
9 purpose of objecting to the production and, the Receiving Party shall, to the extent permissible,
10 avoid producing the materials until such objections are resolved. Nothing herein shall be
11 construed as requiring the Receiving Party of anyone else covered by this Protective Order to
12 challenge or appeal any order issued under the circumstances of this Paragraph requiring
13 production of “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,” or
14 “Highly Confidential Software” Discovery Material covered by this Protective Order, or to
15 subject itself to any penalties for noncompliance with any legal process or order, or to seek any
16 relief from this Court.

17 20. Rendering Legal Advice. Nothing herein shall bar or otherwise restrict an attorney who is
18 a qualified recipient of “Confidential,” “Highly Confidential Materials—Attorneys’ Eyes Only,”
19 or “Highly Confidential Software” Discovery Material under the terms of Paragraphs 1-3 of this
20 Protective Order from rendering advice to his or her client with respect to this Action and, in the
21 course thereof, from generally relying upon his or her examination of such Discovery Material.
22 In rendering such advice or in otherwise communicating with the client, the attorney shall not
23 disclose the specific content of any such Discovery Material of another person or party, whether
24 specifically, generally, inferentially, in summary or otherwise, where such disclosure would not
25 otherwise be permitted under the terms of this Protective Order.

26 21. Inadvertent Production. The inadvertent production of any privileged or otherwise
27 protected exempted information, as well as the inadvertent production of information without an
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1 appropriate designation of confidentiality, shall not be deemed a waiver of impairment of any
2 claim of privilege or protection, including, but not limited to, the attorney-client privilege, the
3 protection afforded to work-product materials, or the subject matter thereof or the confidential
4 nature of any such information, as to the inadvertently produced document and as to any related
5 material. The Producing Party must notify the Receiving Party promptly, in writing, upon
6 discovery that a document has been inadvertently produced. Upon receiving written notice from
7 the Producing Party that confidential information has been inadvertently produced with the
8 incorrect designation, the Receiving Party shall immediately treat the materials as if they bear the
9 corrected designation, and may dispute the corrected designation pursuant to the provisions of
10 this Protective Order. Upon receiving written notice from the Producing Party that privileged
11 and/or protected material has been inadvertently produced, all such information, and all copies
12 thereof, shall be returned to the Producing Party within five business days of receipt of such
13 notice and the Receiving Party shall not use such information for any purpose until further Order
14 of the Court. All copies of the documents in electronic format must also be returned or destroyed,
15 pursuant to the terms set forth in Paragraph 17. If the Receiving Party contests that the
16 information is privileged or protected, the Receiving Party shall give the Producing Party written
17 notice of the reason for said disagreement and shall be entitled to retain one copy of the disputed
18 document for use in resolving the dispute. The Receiving party shall, within 20 business days
19 from the initial notice by the Producing Party, move the Court for an Order compelling the
20 production of the material. If no such motion is filed, upon expiration of the 20-day period all
21 copies of the disputed document shall be returned or destroyed in accordance with this Paragraph
22 and Paragraph 17. Any analyses, memoranda or protected information shall immediately be
23 placed in sealed envelopes, and must be destroyed unless (a) the Producing Party agrees in
24 writing that the inadvertently-produced is not privileged or protected, or (b) the Court rules that
25 the inadvertently-produced information is not privileged or protected.

26 22. Adequate Location of Materials. All Discovery Materials containing “Confidential” or
27 “Highly Confidential—Attorneys’ Eyes Only” Information shall be maintained at a location and
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1 under circumstances to ensure that access is limited to those persons entitled to have access under
2 the Protective Order. All Discovery Materials containing “Highly Confidential Software” shall
3 be maintained at a location and under circumstances set forth in Paragraph 8.

4 23. Right to Seek Further Relief. Nothing in this Protective Order shall be deemed to
5 preclude any party from seeking and obtaining, on an appropriate showing, such additional
6 protection with respect to the confidentiality of documents or other Discovery Material as that
7 party may consider appropriate; nor shall any party be precluded from claiming that any matter
8 designated hereunder is not entitled to protection or is entitled to a more limited form of
9 protection than designated.

10 **IT IS SO ORDERED.**

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12 Dated: _____, 2017

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14 Judge Mary E. Arand

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EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____ [NAME],

[POSITION AND EMPLOYER], am about to receive Confidential Materials and/or Highly Confidential Materials supplied in connection with the Action, Case No. 16CV299476. I certify that I understand that the Confidential Materials and/or Highly Confidential Materials are provided to me subject to the terms and restrictions of the Protective Order filed in this Action. I have been given a copy of the Protective Order; I have read it, and I agree to be bound by its terms.

I understand that the Confidential Materials and Highly Confidential Materials, as defined in the Protective Order, including any notes or other records that may be made regarding any such materials, shall not be disclosed to anyone except as expressly permitted by the Protective Order. I will not copy or use, except solely for the purposes of this Action, any Confidential Materials or Highly Confidential Materials obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Action.

I further understand that I am to retain all copies of all Confidential Material and Highly Confidential Materials provided to me in the Action in a secure manner, and that all copies of such materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such materials will be returned to counsel who provided me with such materials.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this ___ day of ___, 20___, at _____

Date Signature

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Printed Name

City and State where sworn and signed

EXHIBIT

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,
v.
Defendant.

Case No. C

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

1. PURPOSES AND LIMITATIONS

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

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
3 items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
5 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
6 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their
8 support staff).

9 [2.4 *Optional: Designated House Counsel*: House Counsel who seek access to “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.]

11 2.5 Designating Party: a Party or Non-Party that designates information or items that it
12 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
13 – ATTORNEYS’ EYES ONLY” [*Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”*].

14 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
15 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,
16 and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

17 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
18 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
19 in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time
20 of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

21 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
22 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
23 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

24 [2.9 *Optional: “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items*:
25 extremely sensitive “Confidential Information or Items” representing computer code and associated
26 comments and revision histories, formulas, engineering specifications, or schematics that define or
27 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which
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1 to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
2 less restrictive means.]

3 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does
4 not include Outside Counsel of Record or any other outside counsel.

5 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
6 not named as a Party to this action.

7 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but
8 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
9 party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.13 Party: any party to this action, including all of its officers, directors, employees, consultants,
11 retained experts, and Outside Counsel of Record (and their support staffs).

12 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
13 this action.

14 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
15 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
16 retrieving data in any form or medium) and their employees and subcontractors.

17 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
18 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” [*Optional*: or as
19 “HIGHLY CONFIDENTIAL – SOURCE CODE.”]

20 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
21 Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material (as
24 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
25 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
27 conferred by this Stipulation and Order do not cover the following information: (a) any information that is in
28 the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after

1 its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including
2 becoming part of the public record through trial or otherwise; and (b) any information known to the
3 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
4 who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.
5 Any use of Protected Material at trial shall be governed by a separate agreement or order.

6 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

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

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

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

28 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,

1 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

2 Material that qualifies for protection under this Order must be clearly so designated before the
3 material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
6 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [*Optional*: or
8 “HIGHLY CONFIDENTIAL – SOURCE CODE”] to each page that contains protected material. If only a
9 portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly
10 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
11 each portion, the level of protection being asserted.

12 A Party or Non-Party that makes original documents or materials available for inspection need not
13 designate them for protection until after the inspecting Party has indicated which material it would like
14 copied and produced. During the inspection and before the designation, all of the material made available
15 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
16 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
17 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
18 producing the specified documents, the Producing Party must affix the appropriate legend
19 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [*Optional*: or
20 “HIGHLY CONFIDENTIAL – SOURCE CODE”]) to each page that contains Protected Material. If only a
21 portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly
22 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
23 each portion, the level of protection being asserted.

24 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
25 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all
26 protected testimony and specify the level of protection being asserted. When it is impractical to identify
27 separately each portion of testimony that is entitled to protection and it appears that substantial portions of
28 the testimony may qualify for protection, the Designating Party may invoke on the record (before the

1 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific
2 portions of the testimony as to which protection is sought and to specify the level of protection being
3 asserted. Only those portions of the testimony that are appropriately designated for protection within the 21
4 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
5 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
6 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY.”

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

13 Transcripts containing Protected Material shall have an obvious legend on the title page that the
14 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
15 line numbers as appropriate) that have been designated as Protected Material and the level of protection
16 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
17 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
18 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall
20 be treated only as actually designated.

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

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate

1 qualified information or items does not, standing alone, waive the Designating Party's right to secure
2 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
3 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
4 Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
24 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
25 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
26 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
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1 whichever is earlier.¹ Each such motion must be accompanied by a competent declaration affirming that the
2 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
3 the Designating Party to make such a motion including the required declaration within 21 days (or 14 days,
4 if applicable) shall automatically waive the confidentiality designation for each challenged designation. In
5 addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if
6 there is good cause for doing so, including a challenge to the designation of a deposition transcript or any
7 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent
8 declaration affirming that the movant has complied with the meet and confer requirements imposed by the
9 preceding paragraph.

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

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
19 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
20 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
21 persons and under the conditions described in this Order. When the litigation has been terminated, a
22 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
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27 ¹ Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the burden to move on the Challenging
28 Party after a certain number of challenges are made to avoid an abuse of the process. The burden of persuasion would remain on the
Designating Party.

1 manner² that ensures that access is limited to the persons authorized under this Order.

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

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

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

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

15 (d) the court and its personnel;

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

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

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

26 _____
27 ² It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in
28 password-protected form.

1 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [*Optional:*
2 and “HIGHLY CONFIDENTIAL – SOURCE CODE”] Information or Items. Unless otherwise ordered by
3 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
4 or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [*Optional:* or “HIGHLY
5 CONFIDENTIAL – SOURCE CODE”] only to:

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

10 [(b) *Optional as deemed appropriate in case-specific circumstances:* Designated House
11 Counsel of the Receiving Party³ (1) who has no involvement in competitive decision-making, (2) to whom
12 disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1),
14 below, have been followed];⁴

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

18 (d) the court and its personnel;

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

22
23 ³ It may be appropriate under certain circumstances to limit the number of Designated House Counsel who may access “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information under this provision.

25 ⁴ This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY
26 CONFIDENTIAL – SOURCE CODE.” It may also be appropriate under certain circumstances to limit how Designated House
27 Counsel may access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information. For example, Designated House
28 Counsel may be limited to viewing “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information only if it is filed
with the court under seal, or in the presence of Outside Counsel of Record at their offices.

⁵ *Alternative:* The parties may wish to allow disclosure of information not only to professional jury or trial consultants, but also to
mock jurors, to further trial preparation. In that situation, the parties may wish to draft a simplified, precisely tailored Undertaking
for mock jurors to sign.

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

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” [*Optional*: or “HIGHLY CONFIDENTIAL – SOURCE CODE”]
5 Information or Items to Designated House Counsel⁶ or Experts.⁷

6 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
7 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been
8 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first
9 must make a written request to the Designating Party that (1) sets forth the full name of the Designated
10 House Counsel and the city and state of his or her residence, and (2) describes the Designated House
11 Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient
12 detail to determine if House Counsel is involved, or may become involved, in any competitive decision-
13 making.⁸

14 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
15 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
16 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [*Optional*: or “HIGHLY
17 CONFIDENTIAL – SOURCE CODE”] pursuant to paragraph 7.3(c) first must make a written request to the
18 Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” [*Optional*: or “HIGHLY CONFIDENTIAL – SOURCE CODE”]
20 information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name
21 of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s

22 _____
23 ⁶ *Alternative*: The parties may exchange names of a certain number of Designated House Counsel instead of following this
24 procedure.

25 ⁷ *Alternative*: “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items may be
disclosed to an Expert without disclosure of the identity of the Expert as long as the Expert is not a current officer, director, or
employee of a competitor of a Party or anticipated to become one.

26 ⁸ It may be appropriate in certain circumstances to require any Designated House Counsel who receives “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this Order to disclose any relevant changes in job duties
or responsibilities prior to final disposition of the litigation to allow the Designating Party to evaluate any later-arising competitive
28 decision-making responsibilities.

1 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from
2 whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom
3 the expert has provided professional services, including in connection with a litigation, at any time during
4 the preceding five years,⁹ and (6) identifies (by name and number of the case, filing date, and location of
5 court) any litigation in connection with which the Expert has offered expert testimony, including through a
6 declaration, report, or testimony at a deposition or trial, during the preceding five years.¹⁰

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

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

22 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert
23 shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards

24
25 ⁹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
26 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
27 seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

28 ¹⁰ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination
of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY CONFIDENTIAL –
ATTORNEYS’ EYES ONLY” information.

1 proposed) outweighs the Receiving Party’s need to disclose the Protected Material to its Designated House
2 Counsel or Expert.

3 8. PROSECUTION BAR [Optional]

4 Absent written consent from the Producing Party, any individual who receives access to “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [Optional: or “HIGHLY CONFIDENTIAL – SOURCE
6 CODE”] information shall not be involved in the prosecution of patents or patent applications relating to
7 [insert subject matter of the invention and of highly confidential technical information to be produced],
8 including without limitation the patents asserted in this action and any patent or application claiming priority
9 to or otherwise related to the patents asserted in this action, before any foreign or domestic agency,
10 including the United States Patent and Trademark Office (“the Patent Office”).¹¹ For purposes of this
11 paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting
12 the scope or maintenance of patent claims.¹² To avoid any doubt, “prosecution” as used in this paragraph
13 does not include representing a party challenging a patent before a domestic or foreign agency (including,
14 but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution
15 Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [Optional: or
16 “HIGHLY CONFIDENTIAL – SOURCE CODE”] information is first received by the affected individual
17 and shall end two (2) years after final termination of this action.¹³

18 9. SOURCE CODE [Optional]

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

22 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”

23 _____
24 ¹¹ It may be appropriate under certain circumstances to require Outside and House Counsel who receive access to “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information to implement an “Ethical Wall.”

26 ¹² Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

27 ¹³ *Alternative:* It may be appropriate for the Prosecution Bar to apply only to individuals who receive access to another party’s
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” technical or source code information pursuant to this Order, such as
under circumstances where one or more parties is not expected to produce “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
ONLY” information that is technical in nature or “HIGHLY CONFIDENTIAL – SOURCE CODE” information,

1 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY” information [*Optional*: including the Prosecution Bar set forth in Paragraph 8], and may be
3 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
4 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated
5 House Counsel.¹⁴

6 (c) Any source code produced in discovery shall be made available for inspection, in a
7 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
8 mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon
9 location.¹⁵ The source code shall be made available for inspection on a secured computer in a secured room
10 without Internet access or network access to other computers, and the Receiving Party shall not copy,
11 remove, or otherwise transfer any portion of the source code onto any recordable media or recordable
12 device. The Producing Party may visually monitor the activities of the Receiving Party’s representatives
13 during any source code review, but only to ensure that there is no unauthorized recording, copying, or
14 transmission of the source code.¹⁶

15 (d) The Receiving Party may request paper copies of limited portions of source code
16 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers,
17 or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code
18 other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide
19 all such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL -
20 SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy
21 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the

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24 ¹⁴ It may be appropriate under certain circumstances to allow House Counsel access to derivative materials including “HIGHLY
CONFIDENTIAL - SOURCE CODE” information, such as exhibits to motions or expert reports,

25 ¹⁵ *Alternative*: Any source code produced in discovery shall be made available for inspection in a format through which it could be
26 reasonably reviewed and searched during normal business hours or other mutually agreeable times at a location that is reasonably
convenient for the Receiving Party and any experts to whom the source code may be disclosed. This alternative may be appropriate
if the Producing Party and/or its counsel are located in a different jurisdiction than counsel and/or experts for the Receiving Party.

27 ¹⁶ It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log indicating the names of any
28 individuals inspecting the source code and dates and times of inspection, and the names of any individuals to whom paper copies of
portions of source code are provided.

1 Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes
2 of dispute resolution.

3 (e) The Receiving Party shall maintain a record of any individual who has inspected
4 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
5 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not
6 create any electronic or other images of the paper copies and shall not convert any of the information
7 contained in the paper copies into any electronic format. The Receiving Party shall only make additional
8 paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers
9 (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for
10 the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing
11 Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized
12 individual.¹⁷

13 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
14 LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation that compels
16 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [*Optional*: or “HIGHLY CONFIDENTIAL – SOURCE
18 CODE”] that Party must:

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

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

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
25

26 ¹⁷ The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For example, it may
27 be appropriate under certain circumstances to require the Receiving Party to provide notice to the Producing Party before including
28 “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.

1 Designating Party whose Protected Material may be affected.¹⁸

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

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

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

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

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

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

26 ¹⁸ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the
27 Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or
28 order issued.

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

2 (c) If the Non-Party fails to object or seek a protective order from this court within 14
3 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-
4 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
5 protective order, the Receiving Party shall not produce any information in its possession or control that is
6 subject to the confidentiality agreement with the Non-Party before a determination by the court.¹⁹ Absent a
7 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
8 court of its Protected Material.

9 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
18 MATERIAL

19 When a Producing Party gives notice to Receiving Parties that certain inadvertently
20 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving
21 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).²⁰ This provision is not intended to
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25 ¹⁹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford
the Non-Party an opportunity to protect its confidentiality interests in this court.

26 ²⁰ *Alternative:* The parties may agree that the recipient of an inadvertent production may not "sequester" or in any way use the
27 document(s) pending resolution of a challenge to the claim of privilege or other protection to the extent it would be otherwise
28 allowed by Federal Rule of Civil Procedure 26(b)(5)(B) as amended in 2006. This could include a restriction against "presenting"
the document(s) to the court to challenge the privilege claim as may otherwise be allowed under Rule 26(b)(5)(B) subject to ethical
obligations.

1 modify whatever procedure may be established in an e-discovery order that provides for production without
2 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
3 agreement on the effect of disclosure of a communication or information covered by the attorney-client
4 privilege or work product protection, the parties may incorporate their agreement in the stipulated protective
5 order submitted to the court.

6 14. MISCELLANEOUS

7 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
8 modification by the court in the future.

9 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
10 Party waives any right it otherwise would have to object to disclosing or producing any information or item
11 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
12 object on any ground to use in evidence of any of the material covered by this Protective Order.

13 [14.3 *Optional*: Export Control. Disclosure of Protected Material shall be subject to all applicable
14 laws and regulations relating to the export of technical data contained in such Protected Material, including
15 the release of such technical data to foreign persons or nationals in the United States or elsewhere. The
16 Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving
17 Party shall take measures necessary to ensure compliance.]

18 14.4 Filing Protected Material. Without written permission from the Designating Party or a court
19 order secured after appropriate notice to all interested persons, a Party may not file in the public record in
20 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply
21 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
22 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
23 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,
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26 An alternate provision could state: "If information is produced in discovery that is subject to a claim of privilege or of protection as
27 trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis
28 for it. After being notified, a party must promptly return or destroy the specified information and any copies it has and may not
sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to
the court for a determination of the claim."

1 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request
2 to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
3 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
4 unless otherwise instructed by the court.

5 15. FINAL DISPOSITION

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

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21 DATED: _____
22 Attorneys for Plaintiff

23 DATED: _____
24 Attorneys for Defendant

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 DATED: _____
27 [Name of Judge]
28 United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern District
6 of California on [date] in the case of _____ [**insert formal name of the case and the number and**
7 **initials assigned to it by the court**]. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
10 manner any information or item that is subject to this Stipulated Protective Order to any person or entity
11 except in strict compliance with the provisions of this Order.

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

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

24 Signature: _____
25 [signature]

26
27
28

EXHIBIT

3

1 [Attorney Names]
2 [Attorneys' Business Address]

3
4
5
6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF LOS ANGELES**

8
9 [Plaintiff's Name],

10 Plaintiff,

11 vs.

12 [Defendant's Name],

13 Defendant

Case No.: [Number]

14
15
16
17 **STIPULATION AND PROTECTIVE**
18 **ORDER – CONFIDENTIAL AND**
19 **HIGHLY CONFIDENTIAL**
20 **DESIGNATIONS¹**

21 **IT IS HEREBY STIPULATED** by and between the parties to Plaintiffs v. Defendants,
22 (*list names of Plaintiffs and Defendants*) (“Parties”), by and through their respective counsel of
23 record, that in order to facilitate the exchange of information and documents which may be
24 subject to confidentiality limitations on disclosure due to federal laws, state laws, and privacy
25 rights, the Parties stipulate as follows:

26 ¹ INFORMATION RE: STIPULATION AND
27 PROTECTIVE ORDER – CONFIDENTIAL AND HIGHLY CONFIDENTIAL DESIGNATIONS

28 Where the Parties wish to have a confidentiality stipulation and protective order the parties in all civil cases, other than products liability cases, are encouraged to use this Stipulated Confidentiality Order Form as an initial working draft to save time.

Where this Stipulated Confidentiality Order Form is used, then any proposed stipulated confidentiality order submitted to the Court MUST be accompanied by a “redlined” or “compare” version of this Form, so that the Court may readily see ALL MODIFICATIONS that were made to this Form. This procedure is intended to save you and the Court time, and promote faster processing of these proposed orders.

This model form confidentiality stipulation and protective order (the “Stipulated Confidentiality Order Form”) does not address, and may not be used in, products liability cases.

1 1. In this Stipulation and Protective Order, the words set forth below shall have the
2 following meanings:

3 a. “Proceeding” means the above-entitled proceeding (*specify case number*).

4 b. “Court” means the Hon. (*list name of judge*), or any other judge to which
5 this Proceeding may be assigned, including Court staff participating in such proceedings.

6 c. “Confidential” means any Documents, Testimony, or Information which
7 is in the possession of a Designating Party who believes in good faith that such Documents,
8 Testimony, or Information is entitled to confidential treatment under applicable law.

9 d. “Confidential Materials” means any Documents, Testimony, or
10 Information as defined below designated as “Confidential” pursuant to the provisions of this
11 Stipulation and Protective Order.

12 e. [This provision is only to be used when a legitimate basis, tailored to the
13 case, has been explained.] “Highly Confidential” means any information which belongs to a
14 Designating Party who believes in good faith that the Disclosure of such information to another
15 Party or non-Party would create a substantial risk of serious financial or other injury that cannot
16 be avoided by less restrictive means.

17 f. “Highly Confidential Materials” means any Documents, Testimony, or
18 Information, as defined below, designated as “Highly Confidential” pursuant to the provisions
19 of this Stipulation and Protective Order.

20 g. “Designating Party” means the Party that designates Documents,
21 Testimony, or Information, as defined below, as “Confidential” or “Highly Confidential.”

22 h. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give,
23 or make available Materials, or any part thereof, or any information contained therein.

24 i. “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as
25 those terms are defined by California Evidence Code Sections 250, 255, and 260, which have
26 been produced in discovery in this Proceeding by any person or entity, and (ii) any copies,
27
28

1 reproductions, or summaries of all or any part of the foregoing.

2 j. "Information" means the content of Documents or Testimony.

3 k. "Testimony" means all depositions, declarations, or other testimony taken
4 or used in this Proceeding.

5 2. The Designating Party shall have the right to designate as "Highly Confidential"
6 only the non-public Documents, Testimony, or Information that the Designating Party in good
7 faith believes would create a substantial risk of serious financial or other injury, if Disclosed to
8 another Party or non-Party, and that such risk cannot be avoided by less restrictive means.

9 3. The entry of this Stipulation and Protective Order does not alter, waive, modify,
10 or abridge any right, privilege, or protection otherwise available to any Party with respect to the
11 discovery of matters, including but not limited to any Party's right to assert the attorney-client
12 privilege, the attorney work product doctrine, or other privileges, or any Party's right to contest
13 any such assertion.

14 4. Any Documents, Testimony, or Information to be designated as "Confidential"
15 or "Highly Confidential" must be clearly so designated before the Document, Testimony, or
16 Information is Disclosed or produced. The parties may agree that a case name and number are to
17 be part of the "Highly Confidential" designation. The "Confidential" or "Highly Confidential"
18 designation should not obscure or interfere with the legibility of the designated Information.

19 a. For Documents (apart from transcripts of depositions or other pretrial or
20 trial proceedings), the Designating Party must affix the legend "Confidential" or "Highly
21 Confidential" on each page of any Document containing such designated material.

22 b. For Testimony given in depositions the Designating Party may either:

23 i. identify on the record, before the close of the deposition, all
24 "Confidential" or "Highly Confidential" Testimony, by specifying all portions of the Testimony
25 that qualify as "Confidential" or "Highly Confidential;" or

26 ii. designate the entirety of the Testimony at the deposition as
27
28

1 “Confidential” or “Highly Confidential” (before the deposition is concluded) with the right to
2 identify more specific portions of the Testimony as to which protection is sought within 30 days
3 following receipt of the deposition transcript. In circumstances where portions of the deposition
4 Testimony are designated for protection, the transcript pages containing “Confidential” or
5 “Highly Confidential” Information may be separately bound by the court reporter, who must
6 affix to the top of each page the legend “Confidential” or “Highly Confidential,” as instructed
7 by the Designating Party.
8

9 c. For Information produced in some form other than Documents, and for
10 any other tangible items, including, without limitation, compact discs or DVDs, the Designating
11 Party must affix in a prominent place on the exterior of the container or containers in which the
12 Information or item is stored the legend “Confidential” or “Highly Confidential.” If only
13 portions of the Information or item warrant protection, the Designating Party, to the extent
14 practicable, shall identify the “Confidential” or “Highly Confidential” portions.

15 5. The inadvertent production by any of the undersigned Parties or non-Parties to
16 the Proceedings of any Document, Testimony, or Information during discovery in this
17 Proceeding without a “Confidential” or “Highly Confidential” designation, shall be without
18 prejudice to any claim that such item is “Confidential” or “Highly Confidential” and such Party
19 shall not be held to have waived any rights by such inadvertent production. In the event that any
20 Document, Testimony, or Information that is subject to a “Confidential” or “Highly
21 Confidential” designation is inadvertently produced without such designation, the Party that
22 inadvertently produced the document shall give written notice of such inadvertent production
23 within twenty (20) days of discovery of the inadvertent production, together with a further copy
24 of the subject Document, Testimony, or Information designated as “Confidential” or “Highly
25 Confidential” (the “Inadvertent Production Notice”). Upon receipt of such Inadvertent
26 Production Notice, the Party that received the inadvertently produced Document, Testimony, or
27 Information shall promptly destroy the inadvertently produced Document, Testimony, or
28

1 Information and all copies thereof, or, at the expense of the producing Party, return such
2 together with all copies of such Document, Testimony or Information to counsel for the
3 producing Party and shall retain only the “Confidential” or “Highly Confidential” materials.
4 Should the receiving Party choose to destroy such inadvertently produced Document,
5 Testimony, or Information, the receiving Party shall notify the producing Party in writing of
6 such destruction within ten (10) days of receipt of written notice of the inadvertent production.
7 This provision is not intended to apply to any inadvertent production of any Document,
8 Testimony, or Information protected by attorney-client or work product privileges. In the event
9 that this provision conflicts with any applicable law regarding waiver of confidentiality through
10 the inadvertent production of Documents, Testimony or Information, such law shall govern.
11

12 6. In the event that counsel for a Party receiving Documents, Testimony or
13 Information in discovery designated as “Confidential” or “Highly Confidential” objects to such
14 designation with respect to any or all of such items, said counsel shall advise counsel for the
15 Designating Party, in writing, of such objections, the specific Documents, Testimony or
16 Information to which each objection pertains, and the specific reasons and support for such
17 objections (the “Designation Objections”). Counsel for the Designating Party shall have thirty
18 (30) days from receipt of the written Designation Objections to either (a) agree in writing to de-
19 designate Documents, Testimony, or Information pursuant to any or all of the Designation
20 Objections and/or (b) file a motion with the Court seeking to uphold any or all designations on
21 Documents, Testimony, or Information addressed by the Designation Objections (the
22 “Designation Motion”). Pending a resolution of the Designation Motion by the Court, any and
23 all existing designations on the Documents, Testimony, or Information at issue in such Motion
24 shall remain in place. The Designating Party shall have the burden on any Designation Motion
25 of establishing the applicability of its “Confidential” or “Highly Confidential” designation. In
26 the event that the Designation Objections are neither timely agreed to nor timely addressed in
27
28

1 the Designation Motion, then such Documents, Testimony, or Information shall be de-
2 designated in accordance with the Designation Objection applicable to such material.

3
4 7. Access to and/or Disclosure of Confidential Materials shall be permitted only to
5 the following persons or entities:

6 a. the Court;

7 b. (1) Attorneys of record in the Proceeding and their affiliated attorneys,
8 paralegals, clerical and secretarial staff employed by such attorneys who are actively involved
9 in the Proceeding and are not employees of any Party; (2) In-house counsel to the undersigned
10 Parties and the paralegal, clerical and secretarial staff employed by such counsel. Provided,
11 however, that each non-lawyer given access to Confidential Materials shall be advised that such
12 materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and
13 Protective Order and that they may not be Disclosed other than pursuant to its terms;

14 c. those officers, directors, partners, members, employees and agents of all
15 non-designating Parties that counsel for such Parties deems necessary to aid counsel in the
16 prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of
17 Confidential Materials to any such officer, director, partner, member, employee or agent,
18 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and
19 Protective Order to such person, shall explain that such person is bound to follow the terms of
20 such Order, and shall secure the signature of such person on a statement in the form attached
21 hereto as Exhibit A;

22 d. court reporters in this Proceeding (whether at depositions, hearings, or
23 any other proceeding);

24 e. any deposition, trial, or hearing witness in the Proceeding who previously
25 has had access to the Confidential Materials, or who is currently or was previously an officer,
26 director, partner, member, employee or agent of an entity that has had access to the Confidential
27 Materials;
28

1 f. any deposition or non-trial hearing witness in the Proceeding who
2 previously did not have access to the Confidential Materials; provided, however, that each such
3 witness given access to Confidential Materials shall be advised that such materials are being
4 Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and
5 that they may not be Disclosed other than pursuant to its terms;
6

7 g. mock jury participants, provided, however, that prior to the Disclosure of
8 Confidential Materials to any such mock jury participant, counsel for the Party making the
9 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall
10 explain that such person is bound to follow the terms of such Order, and shall secure the
11 signature of such person on a statement in the form attached hereto as Exhibit A.

12 h. outside experts or expert consultants consulted by the undersigned Parties
13 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral
14 hearing; provided, however, that prior to the Disclosure of Confidential Materials to any such
15 expert or expert consultant, counsel for the Party making the Disclosure shall deliver a copy of
16 this Stipulation and Protective Order to such person, shall explain its terms to such person, and
17 shall secure the signature of such person on a statement in the form attached hereto as Exhibit
18 A. It shall be the obligation of counsel, upon learning of any breach or threatened breach of this
19 Stipulation and Protective Order by any such expert or expert consultant, to promptly notify
20 counsel for the Designating Party of such breach or threatened breach; and
21

22 i. any other person or entity that the Designating Party agrees to in
23 writing.

24 8. Access to and/or Disclosure of Highly Confidential Materials shall be permitted
25 only to the following persons or entities:

26 a. Trial Counsel for the Parties, their partners and associates, and staff and
27 supporting personnel of such attorneys, such as paralegal assistants, secretarial, stenographic
28 and clerical employees and contractors, and outside copying services, who are working on this

1 Proceeding (or any further proceedings herein) under the direction of such attorneys and to
2 whom it is necessary that the Highly Confidential Materials be Disclosed for purposes of this
3 Proceeding. Such employees, assistants, contractors and agents to whom such access is
4 permitted and/or Disclosure is made shall, prior to such access or Disclosure, be advised of, and
5 become subject to, the provisions of this Protective Order. "Trial Counsel," for purposes of this
6 Paragraph, shall mean outside retained counsel and shall not include in-house counsel to the
7 undersigned Parties and the paralegal, clerical and secretarial staff employed by such in-house
8 counsel;
9

10 b. outside experts or expert consultants consulted by the undersigned Parties
11 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral
12 hearing; provided, however, that prior to the Disclosure of Highly Confidential Materials to any
13 such expert or expert consultant, counsel for the Party making the Disclosure shall deliver a
14 copy of this Stipulation and Protective Order to such person, shall explain its terms to such
15 person, and shall secure the signature of such person on a statement in the form attached hereto
16 as Exhibit A prior to the Disclosure of Highly Confidential Materials. It shall be the obligation
17 of Trial Counsel, upon learning of any breach or threatened breach of this Stipulation and
18 Protective Order by any such expert or expert consultant, to promptly notify Trial Counsel for
19 the Designating Party of such breach or threatened breach;
20

21 c. any person who authored, received, saw or was otherwise familiar with
22 Documents, Testimony, or Information or thing designated "Highly Confidential," including
23 any person otherwise familiar with the Highly Confidential Information contained therein, but
24 only to the extent of that person's prior familiarity with the Highly Confidential Information;

25 d. court reporters in this Proceeding (whether at depositions, hearings, or
26 any other proceeding); and

27 e. the Court.

28 9. Confidential Materials and Highly Confidential Materials shall be used by the

1 persons or entities receiving them only for the purposes of preparing for, conducting,
2 participating in the conduct of, and/or prosecuting and/or defending the Proceeding, and not for
3 any business or other purpose whatsoever.

4
5 10. Any Party to the Proceeding (or other person subject to the terms of this
6 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other Parties
7 to the Proceeding, to modify or grant relief from any provision of this Stipulation and Protective
8 Order.

9 11. Entering into, agreeing to, and/or complying with the terms of this Stipulation
10 and Protective Order shall not:

11 a. operate as an admission by any person that any particular Document,
12 Testimony, or Information marked “Confidential” or “Highly Confidential” contains or reflects
13 trade secrets, proprietary, confidential or competitively sensitive business, commercial,
14 financial or personal information; or

15 b. prejudice in any way the right of any Party (or any other person subject to
16 the terms of this Stipulation and Protective Order):

17 i. to seek a determination by the Court of whether any particular
18 Confidential Materials or Highly Confidential Materials should be subject to protection under
19 the terms of this Stipulation and Protective Order; or

20 ii. to seek relief from the Court on appropriate notice to all other
21 Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order, either
22 generally or as to any particular Document, Material or Information.

23
24 12. Any Party to the Proceeding who has not executed this Stipulation and Protective
25 Order as of the time it is presented to the Court for signature may thereafter become a Party to
26 this Stipulation and Protective Order by its counsel’s signing and dating a copy thereof and
27 filing the same with the Court, and serving copies of such signed and dated copy upon the other
28 Parties to this Stipulation and Protective Order.

1 13. Any Information that may be produced by a non-Party witness in discovery in
2 the Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as
3 “Confidential” or “Highly Confidential” under the terms of this Stipulation and Protective
4 Order, and any such designation by a non-Party shall have the same force and effect, and create
5 the same duties and obligations, as if made by one of the undersigned Parties hereto. Any such
6 designation shall also function as consent by such producing non-Party to the authority of the
7 Court in the Proceeding to resolve and conclusively determine any motion or other application
8 made by any person or Party with respect to such designation, or any other matter otherwise
9 arising under this Stipulation and Protective Order.
10

11 14. If any person subject to this Stipulation and Protective Order who has custody of
12 any Confidential Materials or Highly Confidential Materials receives a subpoena or other
13 process (“Subpoena”) from any government or other person or entity demanding production of
14 such materials, the recipient of the Subpoena shall promptly give notice of the same by
15 electronic mail transmission, followed by either express mail or overnight delivery to counsel of
16 record for the Designating Party, and shall furnish such counsel with a copy of the Subpoena.
17 Upon receipt of this notice, the Designating Party may, in its sole discretion and at its own cost,
18 move to quash or limit the Subpoena, otherwise oppose production of the Confidential Materials
19 or Highly Confidential Materials, and/or seek to obtain confidential treatment of such materials
20 from the subpoenaing person or entity to the fullest extent available under law. The recipient of
21 the Subpoena may not produce any Confidential Materials or Highly Confidential Materials
22 pursuant to the Subpoena prior to the date specified for production on the Subpoena.
23

24 15. Nothing in this Stipulation and Protective Order shall be construed to preclude
25 either Party from asserting in good faith that certain Confidential Materials or Highly
26 Confidential Materials require additional protection. The Parties shall meet and confer to agree
27 upon the terms of such additional protection.
28

1 16. If, after execution of this Stipulation and Protective Order, any Confidential
2 Materials or Highly Confidential Materials submitted by a Designating Party under the terms of
3 this Stipulation and Protective Order is Disclosed by a non-Designating Party to any person
4 other than in the manner authorized by this Stipulation and Protective Order, the non-
5 Designating Party responsible for the Disclosure shall bring all pertinent facts relating to the
6 Disclosure of such Confidential Materials or Highly Confidential Materials to the immediate
7 attention of the Designating Party.
8

9 17. This Stipulation and Protective Order is entered into without prejudice to the
10 right of any Party to knowingly waive the applicability of this Stipulation and Protective Order
11 to any Confidential Materials or Highly Confidential Materials designated by that Party. If the
12 Designating Party uses Confidential Materials or Highly Confidential Materials in a non-
13 Confidential manner, then the Designating Party shall advise that the designation no longer
14 applies.
15

16 18. Where any Confidential Materials or Highly Confidential Materials, or
17 Information derived therefrom, is included in any motion or other proceeding governed by
18 California Rules of Court, Rules 2.550 and 2.551, the Parties and any involved non-party shall
19 follow those rules. With respect to discovery motions or other proceedings not governed by
20 California Rules of Court, Rules 2.550 and 2.551, the following shall apply: If Confidential
21 Materials, Highly Confidential Materials, or Information derived therefrom are submitted to or
22 otherwise disclosed to the Court in connection with discovery motions and proceedings, the
23 same shall be separately filed under seal with the clerk of the Court in an envelope marked:
24 “CONFIDENTIAL – FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND
25 WITHOUT ANY FURTHER SEALING ORDER REQUIRED.”
26

27 19. The Parties shall meet and confer regarding the procedures for use of any
28 Confidential Materials or Highly Confidential Materials at trial and shall move the Court for
entry of an appropriate order.

1 20. Nothing in this Stipulation and Protective Order shall affect the admissibility into
2 evidence of Confidential Materials or Highly Confidential Materials, or abridge the rights of
3 any person to seek judicial review or to pursue other appropriate judicial action with respect to
4 any ruling made by the Court concerning the issue of the status of any Confidential Materials or
5 Highly Confidential Materials.
6

7 21. This Stipulation and Protective Order shall continue to be binding after the
8 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding,
9 except that a Party may seek the written permission of the Designating Party or may move the
10 Court for relief from the provisions of this Stipulation and Protective Order. To the extent
11 permitted by law, the Court shall retain jurisdiction to enforce, modify, or reconsider this
12 Stipulation and Protective Order, even after the Proceeding is terminated.

13 22. Upon written request made within thirty (30) days after the settlement or other
14 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a)
15 promptly return to counsel for each Designating Party all Confidential Materials and Highly
16 Confidential Materials, and all copies thereof (except that counsel for each Party may maintain
17 in its files, in continuing compliance with the terms of this Stipulation and Protective Order, all
18 work product, and one copy of each pleading filed with the Court [and one copy of each
19 deposition together with the exhibits marked at the deposition)]*, (b) agree with counsel for the
20 Designating Party upon appropriate methods and certification of destruction or other disposition
21 of such materials, or (c) as to any Documents, Testimony, or other Information not addressed by
22 sub-paragraphs (a) and (b), file a motion seeking a Court order regarding proper preservation of
23 such Materials. To the extent permitted by law the Court shall retain continuing jurisdiction to
24 review and rule upon the motion referred to in sub-paragraph (c) herein. *[The bracketed
25 portion of this provision shall be subject to agreement between counsel for the Parties in each
26 case.]
27
28

1 23. After this Stipulation and Protective Order has been signed by counsel for all
2 Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the terms set
3 forth herein with regard to any Confidential Materials or Highly Confidential Materials that
4 have been produced before the Court signs this Stipulation and Protective Order.
5

6 24. The Parties and all signatories to the Certification attached hereto as Exhibit A
7 agree to be bound by this Stipulation and Protective Order pending its approval and entry by the
8 Court. In the event that the Court modifies this Stipulation and Protective Order, or in the event
9 that the Court enters a different Protective Order, the Parties agree to be bound by this
10 Stipulation and Protective Order until such time as the Court may enter such a different Order.
11 It is the Parties' intent to be bound by the terms of this Stipulation and Protective Order pending
12 its entry so as to allow for immediate production of Confidential Materials and Highly
13 Confidential Materials under the terms herein.
14

15 This Stipulation and Protective Order may be executed in counterparts.
16
17

18 Dated: _____
19

20 By: _____
Attorneys for Plaintiffs

21 Dated: _____
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23 By: _____
Attorneys for Defendants
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ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED.

Dated: _____

THE HONORABLE _____

1 **EXHIBIT A**

2
3 **CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

4
5 I hereby acknowledge that I, _____[NAME],
6 _____ [POSITION AND EMPLOYER], am
7 about to receive Confidential Materials and/or Highly Confidential Materials supplied in
8 connection with the Proceeding, **(INSERT CASE NO.)**. I certify that I understand that the
9 Confidential Materials and/or Highly Confidential Materials are provided to me subject to the
10 terms and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have
11 been given a copy of the Stipulation and Protective Order; I have read it, and I agree to be
12 bound by its terms.
13

14 I understand that the Confidential Materials and Highly Confidential Materials, as
15 defined in the Stipulation and Protective Order, including any notes or other records that may be
16 made regarding any such materials, shall not be Disclosed to anyone except as expressly
17 permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the
18 purposes of this Proceeding, any Confidential Materials or Highly Confidential Materials
19 obtained pursuant to this Stipulation and Protective Order, except as provided therein or
20 otherwise ordered by the Court in the Proceeding.
21

22 I further understand that I am to retain all copies of all Confidential Materials and
23 Highly Confidential Materials provided to me in the Proceeding in a secure manner, and that all
24 copies of such materials are to remain in my personal custody until termination of my
25 participation in this Proceeding, whereupon the copies of such materials will be returned to
26 counsel who provided me with such materials.
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this _____ day of _____, 20__, at

_____.

DATED: _____

BY: _____

Signature

Title

Address

City, State, Zip

Telephone Number

EXHIBIT

4

MODEL PROTECTIVE ORDER

[YOUR CAPTION HERE]
Attorneys for [Plaintiff / Defendant]
[Insert party name here]

[UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT
OF
or
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF _____]

[*],

Plaintiff,

vs.

[*]

Defendants.

Case No. - _____

**STIPULATED
PROTECTIVE ORDER**

All parties to the above-captioned Action having agreed that a protective order [for State Court insert: pursuant to California Civil Code Section 3426.5, and California Rules of Court 243.1, 243.2, 243.3, and 243.4; for Federal Court insert: pursuant to Federal Rule of Civil Procedure 26(c)] is both necessary and appropriate, and the [insert court name] (“Court”) having approved such an agreement [Note: Check local rules to ensure compliance.]

IT IS HEREBY ORDERED all parties to this Action are to be bound by the following Protective Order for the protection of confidential information, documents, and other things produced,

served, or otherwise provided in this Action by the parties or by third parties. *[optional as deemed appropriate in case-specific circumstances:* Neither the execution of this Stipulation nor the submission of same to the Court shall in any way be deemed a general appearance by said parties.]

A. Designated Material

1. Information, materials and/or discovery responses may be designated as being protected under this Protective Order by the person or entity producing or lodging it, or by any party to this Action, (hereinafter, the “Designating Party”) if: (a) produced or served, formally or informally, or pursuant to the [select appropriate: Code of Civil Procedure; Federal Rules of Civil Procedure] in response to any formal or informal discovery request or disclosure obligation in this Action; (b) filed or lodged with the Court; and/or (c) filed or lodged with a [for Federal Court include magistrate judge,] special master and/or discovery master or referee, and/or mediator or other alternative dispute resolution provider. All such information and material and extracts, compilations and copies and all information or material derived therefrom constitutes “Designated Material” which includes materials designated “CONFIDENTIAL” and/or “ATTORNEYS AND CONSULTANTS ONLY” under this Protective Order. Unless and until otherwise ordered by the Court upon [X] court days notice or agreed to in writing by the parties, all material designated under this Protective Order shall be used only for purposes of this Action (including any and all appeals), and shall not be used or disclosed or communicated by any person or entity receiving the Designated Material except as provided under the terms of this Protective Order. (For purposes of this Protective Order, “disclose,” “disclosed,” or “disclosure” means to show, furnish, discuss, or otherwise communicate or provide any portion of the Designated Material or its contents, whether orally or in written communication, including the original or a copy, summary or derivative of the Designated Material.)

Appendix C: Model Protective Order

2. Subject to the limitations set forth in this Protective Order, Designated Materials may be marked “CONFIDENTIAL” for the purposes of avoiding disclosure of information, [*optional*: which is broadly interpreted, including to mean [_____] [e.g., computer source code or object code]], whether or not embodied in any physical medium, the Designating Party in good faith believes is confidential or sensitive, which (a) the Designating Party would not normally reveal to third parties except in confidence, (b) the Designating Party has undertaken with others to maintain in confidence, (c) is privileged, (d) is not legally permitted to be disclosed and/or (e) is protected by the right to privacy guaranteed by the Federal Constitution or any applicable State law or Constitution.

3. Subject to the limitations set forth in this Protective Order, a designation of “ATTORNEYS AND CONSULTANTS ONLY” means information, [*optional*: which is broadly interpreted, including to mean [_____] [e.g., computer source code or object code]], whether or not embodied in any physical medium, which the Designating Party believes in good faith has significant competitive value and which, if disclosed to the requesting party, or any person or entity not bound by a written non-disclosure agreement or confidentiality agreement, or other legal obligation, would cause competitive harm to the Designating Party. Such information must not be generally known to third parties or the public and is limited to information that (a) the Designating Party would not normally reveal to third parties except in confidence, (b) the Designating Party has undertaken with others to maintain in confidence, (c) is privileged, (d) is not legally permitted to be disclosed and/or (e) is protected by the right to privacy guaranteed by the Federal Constitution or any applicable State law or Constitution.

4. Blanket designation of documents or information as “CONFIDENTIAL” or “ATTORNEYS AND CONSULTANTS ONLY,” en masse, and/or designation without regard to the specific contents of each document or piece of information, is prohibited.

B. Access to Designated Materials

1. Materials designated “CONFIDENTIAL” may be disclosed only to the following, provided, except for the Court and Court personnel, such person has first read and represents that s/he understands this protective order and has read and executed the certification attached hereto as Exhibit A, and in the case of Outside Consultants has read and executed both certifications attached hereto as Exhibits A and B.

(a) Persons who appear on the face of Designated Materials marked “CONFIDENTIAL” as an author, addressee, or recipient thereof and any Outside Counsel of such author, addressee or recipient that has become counsel of record in this Action, and has agreed to the terms of this Protective Order and to be subject to the jurisdiction of this Court for the purposes of enforcing the rights and obligations contained in, and remedies arising, from this Protective Order. *[optional as deemed appropriate in case-specific circumstances: Any such review of materials designated CONFIDENTIAL pursuant to this Protective Order must be in the presence of and under the supervision of Outside Counsel and all originals and any copies shall remain exclusively in the possession of Outside Counsel. Further, any written notes, compilations or reviews of materials designated CONFIDENTIAL made by persons falling under this subsection shall remain in the possession of Outside Counsel];*

(b) “Outside Counsel,” which are defined as counsel of record for the parties to this Action, including the partners, associates, agents and employees of counsel of record (except for agents who have been retained or employed by Outside Counsel as Outside Consultants to assist in the preparation of this Action, whose access is addressed in Section B.1.(c) below) to the extent reasonably necessary to render professional services in this Action. Unless otherwise expressly provided through stipulation or order, Outside Counsel shall include only the law firms of [law firm name] on behalf of [party] and [law firm name] on behalf of [party]. Upon the filing of a document

Appendix C: Model Protective Order

associating or substituting counsel as counsel of record for a party in this Action, such counsel shall also qualify as Outside Counsel under this subsection, provided that any counsel that has withdrawn as counsel of record for any party confirms in writing to all other counsel of record that it [*optional*: including its partners, associates, agents, and other employees] is no longer in possession of any Designated Material [*optional as deemed appropriate in case-specific circumstances*: with the exception of pleadings, attorney and consultant work product, deposition transcripts and exhibits containing Designated Material, as well as one copy of each item of Designated Material for archival purposes], and provided that the new Outside Counsel of record stipulates to be bound by the terms and obligations of this Protective Order.

(c) “Outside Consultants,” which are defined as being third party experts and consultants retained or employed by Outside Counsel or the parties to this Action to assist in the preparation of, and/or to provide testimony in the case, to the extent reasonably necessary to render professional services in this Action, and subject to the disclosure limitations and prerequisites of Section C below.

(d) The parties to this Action and their officers and directors and in-house counsel and legal department support staff [*optional*: and/or employees] of the parties to this Action, [*optional*: not to exceed [X] in number], on a reasonably necessary basis (“Party Designee”). In the event that any Party Designee ceases to be an officer [or] director [*optional, if applicable*: and/or employee] of that party, the party shall be responsible for ensuring that the Party Designee does not retain and returns any CONFIDENTIAL materials;

(e) Subject to Sections F and G below, Designated Material marked “CONFIDENTIAL” may also be shown to witnesses at deposition and/or at trial;

(f) Vendors with whom Outside Counsel of record for the parties to this Action have contracted for clerical functions, such as copying of documents or preparation of exhibits;

(g) Mock jurors and jury consultants who have been engaged by the parties and/or the Outside Consultants in preparation for and/or during trial. For any jury research, an appropriate screening process must be used to assure that the jury consultant(s) and mock jurors chosen for any mock jury presentation are not current or former officers, directors, employees or consultants of any party or any direct competitors of any party;

(h) Any special master and/or discovery master or referee, and/or mediator or other alternative dispute resolution provider chosen by the parties or the Court, along with necessary legal, paralegal, and secretarial personnel working under the direction of the mediator; and

(i) Independent interpreters, translators, videographers, and “Court Reporters,” which means stenographers that are Certified Shorthand Reporters or have a similar certification.

2. Except as authorized in this Section, materials Designated “ATTORNEYS AND CONSULTANTS ONLY” may not be disclosed to the parties to this Action, to in-house counsel, if any, or to the officers, directors, or employees of the parties hereto. Materials marked ATTORNEYS AND CONSULTANTS ONLY may only be reviewed by or disclosed to the following, provided, except for the Court and Court personnel, such person has first read and understands this protective order and has read and executed the certification attached hereto as Exhibit A, and in the case of Outside Consultants has read and executed both certifications attached hereto as Exhibits A and B:

(a) Persons who appear on the face of Designated Materials marked ATTORNEYS AND CONSULTANTS ONLY as an author, addressee, or recipient thereof, and any Outside Counsel of such author, and any Outside Counsel for any addressee or recipient that has become counsel of record in this Action. [*optional as deemed appropriate in case-specific circumstances*]: Any such review of materials designated ATTORNEYS AND CONSULTANTS ONLY pursuant to this Protective Order must be in the presence of and under

the supervision of Outside Counsel and all originals and any copies shall remain exclusively in the possession of Outside Counsel. Further, any written notes, compilations or reviews of materials designated ATTORNEYS AND CONSULTANTS ONLY made by persons falling under this subsection shall remain in the possession of Outside Counsel] [*optional as deemed appropriate in case-specific circumstances*: Notwithstanding anything to the contrary above, the identification of trade secrets alleged to have been misappropriated by a particular party may be disclosed to persons specifically accused of having had access to such Designated Materials, so long as the disclosure takes place solely in the presence of Outside Counsel, the person takes no copies and is not permitted to make notes reflecting such Designated Materials, and the material is retained solely in the possession of Outside Counsel.]

(b) Outside Counsel as defined in B.1.(b) above. [*optional as deemed appropriate in case-specific circumstances*: in-house counsel and legal department support staff of a party (1) who has no involvement in competitive decision-making [*see Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465 (9th Cir. 1992)] or in patent prosecutions involving [subject matter], and (2) to whom disclosure is reasonably necessary for this litigation.] [Additional options-as deemed appropriate in case-specific circumstances-may include restrictions on access and/or requirements concerning the handling of Designated Materials by in-house counsel.];

(c) Outside Consultants as defined in B.1.(c) above, and subject to the disclosure limitations and prerequisites of Section C below;

(d) Subject to Sections F and G below, Designated Material marked "ATTORNEYS AND CONSULTANTS ONLY" may also be shown to witnesses at deposition and/or at trial;

(e) Vendors with whom Outside Counsel of record for the parties to this Action have contracted for clerical functions, such as copying of documents or preparation of exhibits; and

(f) Mock jurors and jury consultants who have been engaged by the parties and/or the Outside Consultants in preparation for and/or during trial. For any jury research, an appropriate screening process must be used to assure that the jury consultant(s) and mock jurors chosen for any mock jury presentation are not current or former officers, directors, employees or consultants of any party or any direct competitors of any party; and any special master and/or discovery master or referee, and/or mediator or other alternative dispute resolution provider chosen by the parties or the Court, along with necessary legal, paralegal, and secretarial personnel working under the direction of the mediator.

(g) Independent interpreters, translators, videographers and Court Reporters as defined in Section B.1.(i) above.

3. Outside Counsel who makes any disclosure of Designated Materials to any Outside Consultant shall retain each original executed certificate, promptly provide a copy to counsel who has retained him/her and, upon written request, shall circulate copies to all Outside Counsel at the termination of this Action.

4. **Prosecution Bar:** Unless otherwise agreed to in writing by a Designating Party, any individual to whom any material designated by the Designating Party as “ATTORNEYS AND CONSULTANTS ONLY” is disclosed shall not participate in or be responsible for the acquisition, preparation or prosecution of any patent, patent application, or reissue application (including but not limited to continuation, continuation-in-part, or divisional patent applications), or for drafting or revising patent claims, directed to [subject matter] from the time of receipt of such Designated Material through and including [two (2)] years following the first to occur of: (i) the complete resolution of this Action through entry of a final, non-appealable judgment or an order from which any appeal has been exhausted; or

(ii) the complete settlement of all claims against all the parties in this Action, and the completion of all executory obligations thereunder.

C. Access by Outside Consultants

1. If any party wishes to disclose information or materials designated under this Protective Order to any proposed Outside Consultant, the party must first identify that individual to Outside Counsel and the Designating Party, who shall have [X] court days from receipt of such notice to object in writing to such disclosure to the proposed Outside Consultant so identified. Such identification shall at least include the full name and professional address and/or affiliation of the proposed Outside Consultant, his or her prior employment, consultancies and testimony for the previous [X] years, including identification of the law firm, case number, venue and party on whose behalf the proposed Outside Consultant was retained, a statement that the proposed Outside Consultant is neither an employee or consultant nor anticipated to become an employee or consultant, beyond the capacity as Outside Consultant as defined herein, of the party proposing the individual, and all of the proposed Outside Consultant's other present employment or consultancies in the field.

2. The parties shall attempt to resolve any objections informally, and approval by any objecting party shall not be unreasonably withheld. If the objections cannot be resolved informally, the objecting party may, within [X] court days following its objection, move for a protective order preventing disclosure of Designated Materials to the individual. In the event that such a motion is made, the objecting party seeking to prohibit disclosure shall bear the burden of proving that the disclosure is inappropriate. Prior to the resolution of any such objection, the objecting party's Designated Materials shall not be disclosed to the proposed Outside Consultant. Without modifying any obligations under the [Code of Civil Procedure/Federal Rules of Evidence or Federal Rules of Civil Procedure] applicable to testifying experts, the parties shall not have any obligation under the terms of this Protective Order to identify which materials are provided

to Outside Consultants. The disclosure of the identity of a proposed Outside Consultant shall not result in said person being subject to deposition or other discovery procedure. Any depositions or other discovery procedures involving any Outside Consultant shall not take place until that Outside Consultant has been designated as an expert [pursuant to Code of Civil Procedure Section 2034.210 et seq. / pursuant to the Federal Rule of Civil Procedure 26, applicable local rule], the parties' agreement, or otherwise pursuant to order of the Court.

3. Nothing contained herein shall require an Outside Consultant to disclose any attorney-client privileged and/or work product doctrine information.

4. Each Outside Consultant to whom any Designated Material may be disclosed pursuant to the provisions in this Protective Order shall, prior to the time such Designated Material is disclosed to him or her, be provided with a copy of this Protective Order and shall certify under penalty of perjury that he or she has read the Protective Order and fully understands its terms and agrees to be bound thereby. This certificate shall be in the form attached as Exhibit A hereto. Outside Counsel who makes any disclosure of Designated Materials shall retain each original executed certificate and, upon written request, shall circulate copies to all Outside Counsel.

5. In addition to the foregoing, each Outside Consultant to whom any Designated Material will be disclosed shall, prior to disclosure of such material, execute the Certification of Consultant in the form attached as Exhibit B hereto. Upon receipt of this Certification of Consultant by counsel for the party retaining the Outside Consultant, and following disclosure of the Outside Consultant in compliance with Section C.1 above and expiration of the period for objection and/or for resolution of any objections as contemplated in Section C.2 above, disclosure of such Designated Material may be made to the Outside Consultant without notification to the Designating Party or any other party to this Action. Outside Counsel who makes any disclosure of

Designated Materials shall retain each original executed Certification of Consultant and, upon written request, shall circulate copies to all Outside Counsel and Designating Parties at the termination of this Action.

D. Use of Designated Materials by Designating Party

1. Nothing in this Protective Order shall limit any Designating Party's use of its own documents and information, nor shall it prevent the Designating Party from disclosing its own confidential information or documents to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Protective Order, so long as the disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the information.

2. Nothing in this Protective Order shall be deemed to constitute a waiver of the right of a party to object to the production of documents or information based on grounds such as privilege, right of privacy and/or to production of the documentation or information beyond the scope of permissible discovery.

E. Maintenance of Designated Materials.

1. All Designated Materials shall be kept in secure facilities in a manner intended to preserve confidentiality. Access to those facilities and the Designated Materials shall be permitted only to those persons properly permitted to have access hereunder. The recipient of Designated Materials shall use his or her best efforts, but at no time less than reasonable efforts under the circumstances, to maintain the confidentiality of such information.

[optional as deemed appropriate in case-specific circumstances:

2. Designated Materials produced pursuant to this Protective Order shall be maintained by the receiving party in a manner, such as, but not limited to, physical devices such as locked file cabinets, or electronic security devices such as separate, non-networked computers which are not connected to the Internet and which require a special password that

limits access to those persons authorized to have access under this Protective Order. Additionally, the receiving party shall limit the number of copies of Designated Materials to that which is reasonably necessary to render professional services in this Action.]

F. Procedure for Designating Materials

Documents, materials and discovery responses, in whole or in part, may be designated as CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY as follows:

1. When producing Designated Materials, the Designating Party shall designate materials by placing the plainly visible legend CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY on each page of the materials [*optional as deemed appropriate in specific circumstances*: or physically on the outside of any media containing or storing electronic documents, data, or material], prior to production.

2. When a party wishes to designate as CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY materials produced or disclosed by someone other than the Designating Party, such designation shall be made:

(a) Within [X] calendar days from the date that the Designating Party receives copies of the materials from the producing or disclosing entity; and

(b) By written notice to all parties to this Action and, if the Designating Party is not a party to this Action, then to the producing or Designating Party, that identifies the materials to be designated with particularity (either by production numbers or by providing other adequate identification of the specific material). Such notice shall be sent by facsimile and regular mail.

3. Upon notice of designation pursuant to Section F.2 above all persons receiving notice of the requested designation of materials shall:

(a) Make no further disclosure of such Designated Material or information contained therein, except as allowed in this Protective Order;

(b) Take reasonable steps to notify any persons known to have possession of or access to such Designated Materials of the effect of such designation under this Protective Order, and to provide a copy of the Protective Order and undertake to have such person read and execute the appropriate certifications attached hereto as Exhibits A and B;

(c) Take reasonable steps to reclaim or prevent access to such Designated Material or information in the possession or control of any person not permitted to have access under the terms of this Protective Order;

[optional as deemed appropriate in case-specific circumstances: (d) If Designated Material is disclosed to any person other than those entitled to disclosure in the manner authorized by this Protective Order, the party responsible for the disclosure shall immediately upon learning of such disclosure inform the Designating Party in writing of all pertinent facts relating to such disclosure and shall make reasonable effort to prevent further disclosure by the unauthorized person(s). Notwithstanding the foregoing, Outside Counsel are responsible for employing reasonable measures to control, consistent with this Protective Order, duplication of, access to, and distribution of Designated Material. Nothing in this Protective Order shall prevent a party from filing a motion with the Court seeking contempt or other such relief for any violation of this Protective Order.]

G. Procedure for Use of Designated Materials at Deposition and for Designating Deposition Transcripts

1. Deposition transcripts or portions thereof may be designated as CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY by a party [*optional*: or third party during deposition testimony or at the completion of said deposition, on the record, taken in this Action, in which case the portion of the transcript containing the Designated Material shall be identified in the transcript by the Court Reporter as CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY.] [*optional*: The designated testimony shall be bound / transcribed in a separate volume and marked by the Court Reporter accordingly.]

2. Where testimony is designated at a deposition, or where Designated Materials are disclosed to a witness, the Designating Party shall have the right to exclude from attendance, during those portions of the deposition, all persons not authorized by the terms of this Protective Order to receive such Designated Material. Materials designated ATTORNEYS AND CONSULTANTS ONLY shall not be disclosed to a party during discovery, including depositions, without first obtaining the written consent of the Designating Party or upon Order of Court.

3. [*optional as deemed appropriate in case-specific circumstances*: Notwithstanding the provisions set forth in Sections B and C above, any party may, subject to the provisions of the following paragraph, mark Designated Material as a deposition exhibit and examine any witness thereon, provided that the exhibit and related transcript pages receive the same confidentiality designation as the original Designated Material. Any person who is shown a deposition exhibit comprised of Designated Material, but who is not otherwise entitled to access to such Material under Sections B and C above, shall not be allowed (except by express permission of the Designating Party) to keep a copy of the deposition exhibit, and shall not be furnished a copy of such deposition exhibit when given the opportunity to review the deposition transcript for accuracy following the deposition. Any such review shall take place at the offices of the Court Reporter, or of Outside Counsel.

4. If any Designating Party in good faith objects to having its Designated Materials shown to a witness at deposition, it is entitled to have the Court rule on such objection prior to its Designated Materials being shown to said witness.

5. Before Designated Materials are disclosed for the first time to a witness at deposition, the witness shall be advised on the record at the deposition by the examining attorney of the existence of the following relevant portion of this Protective Order:

The Court orders that a witness shown at deposition and/or trial any materials designated CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY may not, absent court order, discuss with any person(s), other than those persons authorized to view the materials designated CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY, any of the materials designated CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY shown to or discussed with the witness at the deposition and/or trial. A violation of this prohibition shall be grounds for a finding by the Court that the witness is in contempt of court. Do you understand your obligations under this Court Order?

If the witness says that he or she does not understand the obligations of the Protective Order, then Designated Materials may not be disclosed to him or her. At the conclusion of each day's deposition session, prior to discharge of the Court Reporter, any Outside Counsel present at the deposition may [*optional*: or shall] remind the witness of his or her obligations under this Protective Order.]

6. Outside Counsel for any party may, within [X] calendar days after receipt of the final deposition transcript from the Court Reporter, designate in a manner that does not disclose the confidential information [e.g., by page and line number and/or exhibit number],

portions of the deposition transcript and/or deposition exhibits as Designated Material. If any party so designates such material, that Designating Party shall provide written notice via facsimile and regular mail [*optional*: e-mail] to all parties within the [X]-day period. Designated Material within the deposition transcript or the exhibits thereto may be identified in writing or by underlining the relevant portions and marking such portions CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY, consistent with the terms of this Protective Order. Until the expiration of the [X]-day period, the deposition transcript, including all exhibits thereto, shall be treated as ATTORNEYS AND CONSULTANTS ONLY. After the expiration of the [X]-day period, all undesignated portion(s) of the deposition transcript and/or exhibits may be disclosed without restriction. The designated portions shall be treated according to their designations pursuant to this Protective Order.

H. Copies

All complete or partial copies of Designated Materials shall also be deemed subject to the terms of this Protective Order.

I. Court Procedures

1. [*Note: Court procedures below are intended to be in accord with the California Rules of Court and are exemplary in nature. Please consult local rules and standing orders of the particular court in which the Protective Order will be entered to ensure compliance with those rules and orders.*] **Disclosure of Designated Material to Court Officials.** Subject to the provisions of this Section, Designated Material may be disclosed to the Court, Court officials or employees involved in this Action (including Court Reporters, and any special master and/or discovery master or referee appointed by the Court) and the jury in this Action, and any interpreters or translators interpreting on behalf of any party or deponent.

2. Filing Designated Materials with the Court:

(a) When filing Designated Material with the Court in connection with motions, applications, or discovery-related motions that are not subject to California Rules of Court 2.550 et seq., the filing party shall file all Designated Materials in a sealed envelope or container on which shall be affixed a cover sheet, which shall contain an indication of the nature of the contents and prominently display the notation, in bold text, “DOCUMENT FILED UNDER SEAL” and a statement, in bold text, substantially as follows:

THIS ENVELOPE CONTAINS MATERIALS SUBJECT TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC, EXCEPT BY ORDER OF THE COURT.

The submission shall indicate clearly which portions are Designated Materials. The notation, in bold, “DOCUMENT FILED UNDER SEAL” shall also be made on pleading or cover sheet under which the document is submitted, as well as on the face of the document itself. A party that files a paper that is a pleading, brief, declaration, or exhibit that contains or paraphrases Designated Material shall only file the particular document or portion thereof under seal for which good cause to seal exists. **The Clerk of the Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, requests for admission, and other pleadings filed under seal with the Court in this Action.**

(b) When filing Designated Materials with the Court in connection with such motions subject to the application of California Rules of Court 2.550 et seq., the filing party shall conditionally lodge all Designated Materials in a sealed envelope or container on which shall be affixed a cover sheet, which shall contain an indication of the nature of the contents and prominently display the notation, in bold text, “DOCUMENT CONDITIONALLY LODGED UNDER SEAL” and a statement, in bold text, substantially as follows:

THIS ENVELOPE CONTAINS MATERIALS SUBJECT TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS SUBJECT TO A PENDING MOTION TO SEAL, AND IS NOT TO BE OPENED NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC, EXCEPT BY ORDER OF THE COURT.

The submission shall indicate clearly which portions are Designated Materials. The notation, in bold, **“DOCUMENT CONDITIONALLY LODGED UNDER SEAL”** shall also be made on any pleading or cover sheet under which the document is submitted, as well as on the face of the document itself. A party that files a paper that is a pleading, brief, declaration, or exhibit that contains or paraphrases Designated Material shall only file the particular document or portion thereof under seal for which good cause to seal exists. **During the pendency of a motion to seal the lodged material, the Clerk of the Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, requests for admission, and other pleadings lodged under seal with the Court in this Action.**

3. Retrieval of Designated Materials: The party lodging or filing the Designated Materials shall be responsible for retrieving such Designated Materials from the Court following the final termination of this Action (including after any appeals) consistent with applicable laws and court procedure.

4. Failure to File Under Seal: If any party fails to file [*optional: another party’s*] Designated Materials under seal, the Designating Party or any party to this Action may promptly file a motion to be heard on an expedited basis to request that the Court place the Designated Materials under seal. [*Note: Parties might want to consider beforehand the consequences of a party’s failure to file or lodge its own Designated Materials under seal, including whether to and the proper method for that failure to be remedied under this*

provision without waiver of any assertions of confidentiality that may be at issue substantively in the Action.]

5. Use of Designated Materials in Open Court: The parties shall neither present nor quote from any Designated Material in open court, unless the Court orders otherwise. Presentation of, or quotations from, Designated Materials shall be heard by the Court under such conditions as the Court may impose to prevent improper disclosure of Designated Materials. Not less than 30 calendar days prior to the date set for trial, the parties shall meet and confer concerning appropriate methods for dealing with Designated Material at trial.

J. Objections

1. A party may challenge the propriety of any designation under this Protective Order at any time. A challenge may be made by serving by facsimile and by mail on all other parties (and third parties, if applicable) a “Notice of Objection” that identifies with particularity the Designated Materials as to which the designation is challenged and states the basis for each challenge.

2. Ten (10) court days after service of a Notice of Objection in full compliance with Section J.1 above, the challenged material shall be deemed de-designated or re-designated unless the Designating Party has served by facsimile and mail delivery a response to the Notice of Objection setting forth the legal and factual grounds upon which the Designating Party bases its position that the materials should maintain the original designation or for designating the material otherwise. If a party challenging the designation is unconvinced, a motion to change the designation shall be filed within ten (10) court days after receipt of the response to the Notice of Objection. [*optional*: Parties are encouraged to consider whether this is a sufficient period of time for third parties who provided Designated Materials to retain counsel that may file such pleadings on that third party’s behalf, and shall allow additional time to such a third party as necessary.] In the event of a motion to change the designation, the Designated Material at issue may be submitted to the Court under seal prior to the first hearing or

conference on the subject. It shall be the burden of the Designating Party under such circumstances to establish that the Designated Material is designated properly as CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY within the meaning of this Protective Order. Upon the timely filing of such a motion, the original designation shall remain effective until ten (10) court days after service of notice of entry of an order re-designating the materials and during the pendency of any writ petition filed within the ten (10) court day period. The Designating Party may also file a brief on the matter in addition to the original response to the Notice of Objection.

3. The parties shall meet and confer in good faith prior to the filing of any motion under this Section.

K. Client Communication

Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course of rendering such advice, relying upon the examination of Designated Material. In rendering such advice and otherwise communicating with the client, Outside Counsel shall comply with the terms of this Protective Order.

L. No Prejudice

1. This Protective Order shall not diminish any existing obligation or right with respect to Designated Materials, nor shall it prevent a disclosure to which the Designating Party consents in writing before the disclosure takes place.

2. Unless all parties stipulate otherwise, evidence of the existence or nonexistence of a designation under this Protective Order, including any marking of "CONFIDENTIAL" or "ATTORNEYS AND CONSULTANTS ONLY" shall not be admissible for any purpose during any proceeding on the merits of this Action. Additionally, in the event that any Designated Material is used in any hearings, trial, appeal or other proceeding in this Action, it shall not lose its status of

CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY material through such use, even if it is provided to the jury with markings of “CONFIDENTIAL” or “ATTORNEYS AND CONSULTANTS ONLY” redacted.

3. If any party or third party required to produce documents inadvertently produces what should be Designated Material without marking it with the appropriate legend, the producing party may give written notice to the receiving party or parties, including appropriately stamped copies of the Designated Material, that the document, thing, or response is deemed Designated Material and should be treated as such in accordance with the provisions of this Protective Order.

4. If any party receives information, materials and/or discovery responses, which it reasonably believes was inadvertently produced without confidentiality markings, it shall promptly advise the producing party by mail and facsimile. The producing party shall have [X] calendar days in which to mark said information, materials and/or discovery responses. During this [X] calendar day period, counsel for the receiving party shall treat said information, materials and/or discovery responses as if designated ATTORNEYS AND CONSULTANTS ONLY.

5. The restrictions as to use or dissemination of information or materials, set forth in any of the preceding paragraphs, shall not apply as to:

(a) Any information which at the time of the designation under this Protective Order is known or available to the general public;

(b) Any information which after designation under this Protective Order becomes known or to available to the general public through no act, or failure to act, attributable to the receiving party or its counsel;

(c) Any information which the receiving party, its counsel, or any recipient of designated material under this Protective Order can

show as a matter of written record was already known to the receiving party through means other than any violation of law or of a confidentiality or nondisclosure agreement; and

(d) Any information a receiving party can demonstrate was developed by that party independently of any disclosure hereunder.

If the parties cannot agree as to whether there is sufficient demonstration of the exceptions set out in subsections (a) through (d) above and if a motion is not brought by the receiving party within [X] calendar days of it first raising the dispute, then the information will be treated consistent with the designation accorded it by the Designating Party.

6. Production of Designated Materials pursuant to this Protective Order, and inadvertent production of materials without the appropriate designation, shall not, by themselves, be deemed a waiver in whole or in part of the producing party's claim of confidentiality or secrecy, either to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter. However, failure to take prompt or appropriate action to rectify any inadvertent production within a reasonable time after materials are produced without designation may, in appropriate circumstances, result in a loss of confidentiality or secrecy.

7. Entering into, agreeing to, and/or producing or receiving Designated Materials under this Order, or otherwise complying with the terms of this Order shall not:

(a) Operate as an admission that any particular information of material Designated Material contains or reflects trade secrets, proprietary or commercially sensitive or valuable information, or any other type of confidential information;

(b) Operate as an admission that the restrictions and procedures set forth herein constitute or do not constitute adequate protection for any particular Designated Material;

(c) Prejudice in any way the right to object to the production of documents a party does not consider to be subject to discovery;

(d) Prejudice in any way the right to object to the authenticity or admissibility into evidence of any document, testimony, or other evidence subject to this Order;

(e) Prejudice in any way the right of any party or third party to petition the Court for a further protective order relating to any purportedly confidential information;

8. Privileged Materials. This Protective Order is without prejudice to a party asserting that any Designated Materials under this Protective Order or any document or thing inadvertently produced is protected by the attorney-client privilege and/or protected by the attorney work product doctrine or otherwise protected from discovery. Nothing in this Protective Order shall preclude a party from challenging the propriety of the claim of privilege in accordance with applicable law.

M. Modification, Termination and Survival

1. Modification and Addition of Parties:

(a) All parties reserve the right to seek modification of this Protective Order at any time for good cause. The parties agree to meet and confer prior to seeking to modify this Protective Order for any reason. The restrictions imposed by this Protective Order may only be modified or terminated by written stipulation of all parties or by order of Court.

(b) Parties to this Action who are not listed herein or who become parties to this Action after the latest date of execution may become parties to this Protective Order, and thereby be bound by all the terms and conditions stated herein, by executing a written agreement thereto, to be signed by all Outside Counsel for the parties, and which designates Outside Counsel for the additional party.

(c) This Protective Order shall remain in effect until superseded, modified, or terminated by order of Court. [*optional*: To the extent third parties to this Action designate materials under this Protective Order, the protections of this Protective Order as to those Designated Materials shall stay in full force and effect unless and until superseded, modified, or terminated by order of Court upon [X] court days notice to the affected third parties, or by the affected third parties' consent in writing.]

2. Survival and Return of Designated Material: This Protective Order shall survive termination of this Action. Upon final termination of this Action, including appeals and retrials, and at the written request of the Designating Party, all Designated Material, including deposition testimony regarding designated exhibits and all copies thereof, shall be returned to Outside Counsel or the Designating Party. Such Designated Materials shall either be returned at the expense of the Designating Party or, at the option and expense of the Designating Party, destroyed. Upon request for the return or destruction of Designated Materials, Outside Counsel for the receiving party shall certify their compliance with this provision and shall deliver such certification to other Outside Counsel or the Designating Party not more than thirty (30) calendar days after the written request to return or destroy Designated Materials. Notwithstanding the provisions for return or destruction of Designated Material, Outside Counsel may, subject to its continuing obligations under this Protective Order, retain pleadings, attorney and Outside Consultant work product, and deposition transcripts and exhibits containing Designated Material [*optional*: as well as one copy of each item of Designated Material for archival purposes].

N. Production of Third Party Information as Designated Material in This Action; Requests for Production of Designated Materials in Other Actions or Proceedings

1. Any party seeking production of information from a third party, through a subpoena or otherwise, in this Action shall advise the

third party of its ability to produce responsive information as Designated Material that would be subject to this Protective Order. Any third party may provide information designated CONFIDENTIAL INFORMATION or ATTORNEYS AND CONSULTANTS ONLY to the parties through either formal or informal disclosure, including by being required by subpoena or court order, and receive the protections provided by this Protective Order. Designated third party information shall be given the same rights, benefits, and protection under this Protective Order as information produced by the parties, and shall have standing to enforce this Protective Order with respect to the disclosure, use and recovery of that third party information.

2. Where a discovery request or subpoena in this Action calls for otherwise discoverable information that is subject to an obligation of nondisclosure to another person or entity, it shall be the obligation of the party or third party subjected to the discovery request or subpoena to:

(a) identify to the party seeking the information the name and address of each person or entity whose confidentiality interests are implicated by the discovery request or, if the identity of such person or entity itself is confidential, the existence of confidentiality obligations to such person or entity, and

(b) promptly provide to such person or entity whose confidentiality interests are implicated:

(1) notice of such discovery request seeking disclosure of materials or information held under obligations of confidentiality; and

(2) a copy of this Protective Order.

The party or third party to whom the discovery request or subpoena has been directed shall be responsible for determining whether the person or entity whose confidentiality interests are implicated objects to the production of the otherwise discoverable

information. If the person or entity whose confidentiality interests are implicated does not object in writing to Outside Counsel for the requesting party within [X] court days after receiving notice of the discovery request and a copy of this Protective Order, the party or third party to whom the discovery request has been directed shall not be permitted to withhold discovery on the ground of confidentiality obligations to such person or entity. If an objection is made by such person or entity, there shall be no disclosure of the information to which the objection is made unless the objection is withdrawn by such person or entity or overruled by order of the Court pursuant to a motion by the requesting party requiring disclosure of the confidential information. The parties and/or third party shall meet and confer in good faith to resolve any issues pertaining to deposition questions that call for otherwise discoverable information that is subject to an obligation of confidentiality owed to another.

3. Where a discovery request or subpoena in any other action or proceeding is served on a party to this Action and it calls for Designated Materials of another Designating Party pursuant to this Protective Order, it shall be the obligation of the party subjected to the discovery request or subpoena to:

(a) promptly provide to the party in the other action or proceeding seeking the information a copy of this Protective Order and the name and address of the Designating Party whose Designated Materials are implicated by the discovery request;

(b) promptly provide to the Designating Party whose Designated Materials are implicated a copy of the discovery request or subpoena; and

(c) Take reasonable steps to oppose the production of the Designated Material in the other action or proceeding and seek restrictions on use or disclosure similar to the terms of this Protective Order unless and until the Designating Party consents to the production or intervenes and directly opposes the production.

O. Court's Retention of Jurisdiction

The Court retains jurisdiction to (a) make such amendments, modifications, and additions to this Protective Order as it may from time to time deem appropriate, (b) enforce this Protective Order, and (c) determine whether any person or entity is in violation of this Protective Order.

P. Authorization and Execution

This Protective Order is executed by the parties, and by their counsels of record, who also sign on behalf of themselves and their respective law firms. Each attorney executing this Protective Order on behalf of any party represents that the attorney has disclosed fully to the party the terms of this Protective Order and is duly authorized by that attorney's client to execute this Protective Order.

Q. Waiver of the Protections of The Protective Order

No part of the restrictions imposed by this Protective Order may be waived by a Designating Party, except by the written stipulation executed by Outside Counsel or the Designating Party.

Dated: [FIRM REPRESENTING PLAINTIFF]

By: _____
[Attorneys representing plaintiff]
Attorneys for [Plaintiff]

Dated: [FIRM REPRESENTING PLAINTIFF]

By: _____
[Attorneys representing defendant]
Attorneys for [Defendant]

ORDER

Pursuant to the foregoing stipulation, **IT IS SO ORDERED.**

Dated:

By: _____
[U.S. District Judge] [Judge of the
Superior Court]

EXHIBIT A to STIPULATED PROTECTIVE ORDER

**CERTIFICATION RE: MATERIAL COVERED BY
PROTECTIVE ORDER**

I, the undersigned, hereby certify that I have read the Protective Order entered in the [e.g., Superior Court of the State of California for the County of _____/ United States District Court, _____ District of _____] in the case entitled [*], Case No. [*]

I understand the terms of the Protective Order. I agree to be bound by such terms and to submit to the personal jurisdiction of the [e.g., Superior Court of the State of California for the County of _____/ United States District Court, _____ District of _____] with respect to any proceeding related to the enforcement of this Protective Order, including any proceedings related to contempt of Court. I will not disclose Designated Materials to anyone other than persons specifically authorized by the Protective Order, and I agree to return to counsel [*optional*: or destroy and confirm destruction in writing under penalty of perjury if agreed to by the designating party] from whom I received such materials all such materials that come into my possession and confirm it in writing under penalty of perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Name of Individual: _____
Company or Firm: _____
Address: _____
Telephone No.: _____
Relationship to this Action and parties: _____
Date _____
Signature: _____

EXHIBIT B to STIPULATED PROTECTIVE ORDER

CERTIFICATION OF CONSULTANT

I, the undersigned, hereby certify that I have read the Protective Order entered in the [Superior Court of the State of California for the County of _____/ United States District Court, _____ District of _____], in the case entitled [*], Case No. [*].

I certify that I am not employed or consulted by or affiliated or contracted with a competitor of any person or entity currently a party (as of the time of the execution of this Certification) to this Action. If at any time after I execute this Consultant Certification and during the pendency of this Action I become engaged in business as or with a competitor of any person or entity currently a party to this Action, I will promptly inform the counsel for the party who retained me in this Action, and I will not thereafter review any Designated Materials unless and until the Court in this Action orders otherwise.

I declare under penalty of perjury that the foregoing is true and correct.

Name of Individual: _____
Company or Firm: _____
Address: _____
Telephone No.: _____
Date _____
Signature: _____

Appendix C: Model Protective Order



“Model Protective Order © 2014 and licensed under the Creative Commons type license cc-by-sa-3.0 (attribution share-alike) (<http://creativecommons.org/licenses/by-sa/3.0/>) by State Bar of California, IP Section, Trade Secrets Interest Group (ipsection.org)-principal authors Jill Kopeikin, Paul Rice, & Matthew Neco, assisted by Daniel Kassabian, Joanna Mendoza, David Morales and Benjamin Scheibe. This entire notice, with links, in quotes must always be reproduced *as is* in 8pt font or larger, on the final page of the stipulated Protective Order, or the page preceding the Court’s signature line on an order.”

EXHIBIT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

)	Case No. _____
)	
Plaintiff,)	<u>STIPULATION AND PROTECTIVE</u>
	)	<u>ORDER REGARDING CONFIDENTIAL</u>
	)	<u>INFORMATION</u>
	)	(Double Level of Confidentiality)
vs.)	
)	
)	
Defendants.)	
_____)	

In order to protect confidential information obtained by the parties in connection with this case, the parties, by and through their respective undersigned counsel and subject to the approval of the Court, hereby agree as follows:

Part One: Use Of Confidential Materials In Discovery

1. Any party or non-party may designate as “Confidential Information” (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving trade secrets, or confidential business or financial information, including personal financial information about any party to this lawsuit, putative class members or employee of any party to this lawsuit; information regarding any individual’s banking relationship with any banking

1 institution, including information regarding the individual’s financial transactions or financial
2 accounts, and any information regarding any party not otherwise available to the public, subject
3 to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of
4 Court or under other provisions of California law. Any party or non-party may designate as “
5 Highly Confidential Information” (by stamping the relevant page or as otherwise set forth
6 herein) any document or response to discovery which that party or non-party considers in good
7 faith to contain information involving highly sensitive trade secrets or confidential business or
8 financial information, the disclosure of which would result in the disclosure of trade secrets or
9 other highly sensitive research, development, production, personnel, commercial, market,
10 financial, or business information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585,
11 8.160, and 8.490 of the California Rules of Court or under other provisions of California law.
12 Where a document or response consists of more than one page, the first page and each page on
13 which confidential information appears shall be so designated.

14 2. A party or non-party may designate information disclosed during a deposition or
15 in response to written discovery as “Confidential” or “Highly Confidential” by so indicating in
16 said responses or on the record at the deposition and requesting the preparation of a separate
17 transcript of such material. In addition, a party or non-party may designate in writing, within
18 thirty (30) days after receipt of said responses or of the deposition transcript for which the
19 designation is proposed, that specific pages of the transcript and/or specific responses be treated
20 as “Confidential Information” or “Highly Confidential.” Any other party may object to such
21 proposal, in writing or on the record. Upon such objection, the parties shall follow the
22 procedures described in Paragraph 9 below. After any designation made according to the
23 procedure set forth in this paragraph, the designated documents or information shall be treated
24 according to the designation until the matter is resolved according to the procedures described in
25 Paragraph 9 below, and counsel for all parties shall be responsible for marking all previously
26 unmarked copies of the designated material in their possession or control with the specified
27 designation. A party that makes original documents or materials available for inspection need
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1 not designate them as Confidential or Highly Confidential Information until after the inspecting
2 party has indicated which materials it would like copied and produced. During the inspection
3 and before the designation and copying, all of the material made available for inspection shall be
4 considered Confidential or Highly Confidential Information.

5 3. All Confidential or Highly Confidential Information produced or exchanged in
6 the course of this case (not including information that is publicly available) shall be used by the
7 party or parties to whom the information is produced solely for the purpose of this case.
8 Confidential or Highly Confidential Information shall not be used for any commercial
9 competitive, personal, or other purpose.

10 4. Except with the prior written consent of the other parties, or upon prior order of
11 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
12 disclosed to any person other than:

- 13 (a) counsel for the respective parties to this litigation, including in-house
14 counsel and co-counsel retained for this litigation;
- 15 (b) employees of such counsel;
- 16 (c) individual parties or officers or employees of a party, to the extent deemed
17 necessary by counsel for the prosecution or defense of this litigation;
- 18 (d) consultants or expert witnesses retained for the prosecution or defense of
19 this litigation, provided that each such person shall execute a copy of the
20 Certification annexed to this Order (which shall be retained by counsel to
21 the party so disclosing the Confidential Information and made available
22 for inspection by opposing counsel during the pendency or after the
23 termination of the action only upon good cause shown and upon order of
24 the Court) before being shown or given any Confidential Information, and
25 provided that if the party chooses a consultant or expert employed by the
26 defendant or one of its competitors, the party shall notify the opposing
27 party, or designating non-party, before disclosing any Confidential
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Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;

- (e) any authors or recipients of the Confidential Information;
- (f) the Court, court personnel, and court reporters; and
- (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall sign the Certification before being shown a confidential document. Confidential Information may be disclosed to a witness who will not sign the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that Confidential Information produced by the party may be used. At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated “Confidential” pursuant to Paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

5. Except with the prior written consent of the other parties, or upon prior order of this Court obtained after notice to opposing counsel, Highly Confidential Information shall be treated in the same manner as “Confidential Information” pursuant to Paragraph 4 above, except that it shall not be disclosed to individual parties or directors, officers or employees of a party.

6. Any persons receiving Confidential or Highly Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein. If a party or any of its representatives, including counsel, inadvertently discloses any Confidential or Highly Confidential Information to persons who are not authorized to use or possess such material, the party shall provide immediate written notice of the disclosure to the party whose material was inadvertently disclosed. If a party has actual knowledge that Confidential or Highly Confidential Information is being used or possessed by a person not authorized to use or possess that material, regardless of how the material was

1 disclosed or obtained by such person, the party shall provide immediate written notice of the
2 unauthorized use or possession to the party whose material is being used or possessed. No party
3 shall have an affirmative obligation to inform itself regarding such possible use or possession.

4 7. In connection with discovery proceedings as to which a party submits
5 Confidential or Highly Confidential Information, all documents and chamber copies containing
6 Confidential or Highly Confidential Information which are submitted to the Court shall be filed
7 with the Court in sealed envelopes or other appropriate sealed containers. On the outside of the
8 envelopes, a copy of the first page of the document shall be attached. If Confidential or Highly
9 Confidential Information is included in the first page attached to the outside of the envelopes, it
10 may be deleted from the outside copy. The word “CONFIDENTIAL” shall be stamped on the
11 envelope and a statement substantially in the following form shall also be printed on the
12 envelope:

13 “This envelope is sealed pursuant to Order of the Court, contains Confidential
14 Information and is not to be opened or the contents revealed, except by Order of
15 the Court or agreement by the parties.”

16 If another court or administrative agency subpoenas or orders production of Confidential or
17 Highly Confidential Information, such party shall promptly notify counsel for the party who
18 produced the material of the pendency of such subpoena or order and shall furnish counsel with a
19 copy of said subpoena or order.

20 8. A party may designate as “Confidential Information” or “Highly Confidential
21 Information” documents or discovery materials produced by a non-party by providing written
22 notice to all parties of the relevant document numbers or other identification within thirty (30)
23 days after receiving such documents or discovery materials. Any party or non-party may
24 voluntarily disclose to others without restriction any information designated by that party or non-
25 party as Confidential or Highly Confidential Information, although a document may lose its
26 confidential status if it is made public. If a party produces materials designated Confidential or
27 Highly Confidential Information in compliance with this Order, that production shall be deemed
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1 to have been made consistent with any confidentiality or privacy requirements mandated by
2 local, state or federal laws.

3 9. If a party contends that any material is not entitled to confidential treatment, such
4 party may at any time give written notice to the party or non-party who designated the material.
5 The party or non-party who designated the material shall have twenty (20) days from the receipt
6 of such written notice to apply to the Court for an order designating the material as confidential.
7 The party or non-party seeking the order has the burden of establishing that the document is
8 entitled to protection.

9 10. Notwithstanding any challenge to the designation of material as Confidential or
10 Highly Confidential Information, all documents shall be treated as such and shall be subject to
11 the provisions hereof unless and until one of the following occurs:

- 12 (a) the party or non-party who claims that the material is Confidential or
13 Highly Confidential Information withdraws such designation in writing; or
- 14 (b) the party or non-party who claims that the material is Confidential or
15 Highly Confidential Information fails to apply to the Court for an order
16 designating the material confidential within the time period specified
17 above after receipt of a written challenge to such designation; or
- 18 (c) the Court rules the material is not Confidential or Highly Confidential
19 Information.

20 11. All provisions of this Order restricting the communication or use of Confidential
21 or Highly Confidential Information shall continue to be binding after the conclusion of this
22 action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the
23 possession of Confidential or Highly Confidential Information, other than that which is
24 contained in pleadings, correspondence, and deposition transcripts, shall either (a) return such
25 documents no later than thirty (30) days after conclusion of this action to counsel for the party or
26 non-party who provided such information, or (b) destroy such documents within the time period
27 upon consent of the party who provided the information and certify in writing within thirty (30)
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1 days that the documents have been destroyed.

2 12. Nothing herein shall be deemed to waive any applicable privilege or work product
3 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of
4 material protected by privilege or work product protection. Any witness or other person, firm or
5 entity from which discovery is sought may be informed of and may obtain the protection of this
6 Order by written advice to the parties' respective counsel or by oral advice at the time of any
7 deposition or similar proceeding.

8 **Part Two: Use of Confidential Materials in Court**

9 The following provisions govern the treatment of Confidential or Highly Confidential
10 Information used at trial or submitted as a basis for adjudication of matters other than discovery
11 motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, 8.160,
12 and 8.490 of the California Rules of Court and must be construed in light of those Rules.

13 13. A party that files with the Court, or seeks to use at trial, materials designated as
14 Confidential or Highly Confidential Information, and who seeks to have the record containing
15 such information sealed, shall submit to the Court a motion or an application to seal, pursuant to
16 California Rule of Court 2.551.

17 14. A party that files with the Court, or seeks to use at trial, materials designated as
18 Confidential or Highly Confidential Information by anyone other than itself, and who does not
19 seek to have the record containing such information sealed, shall comply with either of the
20 following requirements:

- 21 (a) At least ten (10) business days prior to the filing or use of the Confidential
22 or Highly Confidential Information, the submitting party shall give notice
23 to all other parties, and to any non-party that designated the materials as
24 Confidential or Highly Confidential Information pursuant to this Order, of
25 the submitting party's intention to file or use the Confidential or Highly
26 Confidential Information, including specific identification of the
27 Confidential or Highly Confidential Information. Any affected party or
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non-party may then file a motion to seal, pursuant to California Rule of Court 2.551(b); or

(b) At the time of filing or desiring to use the Confidential or Highly Confidential Information, the submitting party shall submit the materials pursuant to the lodging-under-seal provision of California Rule of Court 2.551(d). Any affected party or non-party may then file a motion to seal, pursuant to the California Rule of Court 2.551(b), within ten (10) business days after such lodging. Documents lodged pursuant to California Rule of Court 2.551(d) shall bear a legend stating that such materials shall be unsealed upon expiration of ten (10) business days, absent the filing of a motion to seal pursuant to Rule 2.551(b) or Court order.

15. In connection with a request to have materials sealed pursuant to Paragraph 12 or Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1) shall contain sufficient particularity with respect to the particular Confidential or Highly Confidential Information and the basis for sealing to enable the Court to make the findings required by California Rule of Court 2.550(d).

IT IS SO STIPULATED.

Dated: _____ By: _____

Dated: _____ By: _____

ORDER

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 **CERTIFICATION**

2 I hereby certify my understanding that Confidential or Highly Confidential Information is
3 being provided to me pursuant to the terms and restrictions of the Stipulation and Protective
4 Order Regarding Confidential Information filed on _____, 200__, in San Mateo
5 County Superior Court Case No. _____ (“Order”). I have been given a copy of that
6 Order and read it.

7 I agree to be bound by the Order. I will not reveal the Confidential or Highly
8 Confidential Information to anyone, except as allowed by the Order. I will maintain all such
9 Confidential or Highly Confidential Information, including copies, notes, or other transcriptions
10 made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty
11 (30) days after the conclusion of this action, I will return the Confidential or Highly Confidential
12 Information, including copies, notes, or other transcriptions made therefrom, to the counsel who
13 provided me with the Confidential or Highly Confidential Information. I hereby consent to the
14 jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order.

15 I declare under penalty of perjury that the foregoing is true and correct and that this
16 certificate is executed this ___ day of _____, 200__, at _____.

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18 By: _____
19 Address: _____
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21 Phone: _____
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Attorneys for Plaintiff PALANTIR TECHNOLOGIES INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

PALANTIR TECHNOLOGIES INC., a
Delaware corporation,

Plaintiff,

v.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

) Case No. 16CV299476

) **INDEX OF EXHIBITS TO**
) **DECLARATION OF SHIRA R. LIU**
) **IN SUPPORT OF PLAINTIFF'S MOTION**
) **FOR PROTECTIVE ORDER**
) **GOVERNING THE PROTECTION AND**
) **EXCHANGE OF CONFIDENTIAL**
) **MATERIAL**

) Date: June 13, 2017
) Time: 9:00 a.m.
) Dept.: 9
) Judge: Hon. Mary E. Arand

) Complaint Filed: September 1, 2016
) Trial Date: Not set

INDEX OF EXHIBITS

<u>EX. NO.</u>	<u>DOCUMENT DESCRIPTION</u>
1	Plaintiff's Proposed Protective Order
2	Northern District of California's Model Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets
3	Los Angeles Superior Court Model Protective Order – Confidential and Highly Confidential
4	California Bar Intellectual Property Section's Model Protective Order
5	San Mateo Superior Court's Model Stipulation and Protective Order Regarding Confidentiality (Double Level of Confidentiality)

Dated: April 21, 2017

**BOIES, SCHILLER & FLEXNER LLP
KIRKLAND & ELLIS LLP**

By: 

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12 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**

19 v.)

20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
inclusive,)

24 *Defendants.*)
25 _____)

1 **PROOF OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am employed in the County of Los Angeles. At the time of service I was over 18 years
4 of age and not a party to this action. My business address is 401 Wilshire Blvd., Suite 850, Santa
5 Monica, CA 90401. On April 21, 2017 I served the following document(s):

- 6 **1. PLAINTIFF’S MOTION FOR PROTECTIVE ORDER GOVERNING THE
7 PROTECTION AND EXCHANGE OF CONFIDENTIAL MATERIAL;
8 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;
9 DECLARATION OF SHIRA R. LIU**
- 10 **2. INDEX OF EXHIBITS TO DECLARATION OF SHIRA R. LIU IN SUPPORT OF
11 PLAINTIFF’S MOTION FOR PROTECTIVE ORDER GOVERNING THE
12 PROTECTION AND EXCHANGE OF CONFIDENTIAL MATERIAL**
- 13 **3. [PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR
14 PROTECTIVE ORDER GOVERNING THE PROTECTION AND EXCHANGE
15 OF CONFIDENTIAL MATERIAL**

16 I personally served the documents on the **persons** below, as follows:

17 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

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19 525 University Avenue
20 Palo Alto, California 94301
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22 E-mail: jack.dicanio@skadden.com

23 Attorneys for Defendants KT4 Partners LLC and Marc Abramowitz

24 The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input checked="" type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input checked="" type="checkbox"/> placed the envelope for collection and mailing, following our

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	<p>ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.</p>
<input type="checkbox"/>	<p>By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<input type="checkbox"/>	<p>By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<input type="checkbox"/>	<p>By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on April 21, 2017 at Santa Monica, California.



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12 *Additional counsel identified on signature page*

13 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**
16 **UNLIMITED JURISDICTION**

17 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
18 Delaware corporation,)
19 *Plaintiff,*) **PLAINTIFF PALANTIR**
20 v.) **TECHNOLOGIES INC.'S REPLY IN**
21) **SUPPORT OF MOTION FOR LEAVE TO**
22) **FILE A SECOND AMENDED**
23) **COMPLAINT**
24 MARC L. ABRAMOWITZ, in his individual)
capacity and as trustee of the MARC) Date: May 2, 2017
25 ABRAMOWITZ CHARITABLE TRUST NO.) Time: 9:00 a.m.
2, KT4 PARTNERS LLC, a Delaware limited) Dept.: 9
26 liability company, and DOES 1 through 50,) Judge: Hon. Mary E. Arand
inclusive,)
27 *Defendants.*)
28)
Complaint Filed: September 1, 2016
Trial Date: Not set

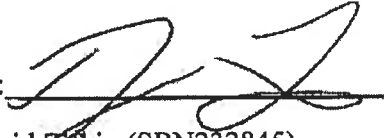
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Defendants do not oppose Palantir’s Motion for Leave to File a Second Amended Complaint (“Motion”) and their spurious characterizations of the amended pleading in their “response” are irrelevant. It is a well-established and frequently cited rule that amendments to a pleading “should be allowed and construed liberally.” (*Mull v. Hunter* (1968) 266 Cal. App. 2d 657, 659; see also *Central Concrete Supply Co., Inc. v. Bursak* (2010) 182 Cal. App. 4th 1092, 1102 [“That trial courts are to liberally permit such amendments at any stage of the proceeding, has been established policy in this state since 1901.”].) This Court has the authority to grant leave to amend “upon any terms as may be just.” (Code Civ. Proc. § 473.) Leave to amend is appropriate for the reasons set forth in the Motion and Palantir respectfully requests that this Court grant the Motion.

The Motion is calendared for hearing before this Court on May 2, 2017. However, in light of Defendants’ non-opposition Palantir respectfully requests that this Court resolve the motion on the merits of the briefing without a hearing.

Dated: April 24, 2017

**BOIES SCHILLER FLEXNER LLP
KIRKLAND & ELLIS LLP**

By: 

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**

19 v.)

20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
24 inclusive,)
Defendants.)

PROOF OF SERVICE

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I, the undersigned, declare as follows:

I am employed in the County of Los Angeles. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Blvd., Suite 850, Santa Monica, CA 90401. On April 24, 2017 I served the following document(s):

**PLAINTIFF PALANTIR TECHNOLOGIES INC.'S REPLY IN SUPPORT OF
MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

I personally served the documents on the **persons** below, as follows:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Jack P. DiCanio (SBN 138782)
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E-mail: jack.dicanio@skadden.com

Attorneys for Defendants KT4 Partners LLC and Marc Abramowitz

The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	<p>By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:</p> <p style="padding-left: 40px;"><input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.</p> <p style="padding-left: 40px;"><input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.</p>

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<input checked="" type="checkbox"/>	By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input type="checkbox"/>	By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i>
<input type="checkbox"/>	By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on April 24, 2017 at Santa Monica, California.



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12 *Additional counsel identified on signature page*

13 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SANTA CLARA**

16 **UNLIMITED JURISDICTION**

17	PALANTIR TECHNOLOGIES INC., a	)	Case No. 16CV299476
18	Delaware corporation,)	
19	<i>Plaintiff,</i>	)	STIPULATION AND [PROPOSED]
20		)	ORDER SETTING A BRIEFING
21	v.	)	SCHEDULE ON PLAINTIFF'S AND
22		)	DEFENDANTS' MOTIONS FOR A
23	MARC L. ABRAMOWITZ, in his individual	)	PROTECTIVE ORDER
24	capacity and as trustee of the MARC)	
25	ABRAMOWITZ CHARITABLE TRUST NO.	)	Date: June 13, 2017
26	2, KT4 PARTNERS LLC, a Delaware limited	)	Time: 9:00 a.m.
27	liability company, and DOES 1 through 50,	)	Dept.: 9
28	inclusive,	)	Judge: Hon. Mary E. Arand
	<i>Defendants.</i>	)	Complaint Filed: September 1, 2016
		)	Trial Date: Not set

1 **STIPULATION**

2 Pursuant to the Code of Civil Procedure Section 1005 and California Rule of Court
3 3.1300, the parties through undersigned counsel hereby stipulate and respectfully request that the
4 Court modify the time for filing and service of motions and associated papers related to the entry
5 of a Protective Order Governing the Protection and Exchange of Confidential Materials in this
6 matter. The parties declare in support of this request:

7 WHEREAS, counsel for Plaintiff and Defendants have met and conferred in good faith
8 concerning the entry of a protective order in this matter;

9 WHEREAS, while the parties are able to agree on many of the terms of a proposed
10 protective order there remain several issues of disagreement and the parties wish to file separate
11 motions for a protective order with the Court;

12 WHEREAS, counsel have met and conferred to facilitate an efficient briefing schedule
13 on the motions and agree Palantir’s Motion for a Protective Order shall be filed with the Court
14 on or before April 21, 2017; Defendants’ Opposition to Palantir’s Motion for a Protective Order
15 and Defendants’ Motion for a Protective Order shall be filed with the Court on or before May 5,
16 2017; Palantir’s Reply in support of Palantir’s Motion for a Protective Order and Palantir’s
17 Opposition to Defendants’ Motion for a Protective Order shall be filed with the Court on or
18 before May 15, 2017; and Defendants’ Reply in support of Defendants’ Motion for a Protective
19 Order shall be filed with the Court on or before May 22, 2017;

20 WHEREAS, Palantir’s Motion for a Protective Order is set for hearing on June 13, 2017;

21 WHEREAS, entering this stipulation will not affect any other deadlines set in this case;

22 THEREFORE, pursuant to Code of Civil Procedure Section 1005 and California Rule of
23 Court 3.1300, the parties by and through their respective attorneys of record stipulate as follows:

- 24 1. Palantir’s Motion for a Protective Order is due on or before April 21, 2017.
- 25 2. Defendants’ Opposition to Palantir’s Motion for a Protective Order and
26 Defendants’ Motion for a Protective Order is due on or before May 5, 2017.
- 27 3. Palantir’s Reply in support of Palantir’s Motion for a Protective Order and
28 Palantir’s Opposition to Defendants’ Motion for a Protective Order are due on or before May 15,

1 2017.

2 4. Defendants' Reply in support of Defendants' Motion for a Protective Order is due
3 on or before May 22, 2017.

4

5 IT IS SO STIPULATED.

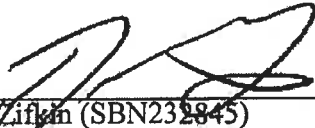
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7 Dated: April 24, 2017

**BOIES, SCHILLER & FLEXNER LLP
KIRKLAND & ELLIS LLP**

8

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By: 

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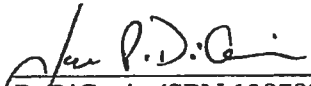
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Attorneys for Plaintiff PALANTIR TECHNOLOGIES
INC.

Dated: April 21, 2017

**SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP**

By: 

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Attorneys for Defendants

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[PROPOSED] ORDER

Pursuant to Stipulation, and GOOD CAUSE HAVING BEEN SHOWN,
IT IS SO ORDERED.

DATED: _____, 2017

Honorable Mary E. Arand
Judge of the Superior Court for the State of California

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(lefkowitz@kirkland.com)
9 Nathaniel J. Kritzer (*Pro Hac Vice* appl. pending)
(nathaniel.kritzer@kirkland.com)
10 601 Lexington Ave
New York, NY 10022
11 Tel: (212) 446-4800; Fax: (212) 446-4900

12 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**
19 v.)
20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
24 inclusive,)
Defendants.)

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PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Los Angeles. At the time of service I was over 18 years of age and not a party to this action. My business address is 401 Wilshire Blvd., Suite 850, Santa Monica, CA 90401. On April 24, 2017 I served the following document(s):

STIPULATION AND [PROPOSED] ORDER SETTING A BRIEFING SCHEDULE ON PLAINTIFF'S AND DEFENDANTS' MOTIONS FOR A PROTECTIVE ORDER

I personally served the documents on the persons below, as follows:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Jack P. DiCanio (SBN 138782)
525 University Avenue
Palo Alto, California 94301
Telephone: (650) 470-4660
E-mail: jack.dicanio@skadden.com

Attorneys for Defendants KT4 Partners LLC and Marc Abramowitz

The documents were served by the following means:

<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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	I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.
<input checked="" type="checkbox"/>	By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input type="checkbox"/>	By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i>
<input type="checkbox"/>	By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on April 24, 2017 at Santa Monica, California.



AIMEE MANDEL

ENDORSED

2017 APR 28 P 3:38

CLERK OF THE COURT,
SUPERIOR COURT OF CA,
COUNTY OF SANTA CLARA
BY _____ DEPUTY

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com

5 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
6 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

10 UNLIMITED JURISDICTION

11 PALANTIR TECHNOLOGIES INC.,

12 Plaintiff,

13 v.

14 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
15 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
16 through 50, inclusive,

17 Defendants.
18

CASE NO.: 16CV299476

APPLICATION OF BARRY S. SIMON
FOR ADMISSION *PRO HAC VICE*

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

Complaint Filed: September 1, 2016
Trial Date: Not Set

19 I, Barry S. Simon, apply for admission to practice before this Court *pro hac vice*, in order to
20 represent Defendants Marc L. Abramowitz, in his individual capacity and as trustee of the Marc
21 Abramowitz Charitable Trust No. 2, and KT4 Partners LLC in the matter of the *Palantir*
22 *Technologies, Inc. v. Abramowitz et al.* (No. 16CV299476) now pending in the Superior Court of
23 the State of California for the County Of Santa Clara. In support of this application, I state the
24 following:
25

26 1. I have been retained by Defendants to appear in this action as an attorney on their
27 behalf.

28 2. I am not a resident of the State of California. I do not regularly practice law in the
State of California. I am not regularly employed in the State of California or engaged in any

1 substantial business, professional, or other activities in the State of California.

2 3. My residential address is 8711 Honeybee Lane, Bethesda, MD 20817.

3 4. My business address is Williams & Connolly LLP, 725 Twelfth Street, N.W.,
4 Washington, D.C., 20005.

5 5. I was admitted to the District of Columbia Bar on December 21, 1976. I have also
6 been admitted to the bars of the United States District Court for the District of Columbia
7 (2/7/1977); United States Court of Appeals for the District of Columbia Circuit (6/9/1977); United
8 States Court of Appeals for the Second Circuit (3/28/1989); United States Court of Appeals for the
9 Third Circuit (12/5/1991); United States Court of Appeals for the Fourth Circuit (3/24/1986);
10 United States Court of Appeals for the Sixth Circuit (10/1/1998); United States Court of Appeals
11 for the Eleventh Circuit (9/9/1986); Supreme Court of the United States (3/7/1988). I am a member
12 in good standing of the bars of all courts to which I have been admitted.

13 6. I am not suspended or disbarred in any court.

14 7. In the preceding two years, I have not applied to appear *pro hac vice* in any matters
15 pending in California state court. In the preceding two years, I applied to appear *pro hac vice* in a
16 federal court located in California in this matter, Palantir Technologies Inc. v. Abramowitz et al.,
17 4:16-cv-05857-PJH, (N.D. California)

18 8. Jack P. DiCano (State Bar No. 138782) of the Palo Alto office of Skadden Arps
19 Slate Meagher & Flom LLP, whose address is 525 University Avenue, Suite 1400, Palo Alto,
20 California 94301, and whose telephone number is (650) 470-4500, is an active member of the State
21 Bar of California and shall act as attorney of record in this matter.

22 9. The matters stated herein are based on my own personal knowledge.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct, and respectfully request that the Court grant this Application and that
25 I be admitted as counsel *pro hac vice* to the bar for the Court to appear in this this matter.

26 Executed this 25th day of April, 2017 at Washington, D.C.

27
28

By: 

Barry S. Simon

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:38

7
CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

CASE NO.: 16CV299476

13 Plaintiff,

**NOTICE OF UNOPPOSED MOTION
AND MOTION FOR ADMISSION OF
BARRY S. SIMON *PRO HAC VICE***

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

18 Defendants.

Complaint Filed: September 1, 2016
Trial Date: Not Set

19
20
21 Please take notice that on June 1, 2017 at 9:00 a.m., or as soon thereafter as the matter can
22 be heard, in Department D-09, 191 North First Street, San Jose, CA 95113, Defendants Marc L.
23 Abramowitz, in his individual capacity and as trustee of the Marc Abramowitz Charitable Trust
24 No. 2, and KT4 Partners LLC will move the Court for an Order granting the *pro hac* application of
25 Barry S. Simon to appear *pro hac vice* pursuant to California Rule of Court 9.40 on the ground that
26 the above-named attorney is not a member of the State Bar of California and that he meets the
27 requirements set forth in Rule 9.40(a).


28 //

BY FAX

1 This motion is based on this Notice of Unopposed Motion for Admission, Memorandum in
2 Support of the Unopposed Motion, the Verified Application of Barry S. Simon, the Declaration of
3 Ian Chen, and the files and records in this action.

4
5 DATED: April 28, 2017

6 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

7
8 By:  _____

9 Ian Chen

10 Attorneys for Defendants
11 Marc L. Abramowitz, in his individual capacity and as
12 trustee of the Marc Abramowitz Charitable Trust No. 2,
13 and KT4 Partners LLC
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1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:38

CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

13 Plaintiff,

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

18 Defendants.
19

CASE NO.: 16CV299476

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR
ADMISSION OF BARRY S. SIMON *PRO*
HAC VICE

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

Complaint Filed: September 1, 2016
Trial Date: Not Set

20 I. INTRODUCTION

21 By this Motion, Defendants ask this Court for an order approving the Application of Barry
22 S. Simon for admission *pro hac vice* to the State Bar of California, for the purpose of participating
23 in the representation of the Defendants in this action. Because the requirements of California Rules
24 of Court Rule 9.40 have been met, the Motion should be granted.

25 II. THE COURT IS AUTHORIZED TO ADMIT COUNSEL *PRO HAC VICE*.

26 Pursuant to California Rules of Court Rule 9.40(a),

27 A person who is not a member of the State Bar of California but who is
28

BY FAX

1 a member in good standing of and eligible to practice before the bar of
2 any United States court or the highest court in any state, territory, or
3 insular possession of the United States, and who has been retained to
4 appear in a particular cause pending in a court of this state, may in the
discretion of such court be permitted upon written application to appear
as counsel *pro hac vice*, provided that an active member of the State Bar
of California is associated as attorney of record.

5 In allowing admission *pro hac vice*, the California courts have stated:

6 *It is common practice, and one sustained by general usage in all of the*
7 *states of this union . . . to permit upon request an attorney holding a*
8 *license to practice law from one state to appear in the courts of a sister*
state, and there take part in the trial of an action pending in said courts.

9 *Ex parte McCue*, 211 Cal. 57, 67 (Cal. 1930). Thus, it is well established that if Rule 9.40 is
10 complied with, permission to appear *pro hac vice* should be granted and will be denied only in
11 extreme circumstances. *See Magee v. Super. Ct.*, 8 Cal. 3d 949, 952-53 n.1 (Cal. 1973) (in
12 California, *pro hac vice* applications are routinely granted).

13 **III. THE COURT SHOULD ADMIT BARRY S. SIMON PRO HAC VICE.**

14 The requirements of Rule 9.40 have been complied with here, and the Application of Barry
15 S. Simon for admission *pro hac vice* thus should be approved.

16 As set forth in his accompanying verified Application, Mr. Simon is a member in good
17 standing of the District of Columbia Bar. Mr. Simon is further admitted to practice before the
18 United States District Court for the District of Columbia, United States Court of Appeals for the
19 District of Columbia Circuit, United States Court of Appeals for the Second Circuit, United States
20 Court of Appeals for the Third Circuit, United States Court of Appeals for the Fourth Circuit,
21 United States Court of Appeals for the Sixth Circuit, United States Court of Appeals for the
22 Eleventh Circuit, and the Supreme Court of the United States. He is not suspended or disbarred in
23 any court. He is not a resident of the State of California, is not regularly employed in the State of
24 California, and he does not regularly engage in professional activities in the State of California.
25 Mr. Simon possesses knowledge and expertise that is important to the Defendants' appearance in
26 this case, and Defendants' interests would be unduly prejudiced if Mr. Simon were not allowed to
27 assist in its representation.

28

1 In the preceding two years, Mr. Simon has not applied to appear *pro hac vice* in any matters
2 pending in California state courts. In the preceding two years, Mr. Simon applied to appear *pro*
3 *hac vice* in a federal court in California in this matter, Palantir Technologies Inc. v. Abramowitz et
4 al., 4:16-cv-05857-PJH (N.D. Cal.).

5 Mr. Simon is a partner with the law firm Williams & Connolly LLP, which serves as co-
6 counsel for Defendants in this action along with the law firm of Skadden, Arps, Slate, Meagher &
7 Flom LLP, whose Palo Alto, California attorneys are active members of the State Bar of California
8 and attorneys of record for Defendants. As set forth in the accompanying declaration of Ian Chen,
9 the California State Bar has been served with notice of this Application, and the required fees have
10 been paid.

11 **IV. CONCLUSION**

12 Mr. Simon's Application fulfills all of the requirements set forth in California Rules of
13 Court Rule 9.40. For the foregoing reasons, the Defendant respectfully requests that this Court
14 issue an order allowing Mr. Simon to appear *pro hac vice* on its behalf in this action.

15 DATED: April 28, 2017

16 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

17
18 By: 

19 Ian Chen

20 Attorneys for Defendants
21 Marc L. Abramowitz, in his individual capacity and as
22 trustee of the Marc Abramowitz Charitable Trust No. 2,
23 and KT4 Partners LLC
24
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28

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:38

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

A. Ramirez

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

CASE NO.: 16CV299476

13 Plaintiff,

DECLARATION OF IAN CHEN IN
SUPPORT OF UNOPPOSED MOTION
FOR ADMISSION OF BARRY S.
SIMON *PRO HAC VICE*

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2; KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

18 Defendants.

Complaint Filed: September 1, 2016
Trial Date: Not Set

19
20 I, Ian Chen, declare as follows:

21 1. I am an attorney licensed to practice law in the State of California and am an
22 associate at the law firm of Skadden Arps Slate Meagher & Flom LLP, counsel of record herein for
23 Defendants Marc L. Abramowitz, in his individual capacity and as trustee of the Marc Abramowitz
24 Charitable Trust No. 2, and KT4 Partners LLC.

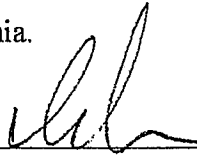
25 2. I caused the State Bar of California to be personally served at its San Francisco
26 office on August 2, 2016, with the verified Application of Barry S. Simon to appear as counsel *Pro*
27 *Hac Vice*, along with the Motion of Defendants for approval of the Application and the
28 accompanying Memorandum of Points and Authorities, Declaration of Ian Chen, and [Proposed]

1 Order Granting the Application, all of which are filed and/or lodged concurrently herewith. The
2 \$50.00 fee for Mr. Simon's application has been paid to the California State Bar.

3 3. On March 22, 2017, I communicated with David Zifkin, counsel for Plaintiff, asking
4 if Plaintiff would oppose the motion for *pro hac vice* admission of Barry S. Simon. Mr. Zifkin
5 informed Defendants that plaintiffs would not oppose the admission of Barry S. Simon *pro hac*
6 *vice*.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed on April 28, 2017 at Palo Alto, California.

10 
11 _____

12 Ian Chen
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1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

13 Plaintiff,

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

18 Defendants.
19

CASE NO.: 16CV299476

**[PROPOSED] ORDER GRANTING
UNOPPOSED MOTION FOR
ADMISSION OF BARRY S. SIMON *PRO
HAC VICE***

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

Complaint Filed: September 1, 2016
Trial Date: Not Set

20
21 This matter came before this Court on Defendants' Unopposed Motion For Admission Of
22 Barry S. Simon *Pro Hac Vice*. The Court having considered the motion and finding good cause,

23 **IT IS HEREBY ORDERED** that the Application Of Barry S. Simon For Admission *Pro*
24 *Hac Vice* is hereby GRANTED.

25

26

27 Dated: _____, 2017

28

SUPERIOR COURT JUDGE

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:38

Clerk of the Court
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION
13

14 PALANTIR TECHNOLOGIES INC.,
15 Plaintiff,
16
17 v.
18 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1 through
20 50, inclusive,
21 Defendants.
22

Case No. 16CV299476

PROOF OF SERVICE

23
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BY FAX

2 I am employed in the County of Santa Clara, State of California. I am over the age of 18
3 and not a party to the within action; my business address is 525 University Avenue, Palo Alto, CA
94301; and my email address is sroots@skadden.com.

4 On April 28, 2017, I caused to be served the following document(s) described as:

5 **APPLICATION OF BARRY S. SIMON FOR ADMISSION *PRO HAC VICE***

6 **NOTICE OF UNOPPOSED MOTION AND MOTION FOR ADMISSION OF BARRY S.
7 *SIMON PRO HAC VICE***

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED
9 MOTION AND MOTION FOR ADMISSION OF BARRY S. SIMON *PRO HAC VICE***

10 **DECLARATION OF IAN CHEN IN SUPPORT OF UNOPPOSED MOTION AND
11 MOTION FOR ADMISSION OF BARRY S. SIMON *PRO HAC VICE***

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION AND MOTION FOR
12 ADMISSION OF BARRY S. SIMON *PRO HAC VICE***

13 on the interested parties in this action by placing a true copy thereon enclosed/attached in/to a
sealed envelope/facsimile cover sheet addressed as follows:

14 COUNSEL FOR PLAINTIFF

15 Boies, Schiller & Flexner LLP
16 David Boies
333 Main Street
Armonk, NY 10504

The State Bar of California
Office of Special Admissions and Specialization
180 Howard Street
San Francisco, CA 94105

17 David Zifkin
18 Shira Liu
401 Wilshire Boulevard, Suite 850
19 Santa Monica, CA 90401

20 Kirkland & Ellis LLP
Jay P. Lefkowitz
21 Nathaniel J. Kritzer
601 Lexington Avenue
New York, NY 10022

22 // (BY EMAIL) I am readily familiar with the firm's practice of email transmission; on this
23 date, I caused the above-referenced document(s) to be transmitted by email as noted above
and that the transmission was reported as complete and without error.

24 // (BY MAIL) I am readily familiar with the firm's practice for the collection and processing
25 of correspondence for mailing with the United States Postal Service and the fact that the
correspondence would be deposited with the United States Postal Service that same day in
26 the ordinary course of business; on this date, the above-referenced correspondence was
placed for deposit at Palo Alto, California and placed for collection and mailing following
27 ordinary business practices. (AS NOTED)

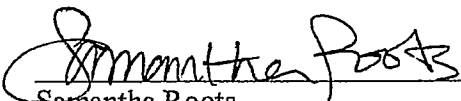
28 /x/ (BY FEDERAL EXPRESS IN THE ORDINARY COURSE OF BUSINESS) I placed the
above document(s) in sealed envelope(s) addressed to the above person(s). I placed the
envelope(s) for collection and processing for delivery by Federal Express in Palo Alto,

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Santa Clara County, California, following the firm's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with Federal Express.

/x/ (STATE/FEDERAL) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 28, 2017, at Palo Alto, California.


Samantha Roots

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com

5 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
6 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC

ENDORSED
2017 APR 28 P 3:37
CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

A. B. Pitt

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA
10 UNLIMITED JURISDICTION

11 PALANTIR TECHNOLOGIES INC.,
12 Plaintiff,
13 v.
14 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
15 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
16 through 50, inclusive,
17 Defendants.

CASE NO.: 16CV299476
APPLICATION OF JONATHAN B.
PITT FOR ADMISSION *PRO HAC VICE*
Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09
Complaint Filed: September 1, 2016
Trial Date: Not Set

19 I, Jonathan B. Pitt, apply for admission to practice before this Court *pro hac vice*, in order
20 to represent Defendants Marc L. Abramowitz, in his individual capacity and as trustee of the Marc
21 Abramowitz Charitable Trust No. 2, and KT4 Partners LLC in the matter of the *Palantir*
22 *Technologies, Inc. v. Abramowitz et al.* (No. 16CV299476) now pending in the Superior Court of
23 the State of California for the County Of Santa Clara. In support of this application, I state the
24 following:

- 25 1. I have been retained by Defendants to appear in this action as an attorney on their
26 behalf.
27 2. I am not a resident of the State of California. I do not regularly practice law in the
28 State of California. I am not regularly employed in the State of California or engaged in any

BY FAX

1 substantial business, professional, or other activities in the State of California.

2 3. My residential address is 5042 Sherier Place, NW, Washington, D.C., 20016.

3 4. My business address is Williams & Connolly LLP, 725 Twelfth Street, N.W.,
4 Washington, D.C., 20005.

5 5. I was admitted to the Bar of the State of New York on June 25, 2002. I was
6 admitted to the District of Columbia Bar on November 1, 2002. I have been admitted to the bars of
7 the United States Supreme Court (admitted March 25, 2013); the United States Court of Appeals
8 for the Second Circuit (admitted July 22, 2009), Fifth Circuit (admitted December 29, 2016), and
9 Ninth Circuit (admitted June 24, 2014); and the United States District Courts for the District of
10 Columbia (admitted March 17, 2004), Southern District of New York (admitted July 7, 2008),
11 Eastern District of New York (admitted October 3, 2008), and District of Maryland (admitted
12 March 15, 2004). I am a member in good standing of the bars of all courts to which I have been
13 admitted.

14 6. I am not suspended or disbarred in any court.

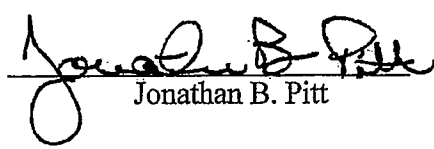
15 7. In the preceding two years, I have applied to appear *pro hac vice* in *Palantir*
16 *Technologies, Inc. v. Abramowitz et al.*, Case No. 4:16-cv-05857-PJH, in the United States District
17 Court for the Northern District of California, which application was made on October 13, 2016 and
18 granted on October 14, 2016.

19 8. Jack P. DiCanio (State Bar No. 138782) of the Palo Alto office of Skadden Arps
20 Slate Meagher & Flom LLP whose address is 525 University Avenue, Suite 1400, Palo Alto,
21 California 94301, and whose telephone number is (650) 470-4500, is an active member of the State
22 Bar of California and shall act as attorney of record in this matter.

23 9. The matters stated herein are based on my own personal knowledge.
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and respectfully request that the Court grant this Application and that
3 I be admitted as counsel *pro hac vice* to the bar for the Court to appear in this this matter.

4 Executed this 25th day of April, 2017 at Washington, D.C.

5 By: 
6 Jonathan B. Pitt

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1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:37

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

CASE NO.: 16CV299476

13 Plaintiff,

**NOTICE OF UNOPPOSED MOTION
AND MOTION FOR ADMISSION OF
JONATHAN B. PITT *PRO HAC VICE***

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

18 Defendants.

Complaint Filed: September 1, 2016
Trial Date: Not Sett

19
20
21 Please take notice that on June 1, 2017 at 9:00 a.m., or as soon thereafter as the matter can
22 be heard, in Department D-09, 191 North First Street, San Jose, CA 95113, Defendants Marc L.
23 Abramowitz, in his individual capacity and as trustee of the Marc Abramowitz Charitable Trust
24 No. 2, and KT4 Partners LLC will move the Court for an Order granting the *pro hac* application of
25 Jonathan B. Pitt to appear *pro hac vice* pursuant to California Rule of Court 9.40 on the ground that
26 the above-named attorney is not a member of the State Bar of California and that he meets the
27 requirements set forth in Rule 9.40(a).

28 //

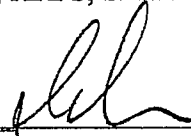
BY FAX

1 This motion is based on this Notice of Unopposed Motion for Admission, Memorandum in
2 Support of the Unopposed Motion, the Verified Application of Jonathan B. Pitt, the Declaration of
3 Ian Chen, and the files and records in this action.

4
5 DATED: April 28, 2017

6 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

7
8 By: _____



9 Ian Chen

10 Attorneys for Defendants
11 Marc L. Abramowitz, in his individual capacity and as
12 trustee of the Marc Abramowitz Charitable Trust No. 2,
13 and KT4 Partners LLC
14
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ENDORSED

2017 APR 28 P. 3: 3

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicanio@skadden.com
ian.chen@skadden.com
5

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,
13 Plaintiff,

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,
18 Defendants.

CASE NO.: 16CV299476

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR
ADMISSION OF JONATHAN B. PITT
PRO HAC VICE

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

Complaint Filed: September 1, 2016
Trial Date: Not Set

19
20 I. INTRODUCTION

21 By this Motion, defendants ask this Court for an order approving the Application of
22 Jonathan B. Pitt for admission *pro hac vice* to the State Bar of California, for the purpose of
23 participating in the representation of the Defendants in this action. Because the requirements of
24 California Rules of Court Rule 9.40 have been met, the Motion should be granted.

25 II. THE COURT IS AUTHORIZED TO ADMIT COUNSEL PRO HAC VICE.

26 Pursuant to California Rules of Court Rule 9.40(a),

27 A person who is not a member of the State Bar of California but who is
28

BY FAX

1 a member in good standing of and eligible to practice before the bar of
2 any United States court or the highest court in any state, territory, or
3 insular possession of the United States, and who has been retained to
4 appear in a particular cause pending in a court of this state, may in the
discretion of such court be permitted upon written application to appear
as counsel *pro hac vice*, provided that an active member of the State Bar
of California is associated as attorney of record.

5 In allowing admission *pro hac vice*, the California courts have stated:

6 *It is common practice, and one sustained by general usage in all of the*
7 *states of this union . . . to permit upon request an attorney holding a*
8 *license to practice law from one state to appear in the courts of a sister*
state, and there take part in the trial of an action pending in said courts.

9 *Ex parte McCue*, 211 Cal. 57, 67 (Cal. 1930). Thus, it is well established that if Rule 9.40 is
10 complied with, permission to appear *pro hac vice* should be granted and will be denied only in
11 extreme circumstances. *See Magee v. Super. Ct.*, 8 Cal. 3d 949, 952-53 n.1 (Cal. 1973) (in
12 California, *pro hac vice* applications are routinely granted).

13 **III. THE COURT SHOULD ADMIT JONATHAN B. PITT PRO HAC VICE.**

14 The requirements of Rule 9.40 have been complied with here, and the Application of
15 Jonathan B. Pitt for admission *pro hac vice* thus should be approved.

16 As set forth in his accompanying verified Application, Mr. Simon is a member in good
17 standing of the State Bar of New York and the District of Columbia Bar. Mr. Pitt is further
18 admitted to practice before the United States Supreme Court, the United States Court of Appeals
19 for the Second Circuit, the United States Court of Appeals for the Fifth Circuit, and the United
20 States Court of Appeals for the Ninth Circuit. Mr. Pitt is also admitted to practice before the
21 United States District Courts for the District of Columbia, Southern District of New York, Eastern
22 District of New York, and District of Maryland. He is not suspended or disbarred in any court. He
23 is not a resident of the State of California, is not regularly employed in the State of California, and
24 he does not regularly engage in professional activities in the State of California. Mr. Pitt possesses
25 knowledge and expertise that is important to the Defendants' appearance in this case, and
26 Defendants' interests would be unduly prejudiced if Mr. Pitt were not allowed to assist in its
27 representation.

1 In the preceding two years, Mr. Pitt has not applied to appear *pro hac vice* in any matters
2 pending in California state courts. In the preceding two years, Mr. Pitt applied to appear *pro hac*
3 *vice* in Palantir Technologies Inc. v. Abramowitz et al., Case No. 4:16-cv-05857-PJH, in the United
4 States District Court for the Northern District of California, which application was made on
5 October 13, 2016 and granted on October 14, 2016.

6 Mr. Pitt is a partner with the law firm Williams & Connolly LLP, which serves as co-
7 counsel for Defendants in this action along with the law firm of Skadden, Arps, Slate, Meagher &
8 Flom LLP, whose Palo Alto, California attorneys are active members of the State Bar of California
9 and attorneys of record for Defendants. As set forth in the accompanying declaration of Ian Chen,
10 the California State Bar has been served with notice of this Application, and the required fees have
11 been paid.

12 **IV. CONCLUSION**

13 Mr. Pitt's Application fulfills all of the requirements set forth in California Rules of Court
14 Rule 9.40. For the foregoing reasons, the Defendant respectfully requests that this Court issue an
15 order allowing Mr. Pitt to appear *pro hac vice* on its behalf in this action.

16 DATED: April 28, 2017

17 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

18
19 By:  _____

20 Ian Chen

21 Attorneys for Defendants
22 Marc L. Abramowitz, in his individual capacity and as
23 trustee of the Marc Abramowitz Charitable Trust No. 2,
24 and KT4 Partners LLC
25
26
27
28

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:36

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

A. Ramirez

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

13 Plaintiff,

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

18 Defendants.
19

CASE NO.: 16CV299476

**DECLARATION OF IAN CHEN IN
SUPPORT OF UNOPPOSED MOTION
FOR ADMISSION OF JONATHAN B.
PITT *PRO HAC VICE***

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

Complaint Filed: September 1, 2016
Trial Date: Not Set

20 I, Ian Chen, declare as follows:

21 1. I am an attorney licensed to practice law in the State of California and am an
22 associate at the law firm of Skadden Arps Slate Meagher & Flom LLP, counsel of record herein for
23 Defendants Marc L. Abramowitz, in his individual capacity and as trustee of the Marc Abramowitz
24 Charitable Trust No. 2, and KT4 Partners LLC.

25 2. I caused the State Bar of California to be personally served at its San Francisco
26 office on August 2, 2016, with the verified Application of Jonathan B. Pitt to appear as counsel *Pro*
27 *Hac Vice*, along with the Motion of Defendants for approval of the Application and the
28 accompanying Memorandum of Points and Authorities, Declaration of Ian Chen, and [Proposed]

1 Order Granting the Application, all of which are filed and/or lodged concurrently herewith. The
2 \$50.00 fee for Mr. Pitt's application has been paid to the California State Bar.

3 3. On March 22, 2017, I communicated with David Zifkin, counsel for Plaintiff, asking
4 if Plaintiff would oppose the motion for *pro hac vice* admission of Jonathan B. Pitt. Mr. Zifkin
5 informed Defendants that plaintiffs would not oppose the admission of Jonathan B. Pitt *pro hac*
6 *vice*.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed on April 28, 2017 at Palo Alto, California.

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11  _____

12 Ian Chen
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1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

13 Plaintiff,

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

18 Defendants.
19

CASE NO.: 16CV299476

**[PROPOSED] ORDER GRANTING
UNOPPOSED MOTION FOR
ADMISSION OF JONATHAN B. PITT
PRO HAC VICE**

Hearing date: June 1, 2017

Time: 9 a.m.

Department D-09

Complaint Filed: September 1, 2016

Trial Date: Not Set

20
21 This matter came before this Court on Defendants' Unopposed Motion For Admission Of
22 Jonathan B. Pitt *Pro Hac Vice*. The Court having considered the motion and finding good cause,

23 **IT IS HEREBY ORDERED** that the Application Of Jonathan B. Pitt For Admission *Pro*
24 *Hac Vice* is hereby GRANTED.

25
26
27 Dated: _____, 2017

28 SUPERIOR COURT JUDGE

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:36

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

A. Ramirez

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION
13

14 PALANTIR TECHNOLOGIES INC.,

Case No. 16CV299476

15 Plaintiff,

PROOF OF SERVICE

16 v.

17
18 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
19 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1 through
20 50, inclusive,

21 Defendants.
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BY FAX

2 I am employed in the County of Santa Clara, State of California. I am over the age of 18
3 and not a party to the within action; my business address is 525 University Avenue, Palo Alto, CA
94301; and my email address is sroots@skadden.com.

4 On April 28, 2017, I caused to be served the following document(s) described as:

5 **APPLICATION OF JONATHAN B. PITT FOR ADMISSION *PRO HAC VICE***

6 **NOTICE OF UNOPPOSED MOTION AND MOTION FOR ADMISSION OF JONATHAN
7 B. PITT *PRO HAC VICE***

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED
9 MOTION AND MOTION FOR ADMISSION OF JONATHAN B. PITT *PRO HAC VICE***

10 **DECLARATION OF IAN CHEN IN SUPPORT OF UNOPPOSED MOTION AND
11 MOTION FOR ADMISSION OF JONATHAN B. PITT *PRO HAC VICE***

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION AND MOTION FOR
12 ADMISSION OF JONATHAN B. PITT *PRO HAC VICE***

13 on the interested parties in this action by placing a true copy thereon enclosed/attached in/to a
sealed envelope/facsimile cover sheet addressed as follows:

14 COUNSEL FOR PLAINTIFF

15 Boies, Schiller & Flexner LLP
16 David Boies
333 Main Street
Armonk, NY 10504

The State Bar of California
Office of Special Admissions and Specialization
180 Howard Street
San Francisco, CA 94105

17 David Zifkin
18 Shira Liu
401 Wilshire Boulevard, Suite 850
19 Santa Monica, CA 90401

20 Kirkland & Ellis LLP
Jay P. Lefkowitz
21 Nathaniel J. Kritzer
601 Lexington Avenue
New York, NY 10022

22 // (BY EMAIL) I am readily familiar with the firm's practice of email transmission; on this
23 date, I caused the above-referenced document(s) to be transmitted by email as noted above
and that the transmission was reported as complete and without error.

24 // (BY MAIL) I am readily familiar with the firm's practice for the collection and processing
25 of correspondence for mailing with the United States Postal Service and the fact that the
correspondence would be deposited with the United States Postal Service that same day in
26 the ordinary course of business; on this date, the above-referenced correspondence was
placed for deposit at Palo Alto, California and placed for collection and mailing following
27 ordinary business practices. (AS NOTED)

28 /x/ (BY FEDERAL EXPRESS IN THE ORDINARY COURSE OF BUSINESS) I placed the
above document(s) in sealed envelope(s) addressed to the above person(s). I placed the
envelope(s) for collection and processing for delivery by Federal Express in Palo Alto,

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Santa Clara County, California, following the firm's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with Federal Express.

/x/ (STATE/FEDERAL) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 28, 2017, at Palo Alto, California.


Samantha Roots

ENDORSED

2017 APR 28 P 3: 35

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com

5 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
6 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

10 UNLIMITED JURISDICTION

11 PALANTIR TECHNOLOGIES INC.,
12 Plaintiff,

13 v.

14 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
15 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
16 through 50, inclusive,
17 Defendants.

CASE NO.: 16CV299476

APPLICATION OF STEPHEN L.
WOHLGEMUTH FOR ADMISSION
PRO HAC VICE

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

Complaint Filed: September 1, 2016
Trial Date: Not Set

19 I, Stephen L. Wohlgermuth, apply for admission to practice before this Court *pro hac vice*,
20 in order to represent Defendants Marc L. Abramowitz, in his individual capacity and as trustee of
21 the Marc Abramowitz Charitable Trust No. 2, and KT4 Partners LLC in the matter of the *Palantir*
22 *Technologies, Inc. v. Abramowitz et al.* (No. 16CV299476) now pending in the Superior Court of
23 the State of California for the County of Santa Clara. In support of this application, I state the
24 following:

25 1. I have been retained by Defendants to appear in this action as an attorney on their
26 behalf.

27 2. I am not a resident of the State of California. I do not regularly practice law in the
28 State of California. I am not regularly employed in the State of California or engaged in any

1 substantial business, professional, or other activities in the State of California.

2 3. My residential address is 1481 Florida Avenue N.W., Ap. A, Washington D.C.,
3 20009.

4 4. My business address is Williams & Connolly LLP, 725 Twelfth Street, N.W.,
5 Washington, D.C., 20005.

6 5. I was admitted to the Bar of the State of New York on April 9, 2012. I was also
7 admitted to the District of Columbia Bar on June 8, 2015. I have been admitted to the bars of the
8 United States Court of Appeals for the Third Circuit (admitted September 2013), and the United
9 States District Court for the District of Columbia (admitted November 2016). I am a member in
10 good standing of the bars of all courts to which I have been admitted.

11 6. I am not suspended or disbarred in any court.

12 7. In the preceding two years, I have not applied to appear *pro hac vice* in any matters
13 pending in California state courts or in any federal courts within the state of California.

14 8. Jack P. DiCanio (State Bar No. 138782) of the Palo Alto office of Skadden Arps
15 Slate Meagher & Flom LLP whose address is 525 University Avenue, Suite 1400, Palo Alto,
16 California 94301, and whose telephone number is (650) 470-4500, is an active member of the State
17 Bar of California and shall act as attorney of record in this matter.

18 9. The matters stated herein are true based on my own personal knowledge.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct, and respectfully request that the Court grant this Application and that
21 I be admitted as counsel *pro hac vice* to the bar for the Court to appear in this this matter.

22 Executed this 25th day of April, 2017 at Washington, D.C.

23
24 By: 

Stephen L. Wohlgenuth

ENDORSED

2017 APR 28 P 3:35

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

A. Ramirez

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,
13 Plaintiff,

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,
18 Defendants.

CASE NO.: 16CV299476

NOTICE OF UNOPPOSED MOTION
AND MOTION FOR ADMISSION OF
STEPHEN L. WOHLGEMUTH *PRO*
HAC VICE

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

Complaint Filed: September 1, 2016
Trial Date: Not Set

19
20
21 Please take notice that on June 1, 2017 at 9:00 a.m., or as soon thereafter as the matter can
22 be heard, in Department D-09, 191 North First Street, San Jose, CA 95113, Defendants Marc L.
23 Abramowitz, in his individual capacity and as trustee of the Marc Abramowitz Charitable Trust
24 No. 2, and KT4 Partners LLC will move the Court for an Order granting the *pro hac* application of
25 Stephen L. Wohlgenuth to appear *pro hac vice* pursuant to California Rule of Court 9.40 on the
26 ground that the above-named attorney is not a member of the State Bar of California and that he
27 meets the requirements set forth in Rule 9.40(a).

28 //

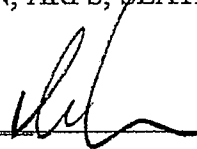
BY FAX

1 This motion is based on this Notice of Unopposed Motion and Motion for Admission,
2 Memorandum in Support of the Unopposed Motion, the Verified Application of Stephen L.
3 Wohlegmuth, the Declaration of Ian Chen, and the files and records in this action.
4

5 DATED: April 28, 2017

6 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

7
8 By: _____



9 Ian Chen

10 Attorneys for Defendants
11 Marc L. Abramowitz, in his individual capacity and as
12 trustee of the Marc Abramowitz Charitable Trust No. 2,
13 and KT4 Partners LLC
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1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3: 35

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

A. Ramirez

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA
11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,
13 Plaintiff,
14 v.
15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,
18 Defendants.
19

CASE NO.: 16CV299476
**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR
ADMISSION OF STEPHEN L.
WOHLGEMUTH *PRO HAC VICE***
Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09
Complaint Filed: September 1, 2016
Trial Date: Not Set

20 I. INTRODUCTION
21

22 By this Motion, defendants ask this Court for an order approving the Application of
23 Stephen L. Wohlgemuth for admission *pro hac vice* to the State Bar of California, for the purpose
24 of participating in the representation of the Defendants in this action. Because the requirements of
25 California Rules of Court Rule 9.40 have been met, the Motion should be granted.

26 II. THE COURT IS AUTHORIZED TO ADMIT COUNSEL *PRO HAC VICE*.

27 Pursuant to California Rules of Court Rule 9.40(a),
28 A person who is not a member of the State Bar of California but who is

BY FAX

1 a member in good standing of and eligible to practice before the bar of
2 any United States court or the highest court in any state, territory, or
3 insular possession of the United States, and who has been retained to
4 appear in a particular cause pending in a court of this state, may in the
discretion of such court be permitted upon written application to appear
as counsel *pro hac vice*, provided that an active member of the State Bar
of California is associated as attorney of record.

5 In allowing admission *pro hac vice*, the California courts have stated:

6 *It is common practice, and one sustained by general usage in all of the*
7 *states of this union . . . to permit upon request an attorney holding a*
8 *license to practice law from one state to appear in the courts of a sister*
state, and there take part in the trial of an action pending in said courts.

9 *Ex parte McCue*, 211 Cal. 57, 67 (Cal. 1930). Thus, it is well established that if Rule 9.40 is
10 complied with, permission to appear *pro hac vice* should be granted and will be denied only in
11 extreme circumstances. *See Magee v. Super. Ct.*, 8 Cal. 3d 949, 952-53 n.1 (Cal. 1973) (in
12 California, *pro hac vice* applications are routinely granted).

13 **III. THE COURT SHOULD ADMIT STEPHEN L. WOHLGEMUTH PRO HAC**
14 **VICE.**

15 The requirements of Rule 9.40 have been complied with here, and the Application of
16 Stephen L. Wohlgemuth for admission *pro hac vice* thus should be approved.

17 As set forth in his accompanying verified Application, Mr. Wohlgemuth is a member in
18 good standing of the State Bar of New York and the District of Columbia Bar. Mr. Wohlgemuth is
19 further admitted to practice before the United States Court of Appeals for the Third Circuit and the
20 United States District Court for the District of Columbia. He is not suspended or disbarred in any
21 court. He is not a resident of the State of California, is not regularly employed in the State of
22 California, and he does not regularly engage in professional activities in the State of California.
23 Mr. Wohlgemuth possesses knowledge and expertise that is important to the Defendants'
24 appearance in this case, and Defendants' interests would be unduly prejudiced if Mr. Wohlgemuth
25 were not allowed to assist in its representation.

26 In the preceding two years, Mr. Wohlgemuth has not applied to appear *pro hac vice* in any
27 matters pending in California state courts or in any federal courts within the state of California.

28 Mr. Wohlgemuth is an associate with the law firm Williams & Connolly LLP, which serves
as co-counsel for Defendants in this action along with the law firm of Skadden, Arps, Slate,

1 Meagher & Flom LLP, whose Palo Alto, California attorneys are active members of the State Bar
2 of California and attorneys of record for Defendants. As set forth in the accompanying declaration
3 of Ian Chen, the California State Bar has been served with notice of this Application, and the
4 required fees have been paid.

5 **IV. CONCLUSION**

6 Mr. Wohlgemuth's Application fulfills all of the requirements set forth in California Rules
7 of Court Rule 9.40. For the foregoing reasons, the Defendant respectfully requests that this Court
8 issue an order allowing Mr. Wohlgemuth to appear *pro hac vice* on its behalf in this action.

9 DATED: April 28, 2017

10 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

11
12 By:  _____

13 Ian Chen

14 Attorneys for Defendants
15 Marc L. Abramowitz, in his individual capacity and as
16 trustee of the Marc Abramowitz Charitable Trust No. 2,
17 and KT4 Partners LLC

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1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
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Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:35

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

13 Plaintiff,

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

18 Defendants.
19

CASE NO.: 16CV299476

DECLARATION OF IAN CHEN IN
SUPPORT OF UNOPPOSED MOTION
FOR ADMISSION OF STEPHEN L.
WOHLGEMUTH *PRO HAC VICE*

Hearing date: June 1, 2017
Time: 9 a.m.
Department D-09

Complaint Filed: September 1, 2016
Trial Date: Not Set

20 I, Ian Chen, declare as follows:

21 1. I am an attorney licensed to practice law in the State of California and am an
22 associate at the law firm of Skadden Arps Slate Meagher & Flom LLP, counsel of record herein for
23 Defendants Marc L. Abramowitz, in his individual capacity and as trustee of the Marc Abramowitz
24 Charitable Trust No. 2, and KT4 Partners LLC.

25 2. I caused the State Bar of California to be personally served at its San Francisco
26 office on August 2, 2016, with the verified Application of Stephen L. Wohlgenuth to appear as
27 counsel *Pro Hac Vice*, along with the Motion of Defendants for approval of the Application and
28 the accompanying Memorandum of Points and Authorities, Declaration of Jack P. DiCanio, and

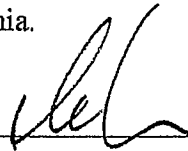
A. Ramirez

1 [Proposed] Order Granting the Application, all of which are filed and/or lodged concurrently
2 herewith. The \$50.00 fee for Mr. Wohlgemuth's application has been paid to the California State
3 Bar.

4 3. On March 22, 2017, I communicated with David Zifkin, counsel for Plaintiff, asking
5 if Plaintiff would oppose the motion for *pro hac vice* admission of Stephen L. Wohlgemuth. Mr.
6 Zifkin informed Defendants that plaintiffs would not oppose the admission of Stephen L.
7 Wohlgemuth *pro hac vice*.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10 Executed on April 28, 2017 at Palo Alto, California.

11
12  _____

13 Ian Chen
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1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
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4 jack.dicanio@skadden.com
ian.chen@skadden.com
5

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 PALANTIR TECHNOLOGIES INC.,

13 Plaintiff,

14 v.

15 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
16 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1
17 through 50, inclusive,

18 Defendants.
19

CASE NO.: 16CV299476

**[PROPOSED] ORDER GRANTING
UNOPPOSED MOTION FOR
ADMISSION OF STEPHEN L.
WOHLGEMUTH *PRO HAC VICE***

Hearing date: June 1, 2017

Time: 9 a.m.

Department D-09

Complaint Filed: September 1, 2016

Trial Date: Not Set

20

21 This matter came before this Court on Defendants' Unopposed Motion For Admission Of
22 Stephen L. Wohlgemuth *Pro Hac Vice*. The Court having considered the motion and finding good
23 cause,

24 **IT IS HEREBY ORDERED** that the Application Of Stephen L. Wohlgemuth For
25 Admission *Pro Hac Vice* is hereby GRANTED.

26

27 Dated: _____, 2017

28

SUPERIOR COURT JUDGE

1 JACK P. DICANIO (SBN 138782)
IAN CHEN (SBN 287778)
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Palo Alto, California 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570
4 jack.dicano@skadden.com
ian.chen@skadden.com
5

ENDORSED

2017 APR 28 P 3:35

SUPERIOR COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY _____ DEPUTY

A. Ramirez

6 Attorneys for Defendants
Marc L. Abramowitz, in his individual capacity and as
7 trustee of the Marc Abramowitz Charitable Trust No. 2, and
KT4 Partners LLC
8

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION
13

14 PALANTIR TECHNOLOGIES INC.,
15
16 Plaintiff,
17
18 v.
19 MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
20 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, and DOES 1 through
50, inclusive,
21
22 Defendants.

Case No. 16CV299476

PROOF OF SERVICE

BY FAX

2 I am employed in the County of Santa Clara, State of California. I am over the age of 18
3 and not a party to the within action; my business address is 525 University Avenue, Palo Alto, CA
94301; and my email address is sroots@skadden.com.

4 On April 28, 2017, I caused to be served the following document(s) described as:

5 **APPLICATION OF STEPHEN L. WOHLGEMUTH FOR ADMISSION *PRO HAC VICE***

6 **NOTICE OF UNOPPOSED MOTION AND MOTION FOR ADMISSION OF STEPHEN L.
7 WOHLGEMUTH *PRO HAC VICE***

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED
9 MOTION AND MOTION FOR ADMISSION OF STEPHEN L. WOHLGEMUTH *PRO
HAC VICE***

10 **DECLARATION OF IAN CHEN IN SUPPORT OF UNOPPOSED MOTION AND
MOTION FOR ADMISSION OF STEPHEN L. WOHLGEMUTH *PRO HAC VICE***

11 **[PROPOSED] ORDER GRANTING UNOPPOSED MOTION AND MOTION FOR
12 ADMISSION OF STEPHEN L. WOHLGEMUTH *PRO HAC VICE***

13 on the interested parties in this action by placing a true copy thereon enclosed/attached in/to a
sealed envelope/facsimile cover sheet addressed as follows:

14 **COUNSEL FOR PLAINTIFF**

15 Boies, Schiller & Flexner LLP
16 David Boies
333 Main Street
17 Armonk, NY 10504

The State Bar of California
Office of Special Admissions and Specialization
180 Howard Street
San Francisco, CA 94105

18 David Zifkin
19 Shira Liu
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401

20 Kirkland & Ellis LLP
21 Jay P. Lefkowitz
Nathaniel J. Kritzer
601 Lexington Avenue
22 New York, NY 10022

23 // (BY EMAIL) I am readily familiar with the firm's practice of email transmission; on this
date, I caused the above-referenced document(s) to be transmitted by email as noted above
24 and that the transmission was reported as complete and without error.

25 // (BY MAIL) I am readily familiar with the firm's practice for the collection and processing
of correspondence for mailing with the United States Postal Service and the fact that the
26 correspondence would be deposited with the United States Postal Service that same day in
the ordinary course of business; on this date, the above-referenced correspondence was
27 placed for deposit at Palo Alto, California and placed for collection and mailing following
ordinary business practices. (AS NOTED)

28 /x/ (BY FEDERAL EXPRESS IN THE ORDINARY COURSE OF BUSINESS) I placed the
above document(s) in sealed envelope(s) addressed to the above person(s). I placed the

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envelope(s) for collection and processing for delivery by Federal Express in Palo Alto, Santa Clara County, California, following the firm's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with Federal Express.

/x/ (STATE/FEDERAL) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 28, 2017, at Palo Alto, California.


Samantha Roots



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MINUTE ORDER

Palantir Technologies, Inc. v. Mark Abramowitz

16CV299476

Date of Hearing: May 02, 2017

Hearing Start Time: 9:00 AM

Hearing Type: Motion: Leave to File

Comments:

Heard By: Arand, Mary E
Courtroom Reporter: Heather J Bautista

Location: Department 9
Courtroom Clerk: Diane Macias
Court Interpreter:
Court Investigator:

Parties Present:

Future Hearings:

Exhibits:

- No appearance.

No one called to contest the Tentative Ruling.

The tentative ruling is adopted. See below for ruling.

Motion for leave to file second amended complaint was properly served, is unopposed, and is GRANTED. However, the Court is not prepared to make findings as to whether the amendment is necessary to clarify Plaintiff's claims or as to any other purpose for the amendments. It is not the practice of the Court to make findings on allegations made in the parties' papers unless findings are required, which they are not in this instance. Moreover, the Court reaches no conclusions as to whether the claims are properly stated, and the Defendants' rights to demur are preserved. The Court will modify and sign the proposed form of order. The Second Amended Complaint shall be filed within ten days after entry of the order.

As a point for future reference, in response to the request that the Court decide this matter on the briefs alone, the Court resolves motions on the law and motion calendar without a hearing only where neither party contests the tentative ruling. (See Local Rules of Court, Rule 8.E.) The Court does not follow Federal Rules or practice.



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MINUTE ORDER

Palantir Technologies, Inc. v. Mark Abramowitz

Hearing Start Time: 9:00 AM

16CV299476

Hearing Type: Hearing: Pro Hac Vice
Counsel

Date of Hearing: May 02, 2017

Comments:

Heard By: Arand, Mary E
Courtroom Reporter: Heather J Bautista

Location: Department 9
Courtroom Clerk: Diane Macias
Court Interpreter:
Court Investigator:

Parties Present:

Future Hearings:

Exhibits:

- No appearance.

No one called to contest the Tentative Ruling.

The tentative ruling is adopted. See below for ruling.

Application of attorney David Boies to appear as counsel pro hac vice for Plaintiff Palantir Technologies, Inc. was timely served on the opposing party and is unopposed, but the amended notice of motion was not served on the State Bar. An amended order reflecting the date and department change, plus a second copy of the order, will be required.

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The motion of Plaintiff Palantir Technologies Inc. ("Palantir") for leave to file a Second Amended Complaint came on for hearing in Department 9 of this Court on May 2, 2017 at 9:00 a.m. *No appearance after the tentative ruling was posted* Counsel for Palantir and Defendants Marc L. Abramowitz, individually and in his capacity as trustee for the Marc Abramowitz Charitable Trust No. 2, and KT4 Partners LLC appeared.

Having read the motion, the memoranda and declarations filed by the parties, ~~and having heard argument of counsel presented at the hearing,~~ and good cause appearing, the Court finds that the proposed amendment is necessary to clarify Palantir's claims relating to the Unfair Competition Law and to remove Palantir's request for declaratory relief. The Court also finds that Defendants will suffer no undue prejudice by reason of the amendment, and that the amendment will not cause undue delay. Accordingly, it is in the interests of justice and judicial efficiency to allow Plaintiff to file its second amended complaint.

THEREFORE, IT IS ORDERED THAT Plaintiff's motion is granted. Plaintiff shall file its proposed Second Amended Complaint and substituted as the operative pleading in this matter, forthwith.

DATED: 5/2, 2017

Mary E. Arand
HONORABLE MARY E. ARAND
JUDGE OF THE SUPERIOR COURT

FILED

2017 MAY -5 P 1:35

CLERK OF THE COURT
COUNTY OF SANTA CLARA
L. QUAGLIA

1 **BOIES, SCHILLER & FLEXNER LLP**
David Boies (*Pro Hac Vice* appl. pending)
2 (dboies@bsflp.com)
3 333 Main Street
Armonk, NY 10504
4 Tel: (914) 749-8200; Fax: (914) 749-8300

5 David Zifkin (SBN 232845) (dzifkin@bsflp.com)
Shira Liu (SBN 274158) (sliu@bsflp.com)
6 401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401
7 Tel: (310) 752-2400; Fax: (310) 752-2490

8 **KIRKLAND & ELLIS LLP**
Jay P. Lefkowitz (*Pro Hac Vice* appl. pending)
(lefkowitz@kirkland.com)
9 Nathaniel J. Kritzer (*Pro Hac Vice* appl. pending)
(nathaniel.kritzer@kirkland.com)
10 601 Lexington Ave
New York, NY 10022
11 Tel: (212) 446-4800; Fax: (212) 446-4900

12 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a)
17 Delaware corporation,)
18 *Plaintiff,*)
19 v.)
20 MARC L. ABRAMOWITZ, in his individual)
21 capacity and as trustee of the MARC)
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
24 inclusive,)
Defendants.)

Case No. 16CV299476
**PROOF OF SERVICE OF AMENDED
NOTICE OF HEARING RE: VERIFIED
PRO HAC VICE APPLICATIONS**

Complaint Filed: September 1, 2016
Trial Date: Not set

FAXED

1 PROOF OF SERVICE

2 I, the undersigned, declare as follows:

3 I am employed in the County of Los Angeles. At the time of service I was over 18 years
4 of age and not a party to this action. My business address is 401 Wilshire Blvd., Suite 850, Santa
5 Monica, CA 90401. On May 4, 2017 I served the following document(s):

6 **AMENDED NOTICE OF HEARING RE: VERIFIED APPLICATION OF DAVID BOIES
7 AND JOHN T. ZACH TO APPEAR AS COUNSEL *PRO HAC VICE* FOR PLAINTIFF
8 PALANTIR TECHNOLOGIES INC.**

9 I personally served the documents on the person/s below, as follows:

10 Pro Hac Vice Program
11 **The State Bar of California**
12 180 Howard St.
13 San Francisco, CA 94105
14 E-mail: ProHac@calbar.ca.gov
15 Phone: 415-538-2111

16 The documents were served by the following means:

17 <input type="checkbox"/>	18 By personal service. I caused to be personally delivered the documents to the 19 persons at the addresses listed above. (1) For a party represented by an 20 attorney, delivery was made to the attorney or at the attorney's office by 21 leaving the documents in an envelope or package clearly labeled to identify the 22 attorney being served with a receptionist or an individual in charge of the 23 office. (2) For a party, delivery was made to the party or by leaving the 24 documents at the party's residence with some person not less than 18 years of 25 age between the hours of eight in the morning and six in the evening.
26 <input type="checkbox"/>	27 By United States mail. I enclosed the documents in a sealed envelope or 28 package addressed to the persons at the addresses listed above and: <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.

1 2 3	<input checked="" type="checkbox"/> By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
4 5 6 7	<input type="checkbox"/> By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i>
8 9 10	<input type="checkbox"/> By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

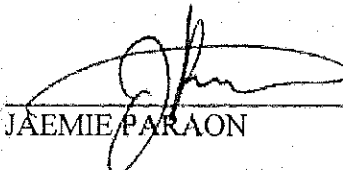
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(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

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Executed on May 4, 2017 at Santa Monica, California.

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 JAEMIE PARAON

1 **BOIES, SCHILLER & FLEXNER LLP**
2 David Boies (*Pro Hac Vice* appl. pending)
3 (dboies@bsflp.com)
4 333 Main Street
5 Armonk, NY 10504
6 Telephone: (914) 749-8200
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8 David Zifkin (SBN 232845)
9 (dzifkin@bsflp.com)
10 Shira Liu (SBN 274158)
11 (sliu@bsflp.com)
12 401 Wilshire Boulevard, Suite 850
13 Santa Monica, CA 90401
14 Telephone: (310) 752-2400
15 Facsimile: (310) 752-2490

16 *Additional counsel identified on signature page*

17 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SANTA CLARA**
20 **UNLIMITED JURISDICTION**


21 PALANTIR TECHNOLOGIES INC., a	)	Case No. 16CV299476
22 Delaware corporation,)	
23)	
24 <i>Plaintiff,</i>	)	NOTICE OF ENTRY OF ORDER
25)	
26 v.)	
27)	
28 MARC L. ABRAMOWITZ, in his individual	)	Complaint Filed: September 1, 2016
capacity and as trustee of the MARC	)	Trial Date: Not set
ABRAMOWITZ CHARITABLE TRUST NO.)	
2, KT4 PARTNERS LLC, a Delaware limited)	
liability company, and DOES 1 through 50,)	
inclusive,)	
29)	
30 <i>Defendants.</i>)	
31)	
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1 **TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD IN THIS**
2 **ACTION:**

3 PLEASE TAKE NOTICE that on May 2, 2017, the Honorable Mary E. Arand, Superior
4 Court Judge for the State of California, issued an Order, attached hereto as Exhibit A, granting
5 Plaintiff Palantir Technologies Inc.'s Motion for Leave to File a Second Amended Complaint.
6

7 Dated: May 5, 2017

BOIES, SCHILLER & FLEXNER LLP

8 By: 
9 David Zifkin (SBN 232845) (dzifkin@bsflp.com)
10 Shira Liu (SBN 274158) (sliu@bsflp.com)
11 401 Wilshire Boulevard, Suite 850
12 Santa Monica, CA 90401
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14 David Boies (*Pro Hac Vice* appl. pending)
15 (dboies@bsflp.com)
16 333 Main Street, Armonk, NY 10504
17 Telephone: (914) 749-8200; Facsimile: (914) 749-8300

18 John T. Zach (*Pro Hac Vice* appl. pending)
19 (jzach@bsflp.com)
20 575 Lexington Avenue, 7th Floor
21 New York, NY 10022
22 Telephone: (212) 446-2300; Facsimile: (212) 446-2350

23 Carlos M. Sires (*Pro Hac Vice* to be filed)
24 (csires@bsflp.com)
25 401 East Las Olas Blvd., Suite 1200
26 Fort Lauderdale, FL 33301
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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**
19 v.)
20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
24 inclusive,)
Defendants.)

1 **PROOF OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am employed in the County of Los Angeles. At the time of service I was over 18 years
4 of age and not a party to this action. My business address is 401 Wilshire Blvd., Suite 850, Santa
5 Monica, CA 90401. On May 5, 2017 I served the following document(s):

6 **1. NOTICE OF ENTRY OF ORDER**

7 **2. SECOND AMENDED COMPLAINT FOR:**

8 **(1) Breach of Contract**

9 **(2) Breach of the Implied Covenant of Good Faith and Fair Dealing**

10 **(3) Violation of Cal. Civ. Code § 3426 et seq.**

11 **(4) Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §
12 17200 et seq.**

13 I personally served the documents on the person/s below, as follows:

14 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

15 Jack P. DiCanio

16 Ian Chen

17 525 University Avenue

18 Palo Alto, California 94301

19 Telephone: (650) 470-4660

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The documents were served by the following means:

24

25 **By personal service.** I caused to be personally delivered the documents to the
26 persons at the addresses listed above. (1) For a party represented by an
27 attorney, delivery was made to the attorney or at the attorney's office by
28 leaving the documents in an envelope or package clearly labeled to identify the
attorney being served with a receptionist or an individual in charge of the
office. (2) For a party, delivery was made to the party or by leaving the

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	documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.
<input checked="" type="checkbox"/>	By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input type="checkbox"/>	By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i>
<input type="checkbox"/>	By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

Executed on May 5, 2017 at Santa Monica, California.



Elena Colle

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20 *Additional counsel identified on signature page*

21 *Attorneys for Plaintiff PALANTIR TECHNOLOGIES INC.*

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **FOR THE COUNTY OF SANTA CLARA**

24 **UNLIMITED JURISDICTION**

25 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
26 Delaware corporation,)
27) **SECOND AMENDED COMPLAINT FOR:**
28) (1) Breach of Contract
29) (2) Breach of the Implied Covenant of Good
30) Faith and Fair Dealing
31) (3) Violation of Cal. Civ. Code § 3426 et seq.
32) (4) Violation of California's Unfair
33) Competition Law, Cal. Bus. & Prof. Code §
34) 17200 et seq.
35) **JURY TRIAL DEMAND**
36) Complaint Filed: September 1, 2016
37) Trial Date: Not set
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1 Plaintiff Palantir Technologies Inc. (“Palantir”), for its First Amended Complaint against
2 defendants Marc L. Abramowitz (“Abramowitz”), both in his individual capacity and as trustee of
3 the Marc Abramowitz Charitable Trust No. 2 (the “Trust”), KT4 Partners LLC (“KT4”), and Does
4 1 through 50 (collectively with Abramowitz, KT4, and the Trust, “Defendants”), alleges as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action to stop Defendants from misappropriating Palantir’s confidential
7 information and proprietary trade secrets for their own benefit and to prevent them from receiving
8 any additional confidential or proprietary information from Palantir pursuant to an Investors’
9 Rights Agreement.

10 2. Abramowitz was a respected confidant and advisor to Palantir and its senior
11 executives until he betrayed the trust they bestowed upon him for his own personal gain. He was,
12 through KT4 and other entities, an early equity investor in Palantir who personally engaged in
13 regular discussions with executives about some of the company’s most sensitive business
14 strategies and trade secrets. Those discussions were highly confidential, as was made clear by
15 express written agreements among the parties at the time and a course of dealing based on the
16 most basic principles of fairness and honesty between a trusted shareholder and advisor and
17 Palantir’s management and business personnel.

18 3. Nonetheless, as part of brazen scheme to claim Palantir’s highly confidential
19 information and trade secrets as his own, Abramowitz stole those secrets, engaged in methodical
20 deception of Palantir’s senior executives, and made false claims to the United States Patent and
21 Trademark Office (USPTO). Abramowitz’s claim to be a patent innovator is directly
22 contradicted by the facts surrounding his professional career and his interactions with Palantir.

23 4. To start, Abramowitz has no notable history as an inventor or patent innovator in
24 the data analysis area. He has made most of his career and fortune in real estate and buyout
25 investing. Yet, beginning in 2014, Abramowitz suddenly filed five patent applications with the
26 USPTO, all of them based on trade secrets he stole from Palantir. This was plainly illegal and
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1 highly unethical conduct, and it was a betrayal of his trusted relationship with Palantir and its
2 executives.

3 5. But Abramowitz's scheme did not end there. After stealing from Palantir, he has
4 continued to employ false pretenses in an effort to further exploit his relationship with Palantir
5 and extort confidential information from the company. Among other things, Abramowitz has
6 made a series of unwarranted demands upon the company to obtain sensitive financial and other
7 information. In a transparent ploy to seek leverage for his demands, Abramowitz has resorted to
8 concocting a false story that Palantir intentionally interfered with his attempt to sell his Palantir
9 shares to an international firm. Those allegations are spurious. The international firm that
10 Abramowitz claims was prepared to purchase his shares was actually identified to Palantir as a
11 potential direct investor by a third party unaffiliated with Abramowitz well *before* Abramowitz
12 raised them as a potential purchaser. Far from interfering with Abramowitz's efforts, Palantir
13 specifically instructed its agents to stand down from any attempt to sell stock to this potential
14 buyer, and Palantir never sold any stock to this potential buyer. Palantir also stood ready to assist
15 Abramowitz with a sale of his shares—as it had done in the past—if his discussions with the
16 potential buyer ever became serious. They never did. That international firm did not invest in
17 Palantir, either by purchasing Abramowitz's shares or from Palantir directly.

18 6. Nonetheless, Abramowitz has now hired lawyers and has brought an action in
19 Delaware state court to demand from Palantir sensitive and confidential information about the
20 company, including its finances and business dealings, which Palantir considers to be, and treats
21 as, highly sensitive and confidential. Having uncovered Abramowitz's breach of Palantir's trust
22 (and of his contractual obligations to Palantir under multiple agreements), it is apparent that
23 Abramowitz is not seeking this information in good faith or for a proper purpose. In fact, history
24 has shown that, unlike Palantir's other investors, Abramowitz has and will misuse any
25 information provided to him in breach of confidence, causing Palantir irreparable harm in the
26 process.

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1 and for the damages proximately caused thereby. Once Palantir learns of the true names of Does 1
2 through 50, Palantir will amend the complaint to include the real name(s) of such party or parties.

3 13. This action is founded on injuries and damages suffered by Palantir in Santa Clara
4 County by virtue of the Defendants' misappropriation of trade secrets, breach of contract, breach
5 of confidence and other illegal and wrongful acts as alleged in this Complaint. Venue is proper in
6 this Court because Plaintiff resides in this County, the harm caused by Defendants occurred in this
7 County, and the events that form the basis for this Complaint largely took place in this County.

8 **FACTUAL BACKGROUND**

9 **Palantir's Business and the Trade Secrets and Other Confidential Information at Issue**

10 14. Palantir is a software and services company that specializes in data analytics. In
11 2004, Palantir was founded on a vision: to provide solutions not only to problems then faced by
12 business and government, but also solutions to problems that did not yet exist, but that would
13 surely come to be as part of our rapidly-evolving world. It sought to make this vision a reality by
14 the use of technology. And it embarked on an ambitious, time-consuming, and costly endeavor to
15 create a viable, successful business. As a result of hard work and investment, Palantir has
16 succeeded and is now a leader in its industry. Today, Palantir's products are deployed at the most
17 critical government, commercial, and non-profit institutions in the world to solve problems the
18 company's founders had not even dreamed of back in 2004.

19 15. In particular, at its founding, Palantir set out to create products that would transform
20 the way organizations use what is perhaps their most important asset in today's business world,
21 data. Palantir's mission has been and remains to develop flexible tools and services to provide
22 human-driven analysis of real-world data, with a focus on creating the world's best user experience
23 for working with data. To achieve this, Palantir builds platforms for integrating, managing, and
24 securing data, on top of which it layers applications for fully interactive, human-driven, machine-
25 assisted analysis. This means that Palantir develops programs and provides services that allow
26 businesses, governments and other entities to run their operations in a way that corresponds with
27 the reality of their marketplace and consumers.

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1 16. Businesses and governments use Palantir’s software to interpret and visualize large
2 quantities of information from various sources. For example, businesses use Palantir’s software to
3 analyze internal and external data to better assess cyber risks, and government agencies use
4 Palantir’s software to analyze intelligence data to better understand emerging threats.

5 17. Palantir’s success is due in part to its early recognition that many organizations are
6 traditionally unable to identify problems and leverage insights from their internal data because it is
7 held in separate silos that are often disconnected and have different access, security controls, and
8 privacy requirements. When information is siloed—that is, when important information is stored
9 in containerized, unrelated units—businesses and governments cannot fully realize the potential of
10 that data. Palantir provides software solutions that avoid this problem, allowing users to run their
11 businesses consistent with the actual environment in which they operate. Thus, Palantir’s products
12 are used to fuse and analyze customer data across platforms and sources and enable secure
13 collaboration among analysts, while protecting data privacy and security.

14 18. As is expected in this type of work, Palantir is also heavily involved in research and
15 development. Palantir spends millions of dollars each year to expand its business and seek out new
16 opportunities—and to stay ahead of the curve and atop the industry. This research and development
17 investment involves both creating new software, technologies and processes and adapting existing
18 products and technologies to new applications and uses.

19 19. As described in more detail below, this litigation concerns, among other things,
20 Defendants’ misappropriation of Palantir’s proprietary trade secret and business information
21 concerning Palantir’s technologies and/or use cases for (i) interpreting and analyzing data in the
22 healthcare space for clinical drug trials and for health insurance risk assessments (the “Healthcare
23 Technology”); (ii) cyber insurance technology and related cybersecurity technology for use of
24 customer consortia to improve cybersecurity; (the “Cyber Insurance and Cybersecurity
25 Technology”); and (iii) interpreting and analyzing data in connection with natural resources
26 exploration and management (the “Natural Resources Exploration Technology”). It also concerns
27 Defendants’ misappropriation of Palantir’s trade secret business plans and customer lists related to
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1 these technologies. Palantir employed reasonable efforts to maintain the secrecy of these trade
2 secrets, which have had substantial economic value because they were not generally known to the
3 public or others in the industry at the time of Defendants' misappropriation.

4 **Palantir Scrupulously Protects Its Trade Secrets and Other Confidential Information**

5 20. Palantir undertakes significant efforts to protect the confidentiality and security of
6 its trade secrets, property (including physical locations, intellectual property, and network security),
7 as well as sensitive and confidential business and financial information.

8 21. Palantir employs both technical and physical safety measures to maintain the
9 security of its property and confidential information. Among other things, Palantir restricts
10 employees' access to sensitive internal information such that individual employees can only access
11 such data after obtaining appropriate authorization and only to the extent necessary to perform their
12 jobs. Additionally, Palantir employs a multitude of technical security measures to protect its
13 systems and networks, including, among other methods: intrusion detection systems, network
14 monitoring tools, anti-malware software, network firewalls, and whole disk encryption of employee
15 computers. Palantir's network and security systems are also continually monitored for potential
16 security risks. To secure access to information and data no matter where employees are, Palantir
17 uses and requires complex password requirements and two-factor authentication for access to its
18 hardware and its network.

19 22. In addition to data and network security, physical access to Palantir's facilities is
20 also highly restricted. Palantir employees must use electronic badges to access Palantir facilities.
21 Access to certain sensitive areas of Palantir's facilities is further restricted to a small subset of
22 Palantir employees with a specific need for access (including, for example, Palantir facilities
23 containing network servers and security equipment, among others). Visitors must be invited to
24 Palantir facilities, must sign in and wear a visitor badge, and are escorted at all times. In addition,
25 certain areas of Palantir's facilities are off limits to visitors, and Palantir deploys security guards to
26 protect its facilities.

1 and advisor about concepts for new technology and use cases for technology that Palantir had spent
2 significant time and resources researching, developing and testing, including the Healthcare
3 Technology, Cyber Insurance and Cybersecurity Technology, and Natural Resources Exploration
4 Technology. At Abramowitz's request, Palantir also provided him with information about
5 proprietary business plans and customer lists for these technologies. Palantir always provided any
6 such information to Abramowitz subject to an express and reasonable understanding that
7 Abramowitz would maintain its confidentiality, that he would never pass Palantir's concepts and
8 trade secrets off as his own, and that he would never use the information to Palantir's detriment or
9 without Palantir's permission.

10 29. Consistent with the confidential nature of these communications, Palantir and
11 Abramowitz entered into confidentiality agreements.

12 30. For example, in a Preferred Stock Transfer Agreement, dated August 14, 2012,
13 Abramowitz agreed "to keep confidential and refrain from using or disclosing all agreements,
14 documents and other information regarding the Company or its securityholders provided or made
15 available to [Abramowitz]...in [his] capacity as a stockholder of the Company..." Abramowitz
16 renewed that confidentiality agreement in a Preferred Stock Transfer Agreement, dated June 17,
17 2015.

18 31. Similarly, in a Preferred Stock Transfer Agreement also dated June 17, 2015, KT4
19 agreed "to keep confidential and refrain from using or disclosing all agreements, documents and
20 other information regarding the Company or its securityholders provided or made available to
21 [Abramowitz]...in [his] capacity as a stockholder of the Company..."

22 32. Abramowitz also executed an NDA, dated July 12, 2014 (the "July 2014 NDA"),
23 covering "Proprietary Information," which is defined in the NDA as "non-public business, technical
24 or other information, materials and/or ideas of Palantir [including] anything you learn or discover
25 as a result of exposure to or analysis of any Proprietary Information." The NDA expressly forbids
26 Abramowitz from using or revealing any of Palantir's Proprietary Information. Abramowitz
27 repeatedly met with Palantir employees, including high-level executives, to seek out Palantir's
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1 confidential and trade secret information. During these meetings, Abramowitz assured Palantir
2 employees, through his words, his conduct, and the written confidentiality agreements between the
3 parties, that he would maintain the confidentiality of any confidential or trade secret information
4 he obtained from Palantir and that he would not misuse such information.

5 **Abramowitz's Misappropriation of Confidential Business Information and Trade Secrets**

6 33. In breach of multiple confidentiality agreements and confidential relationships with
7 Palantir, Abramowitz disclosed Palantir's confidential information and trade secrets, and
8 misrepresented and concealed the true nature of his interactions with Palantir.

9 34. Abramowitz met with top Palantir executives at Palantir's offices, in local
10 restaurants and coffee shops, and in the home of at least one such executive. During these meetings
11 Abramowitz routinely pressed Palantir employees to provide confidential information about the
12 company. The degree of Abramowitz's interest in Palantir's developing projects, client lists, and
13 other confidential information separated him from the typical investor. With the expectation that
14 Abramowitz would not disclose this confidential information or use it to the detriment of Palantir,
15 these employees provided Abramowitz with information about, among other things, the industries
16 Palantir identified as areas where its technology could be applied, potential clients, potential
17 partners and details regarding those evolving relationships.

18 35. By 2014, Abramowitz had embarked on an intentional and calculated scheme to
19 discover Palantir trade secrets and convert them for his own use and profit. Abramowitz violated
20 the trust Palantir put in him by, at a minimum, misappropriating the above-described trade secrets
21 related to the Healthcare Technology, the Cyber Insurance and Cybersecurity Technology, and the
22 Natural Resources Exploration Technology.

23 36. **The Healthcare Technology.** Since 2010, Palantir worked extensively to identify
24 the most effective way to enter and advance the clinical trial space. As a result of this work, Palantir
25 developed proprietary and trade secret technology and data analytics services to improve the design
26 of clinical trials of prescription drugs by pharmaceutical companies and academic institutions. For
27 example, this proprietary technology and data analytics services can interpret and analyze various
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1 data for purposes of patient recruitment in clinical trial. In conjunction with developing this
2 technology, Palantir developed proprietary business plans, customer lists and use cases that are also
3 trade secrets. Palantir has made reasonable efforts to maintain the confidentiality of these trade
4 secrets.

5 37. In the healthcare space, Palantir also worked extensively to develop proprietary
6 technology and data analytic services to perform insurance risk assessments, including, for
7 example, patient diagnoses not accounted for by health insurance companies and healthcare fraud
8 risks. In conjunction with developing this technology, Palantir developed proprietary business
9 plans, customer lists and use cases that are also trade secrets. Palantir has made reasonable efforts
10 to maintain the confidentiality of these trade secrets.

11 38. As a trusted investor and advisor, Abramowitz learned proprietary trade secret
12 information concerning the Healthcare Technology through his communications with Palantir
13 about Palantir's research and development work, technology, business plans, use cases, and
14 customer lists in this area.

15 39. At all times, Abramowitz knew that this information was confidential and
16 proprietary, and that he needed Palantir's permission before disclosing any of it. As described
17 above, Abramowitz entered into confidentiality agreements with Palantir. Moreover, in his
18 communications with Palantir, Abramowitz made clear that he understood the information Palantir
19 provided to him was confidential.

20 40. In February 2014, Abramowitz sought to broker a deal between Palantir and a
21 customer. Had the introduction resulted in a finalized deal, Abramowitz would have received a fee
22 for the introduction. Consistent with the confidential nature of their communications, the draft
23 agreement between Abramowitz and Palantir for this fee contains a confidentiality provision. Even
24 though this potential customer understood that it was also obligated to maintain the confidentiality
25 of any information received, Palantir advised Abramowitz that he could provide this potential
26 customer only with limited information.

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1 41. After it was clear that the introduction would not result in a finalized deal – and
2 despite knowing that Palantir invented the Healthcare Technology and that it was confidential trade
3 secret information – Abramowitz misappropriated Palantir’s inventions and trade secrets in this
4 space, has improperly disclosed them in an effort to profit from them, and has attempted to patent
5 them as his own.

6 42. On October 29, 2014, without Palantir’s knowledge or consent, Abramowitz filed
7 Provisional Application No. 62/072,368 with the United States Patent and Trademark Office
8 (“USPTO”) seeking to patent systems, methods and concepts concerning the Healthcare
9 Technology that were developed by Palantir and explained to Abramowitz in confidence. The
10 application falsely identifies Abramowitz as the sole inventor of the Healthcare Technology,
11 includes no mention of Palantir at all, and fails to list a single Palantir employee as an inventor.

12 43. On information and belief, in his effort to market the Healthcare Technology as his
13 own and to profit from it, Abramowitz has also improperly disclosed trade secret information
14 related to the Healthcare Technology to others.

15 44. In addition to misappropriating Palantir’s trade secret Healthcare Technology,
16 Defendants breached their confidentiality agreements when they filed the patent application and
17 disclosed Palantir’s confidential information to others.

18 45. **The Cyber Insurance and Cybersecurity Technology.** Palantir engaged in
19 research and development to build technology to assist companies in the cyber insurance and
20 cybersecurity space. Beginning in 2013, Palantir began developing trade secret systems and
21 methods for companies to better defend themselves against cyberattacks to their networks by
22 sharing cyberattack data among various participants in Palantir’s system. Palantir developed trade
23 secret technology, business plans, use cases, and customer lists to implement these cybersecurity
24 systems and methods. Palantir often referred to this project as “CyberMesh” or “Cyber
25 Consortium.” Additionally, Palantir developed related systems, methods, technologies, business
26 plans, uses cases, and customer lists that were specific to improving cyber insurance. For example,
27 Palantir expanded upon its existing cyber security technologies to develop technology to more
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1 accurately measure the risk of a cyberattack and thus enable insurers to provide products to protect
2 customers against the risk of cyberattacks. Palantir has made reasonable efforts to maintain the
3 confidentiality of these trade secrets.

4 46. Abramowitz requested information and participated in discussions about Palantir's
5 Cyber Insurance and Cybersecurity Technology trade secrets.

6 47. In June 2014, a Palantir executive disclosed to Abramowitz during a conversation
7 that Palantir was working on opportunities in the insurance industry, including opportunities related
8 to cyber insurance. When Abramowitz expressed interest in these concepts and requested
9 additional information, the Palantir executive arranged for Abramowitz to speak with another
10 Palantir executive, who sent Abramowitz trade secret information on these concepts via email and
11 invited Abramowitz to meet with him at Palantir's offices to discuss them. During his June 2014
12 meeting with Abramowitz, this Palantir executive further described the two related concepts that
13 Palantir had developed relating to cyber insurance and the use of customer consortia to improve
14 cyber security.

15 48. When Abramowitz next met with Palantir on the subject, he indicated he was
16 interested in setting up a Palantir subsidiary that he would run to perform the insurance-related
17 function Palantir had revealed to him. In addition to his express confidentiality agreements with
18 Palantir, Abramowitz's indication of interest in establishing a subsidiary further indicated that these
19 discussions in June 2014 were confidential communications made solely for the benefit and interest
20 of Palantir. Palantir ultimately decided not pursue the subsidiary Abramowitz suggested.

21 49. After Palantir decided not to pursue the subsidiary Abramowitz desired – and despite
22 knowing that Palantir invented the Cyber Insurance and Cybersecurity Technology and that it was
23 confidential trade secret information – Abramowitz misappropriated Palantir's inventions and trade
24 secrets in this space, has improperly disclosed them in an effort to profit from them, and has
25 attempted to patent them as his own.

26 50. Without Palantir's knowledge, on October 21, 2014, Abramowitz filed Provisional
27 Application No. 62/066,716 at the USPTO attempting to patent systems, methods and concepts
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1 related to Palantir's Cyber Insurance and Cybersecurity Technology as his own, claiming to be the
2 invention's sole owner and inventor. Once again, Abramowitz's application failed to mention
3 Palantir and did not include a single Palantir employee as an inventor.

4 51. Presumably unbeknownst to Abramowitz, Palantir had filed its own patent
5 application on certain inventions related to the Cyber Insurance and Cybersecurity Technologies,
6 on May 16, 2014, months before Abramowitz learned of the systems, methods, techniques and
7 concepts from Palantir; that application resulted in United States Patent No. 9,009,827, dated April
8 14, 2015, which is owned by Palantir and was invented by Palantir employees. During the
9 pendency of that application, the information contained in it remained confidential trade secret
10 information. Moreover, that patent application and patent does not disclose other trade secret
11 information related to the Cyber Insurance and Cybersecurity Technology (e.g., business plans, use
12 cases), which was disclosed to Abramowitz in confidence.

13 52. On information and belief, in his effort to market the Cyber Insurance and
14 Cybersecurity Technology as his own and to profit from it, Abramowitz has also improperly
15 disclosed trade secret information related to the Cyber Insurance and Cybersecurity Technology to
16 others.

17 53. In addition to misappropriating Palantir's trade secret Cyber Insurance and
18 Cybersecurity Technology, Defendants breached their confidentiality agreements when
19 Abramowitz filed the patent application and disclosed Palantir's confidential information to others.

20 54. **The Natural Resources Exploration Technology.** Palantir engaged in research
21 and development to create a more effective way for natural resources exploration companies to
22 mine data. Palantir was able to adapt its existing data analysis technologies to develop this new
23 proprietary and trade secret technology. In conjunction with developing this valuable technology,
24 Palantir also developed proprietary business plans, use cases and customer lists that are also trade
25 secret. Palantir has made reasonable efforts to maintain the confidentiality of these trade secrets.

26 55. After discussions with Palantir employees concerning Palantir's work on adapting
27 its data analysis technology for use in oil and gas exploration, Abramowitz again sought to patent
28

1 Palantir's systems, methods and concepts by filing Provisional Application No. 62/094,888 with
2 the USPTO on December 19, 2014, and falsely claiming to be the sole owner and inventor. As
3 with his other applications described above, Abramowitz filed the application without Palantir's
4 knowledge or consent and failed to credit Palantir or its employees in any way.

5 56. On information and belief, in his effort to market the Natural Resources Exploration
6 Technology as his own and to profit from it, Abramowitz has also improperly disclosed trade secret
7 information related to the Natural Resources Exploration Technology to others.

8 57. In addition to misappropriating Palantir's trade secret Natural Resources
9 Exploration Technology, Defendants breached their confidentiality agreements when they filed the
10 patent application and disclosed Palantir's confidential information to others.

11 58. After Palantir learned of one of Abramowitz's improper patent applications, a senior
12 Palantir executive went to meet with him at Jean-Georges, a high-end French restaurant located in
13 the Trump International Hotel & Tower in Manhattan, where Abramowitz regularly conducted
14 business meetings and was known to "hold court". At that time, Abramowitz did not deny that his
15 patent applications contained confidential or trade secret information obtained from Palantir, but
16 claimed that he filed the patent application for Palantir's benefit. That statement was plainly false,
17 and was presumably designed to induce Palantir to delay challenging Abramowitz's patent
18 application and filing suit for misappropriation of trade secrets and breach of contract. Indeed,
19 Abramowitz has neither withdrawn any of his improper patent applications nor amended them to
20 indicate that Palantir is the inventor and owner of the systems, methods and concepts described
21 therein.

22 59. Through his scheme, Abramowitz intentionally abused his status as an investor and
23 trusted advisor in an attempt to profit at Palantir's expense by improperly using and disclosing
24 multiple Palantir trade secrets and improperly attempting to patent them as his own. On information
25 and belief, despite Abramowitz's lack of experience in these areas, he is attempting to market them
26 as his own. Additionally, he could, for example, attempt to use Palantir's trade secrets to hold
27 Palantir hostage in exchange for royalties. Abramowitz's actions are causing Palantir irreparable
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1 harm, and Palantir is therefore separately seeking to have Abramowitz's patent applications denied
2 by the USPTO.

3 60. The foregoing facts are not the only indications that Abramowitz has sought to profit
4 from Palantir's trade secrets. As Abramowitz knows, Palantir's company name is inspired by the
5 "seeing stones" referenced in The Lord of the Rings. Without Palantir's knowledge, Abramowitz
6 filed for a trademark on the mark "Shire," which is also referenced in The Lord of the Rings as the
7 place where one of the main characters lives. It is clear that Abramowitz has filed this trademark
8 application in an attempt to further improperly associate himself with the Palantir brand.

9 61. Significantly, Abramowitz filed this trademark application with an intent to use the
10 mark in connection with "underwriting and administration of cyber liability insurance;
11 underwriting and administration of cyber security insurance; insurance brokerage in the field of
12 cyber liability and cyber security insurance." This further reflects that Abramowitz is using, and
13 intends to continue to use, Palantir's trade secrets in these areas.

14 **Abramowitz Demands Information Under the Investors' Rights Agreement**

15 62. In the months following Abramowitz's filing of false patent applications,
16 Abramowitz continued to employ false pretenses in an effort to further exploit his relationship
17 with Palantir and extort confidential information from the company. Abramowitz has made a
18 series of unwarranted demands upon the company to obtain sensitive financial and other
19 information, including through a demand letter (that KT4 has since withdrawn) and through a
20 rambling, nonsensical, and unsupportable complaint that KT4 filed in Delaware state court. In a
21 transparent ploy to seek leverage for those baseless demands, Abramowitz has resorted to
22 concocting a false story that Palantir intentionally interfered with his attempt to sell his own
23 Palantir shares to an international firm. Those allegations are spurious. The international firm
24 that Abramowitz claims was prepared to purchase his shares was actually identified to Palantir as
25 a potential direct investor by a third party unaffiliated with Abramowitz well *before* Abramowitz
26 raised them as a potential purchaser.

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trade secret “to others” allegations); 42, 50, 55 (re: false statements to PTO)];

b. Representations that Abramowitz would maintain the confidentiality of the confidential information that Palantir shared with him, as described in ¶¶ [26-32, 48 (re: relationship with Palantir)]; and

c. Statements to a Palantir employee that the patent applications were filed for Palantir’s benefit, as described in ¶ [58].

91. Defendants have engaged in unfair business acts and practices in violation of the UCL by, among other things, acting in bad faith, concealing the true nature of their acts and practices, and threatening and harming competition in the market for the technologies described herein. The harm suffered by Palantir described herein outweighs any justification that Defendants may assert for engaging in those acts and practices. Moreover, Palantir could not have avoided the harm it suffered as a result of Defendants’ unfair acts and practices because Defendants made every effort to obscure and conceal from Palantir the existence and extent of its harmful acts and practices.

92. Defendants’ unlawful, unfair and fraudulent business acts and practices were carried out and effectuated in California and injured Plaintiff in California.

93. Plaintiff suffered harm as herein alleged as a direct and proximate result of Defendants’ unlawful, unfair and fraudulent business acts and practices.

94. Plaintiff is entitled to an injunction enjoining Defendants from such further violations of the UCL. Any such injunction will benefit Plaintiff and the general public.

FOURTH CAUSE OF ACTION

(Violation of Cal. Civ. Code § 3426 et seq. – Against All Defendants)

95. Palantir hereby realleges, as if set forth fully herein, the allegations of paragraphs 1 through 94.

1 96. Palantir's confidential and proprietary information pertaining to its projects,
2 including those concerning use of data analysis in the Healthcare Technology, Cyber Insurance
3 and Cybersecurity Technology, and Natural Resources Exploration Technology, constitute
4 protectable trade secrets as set forth in California Civil Code § 3426.1(d).

5 97. Palantir's confidential and proprietary information derives independent economic
6 value, actual or potential, from not being generally known to the public or to other persons who
7 can obtain economic value from their disclosure or use as set forth in California Civil Code
8 § 3426.1(d)(1).

9 98. Palantir's confidential and proprietary information is the subject of efforts that are
10 reasonable under the circumstances to maintain their secrecy as set forth in California Civil Code
11 § 3426.1(d)(2).

12 99. Palantir did not consent to the use of any of its trade secrets by anyone other than
13 authorized employees using them for Palantir's business purposes and customers bound by
14 confidentiality obligations.

15 100. Defendants willfully and intentionally misappropriated Palantir's trade secrets
16 when, *inter alia*, he used them to develop patent and trademark applications claiming
17 inventorship and ownership of Palantir's systems, methods and concepts. Palantir is informed
18 and believes that Defendants have used, and continues to use, Palantir's trade secret, confidential,
19 and proprietary information to develop a competing business or in furtherance of that goal,
20 including those described in his trademark and patent applications.

21 101. Palantir is entitled to an injunction of both actual and threatened misappropriation
22 as set forth in California Civil Code § 3426.2(a).

23 102. Palantir also requests that the court take affirmative acts to protect Palantir's trade
24 secrets, as set forth in California Civil Code § 3426.2(c), including ordering an inspection of
25 Defendants' computer(s), USB drives, email accounts, cloud storage accounts and other sources
26 and equipment by a forensics expert to determine the extent to which Palantir's trade secrets were
27 wrongfully taken and/or disseminated to others, and to ensure that no trade secrets belonging to
28

1 Palantir remain saved on those systems; and issue a writ of possession, a preliminary injunction,
2 and a permanent injunction ordering the return of Palantir's confidential information and
3 prohibiting Defendants from continuing his unlawful actions.

4 103. In addition to equitable relief, Palantir demands monetary damages, fees, and
5 costs, where allowed.

6 104. Defendants' conduct as alleged herein was willful, malicious and wanton, and
7 undertaken for the purpose of injuring or causing injury to Palantir. Palantir seeks exemplary and
8 punitive damages against Defendants.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Palantir respectfully requests the following relief:

12 1. Judgment in favor of Palantir and against all Defendants on all of Palantir's claims
13 asserted in the Complaint;

14 2. For a preliminary injunction and permanent injunction restraining Defendants,
15 their officers, agents, servants, employees, and all persons acting in concert or participation with
16 them from:

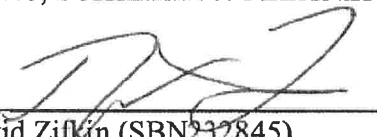
- 17 a. perpetuating the wrongful acts and conduct as set forth above;
- 18 b. continuing to pursue Defendants' patent applications set forth above;
- 19 c. directly or indirectly retaining, using or disclosing Palantir's trade secret,
20 confidential and/or proprietary information, and derivatives thereof;
- 21 d. destroying any property, emails, documents or materials that are relevant or
22 potentially relevant to this action;
- 23 e. moving or transferring outside the United States Palantir's property,
24 emails, documents or materials that are relevant or potentially relevant to this action;

25 3. For an Order requiring that Palantir's confidential, proprietary and trade secret
26 information be returned to Palantir;

- 1 4. For an Order requiring all Defendants to divulge the identity of the individuals,
2 groups and companies to whom they have disclosed Palantir's confidential, proprietary and trade
3 secret information;
- 4 5. For an Order requiring all Defendants to account for and pay to Palantir all ill-gotten
5 gains, profits, and savings obtained or derived from their improper conduct;
- 6 6. For damages, unjust enrichment, and/or reasonable royalties in amounts to be
7 proven at trial;
- 8 7. For an Order awarding Palantir punitive and/or exemplary damages in a sum to be
9 determined at trial, on the basis of Defendants' willful, deliberate, and malicious tortious conduct;
- 10 8. For restitution and disgorgement of all ill-gotten gains unjustly obtained and
11 retained by Defendants through the acts complained of herein;
- 12 9. For prejudgment interest;
- 13 10. For an Order awarding Palantir its attorney's fees and all costs of suit incurred
14 herein; and
- 15 11. For such other and further relief as the Court deems just and proper.

16
17 Dated: May 5, 2017

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: May 5, 2017

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SANTA CLARA**

16 **UNLIMITED JURISDICTION**

17 PALANTIR TECHNOLOGIES INC., a
18 Delaware corporation,

19 *Plaintiff,*

20 v.

21 MARC L. ABRAMOWITZ, in his individual
22 capacity and as trustee of the MARC
23 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
24 liability company, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 16CV299476

**PALANTIR'S REPLY IN SUPPORT OF
MOTION FOR A PROTECTIVE ORDER
AND OPPOSITION TO DEFENDANTS'
MOTION FOR A PROTECTIVE ORDER**

Date: June 13, 2017

Time: 9:00 a.m.

Dept.: 9

Judge: Hon. Mary E. Arand

Complaint Filed: September 1, 2016

Trial Date: Not set

1 Palantir Technologies Inc. (“Palantir”) proposed a protective order (“Palantir’s Proposed
2 Protective Order”) that is typical of those entered in trade secret cases. Defendants, in their
3 Motion for a Protective Order and Opposition to Plaintiff’s Motion for a Protective Order
4 (“Opp.”), argue against implementing certain common sense safeguards included in Palantir’s
5 Proposed Protective Order by exaggerating and misreading its plain terms and ignoring
6 established law. Those arguments should be rejected and Palantir respectfully requests the Court
7 enter Palantir’s Proposed Protective Order, which mirrors those routinely utilized by state and
8 federal courts in California and throughout the nation.

9 There is no dispute between the parties that a protective order is warranted in this trade
10 secret case because it involves highly confidential and competitively sensitive information.
11 Defendants nonetheless seek to eliminate the “Highly Confidential-Attorneys’ Eyes Only” (AEO)
12 designation from the confidentiality designations included in Palantir’s Proposed Protective
13 Order. The AEO designation proposed by Palantir is standard practice in this type of case, so
14 much so that courts include them in their own model protective orders. In opposing
15 implementation of this type of common sense protection, Defendants central argument is that
16 Abramowitz will be prejudiced because he is “an individual defendant” and not a business. (Opp.
17 at 5.) There is simply no basis for that assertion and Defendants do not identify a single case that
18 supports this argument. Rather, the applicable precedent demonstrates that individuals are treated
19 no differently than businesses, especially where, as here, the parties are competitors.

20 Defendants also argue that an AEO designation would create unnecessary collateral
21 litigation regarding document designations. This argument ignores the safeguards built into
22 Palantir’s Proposed Protective Order and the parties’ incentives and ethical obligations that
23 prevent them from over-designating documents as AEO. Palantir, and presumably Defendants as
24 well, has no interest in taking up the Court’s time—and incurring costs—in litigating
25 confidentiality designations. Palantir seeks to simply protect its most sensitive business
26 information in a manner that has been endorsed by numerous courts in this state and elsewhere. If
27 either party overreaches or acts unreasonably, they face potential consequences from the Court
28 under Palantir’s Proposed Protective Order and Code of Civil Procedure § 2023.030. That

1 deterrence is a reason to implement an AEO designation, not to reject it. (See GT, Inc. v.
2 Superior Court (1984) 151 Cal.App.3d 748, 756 n.4.) Indeed, AEO designations would not be
3 commonplace in trade secret cases and in model protective orders if they were unworkable.

4 Defendants further claim that Palantir’s proposed expert identification provision is novel
5 and inappropriate, but courts impose expert identification provisions in cases such as this to
6 ensure trade secrets and competitively sensitive information are not shared with a consultant or
7 expert who works for a competitor of the producing party. This narrowly-tailored safeguard is
8 easily complied with by both parties and causes Defendants no prejudice.

9 In addition to criticizing Palantir’s proposal, Defendants offer their own version of a
10 Protective Order in their papers. (“Defendants’ Proposed Protective Order”) Their proposal
11 largely mirrors Palantir’s version (minus the AEO and expert identification provisions), but
12 Defendants do present one significant additional modification, which does not advance the goal
13 of protecting the parties’ confidential and sensitive business information in a more efficient and
14 effective manner than the framework proposed by Palantir. Defendants do not make any effort to
15 justify their modifications or even explain their utility. Accordingly, they should be rejected.

16 **I. An Attorneys’ Eyes Only Provision Is Needed In This Trade Secret Case.**

17 **A. Defendants’ Argument that AEO Designations Should Be Prohibited Where One**
18 **Party is an Individual Should Be Rejected.**

19 The gravamen of the Complaint is that Defendants wrongfully misappropriated and
20 improperly used, disclosed, *and published* Palantir’s trade secrets and other highly confidential
21 information. (Second Amended Complaint, ¶¶ 1-7, 33-61, 70-104.) In their opposition papers
22 Defendants do not dispute that this case concerns, and discovery will involve, the production of
23 confidential and highly sensitive business information.¹ Nor do they offer any challenge to the
24 fact that AEO designations are a staple of model protective orders promulgated by multiple courts
25 in California and throughout the nation. (Palantir’s Motion for Protective Order (“Mot.”) at 8-9.)

26 ¹ The California Uniform Trade Secret Act presumes that there is good cause for protective
27 orders in trade secret cases, stating that courts are required to “preserve the secrecy of an alleged
28 trade secret by reasonable means, which may include granting protective orders in connection
with discovery proceedings.” (Civ. Code, § 3426.5.)

1 Palantir’s Motion clearly describes Abramowitz as a competitor to Palantir by virtue of his
2 supposed invention of the technologies described in the patent applications and, in their papers,
3 Defendants do not address, much less attempt to dispute, the fact that Abramowitz is a competitor
4 of Palantir. Under similar circumstances, particularly where a competitor presents a risk of
5 further misuse and dissemination of the protected information, courts routinely implement AEO
6 designations. (See, e.g., GT, Inc., supra, 151 Cal. App. 3d at 755) [finding good cause for an
7 AEO designation despite opponents’ argument that proponents of protective order did not
8 “produce evidence, through affidavits, declarations, or sworn testimony, showing any facts in
9 support of their request” but stated in argument that the parties “are ongoing competitors”
10 because the trial judge understood “that the information, in the hands of a competitor, could be
11 improperly used”]; DeFreitas v. Tillinghast (W.D. Wash. Jan. 17, 2013, No. 2:12-CV-00235-JLR)
12 2013 WL 209277 at *4 [finding good cause to apply an AEO designation to “information about
13 finances, strategy, competitive market research, and confidential agreements” where the receiving
14 party “works for a direct competitor” of the designating party].)²

15 Against this backdrop, Defendants argue that an AEO designation should not be applied
16 here because Abramowitz is “an individual defendant” rather than a business. (Opp. at 5.)
17 Defendants cite no authority whatsoever that makes this distinction. Rather, the relevant
18 precedent repeatedly undermines their claim and finds good cause for including AEO
19 designations where one of the parties is an individual.³ For example, in Vardon Golf Co. Inc. v.

20 ² Defendants appear to argue that the Court should reject Palantir’s Proposed Protective Order
21 because there was no declaration offered in support of it. That is incorrect for a couple of
22 reasons. First, Defendants themselves have not provided a declaration to support their proposed
23 order, so it is perplexing that they should criticize Plaintiff for not providing one. Second, both
24 sides agree that a protective order is required in this case – there is simply a dispute as to the
25 contours of that order. Defendants have not cited any cases requiring a declaration when the
26 parties agree that a protective order is indicated. There is also no factual dispute that this is a
27 trade secrets case and that those cases trigger the types of protections Palantir seeks. Nonetheless,
28 for the avoidance of any doubt, Palantir concurrently submits a declaration of these undisputed
facts. (Declaration of Akash Jain Decl. ¶¶ 3-5.)

26 ³ Although Defendants deride the number of published California court opinions Palantir cites
27 permitting an AEO designation, Defendants do not cite even one published California case
28 rejecting an AEO designation. Conversely, Palantir relied on relevant cases from California and
other jurisdictions. (*See Mot.* at 10, 12.)

1 BBMG Golf, Ltd. (N.D. Ill. Oct. 24, 1991, No. 91 C 0349) 1991 WL 222258, plaintiff, “a one-
2 man company” argued its sole employee who served as president, engineer, and trial counsel,
3 needed access to discovery designated highly confidential. (Id. at *2.) The court balanced the
4 imposition on plaintiff in preventing access to the information against the potential prejudice to
5 defendant in having its confidential information disclosed to a competitor and found the
6 defendant’s “need for confidentiality outweighed” the plaintiff’s interest in accessing the
7 documents. (Id.) The court prevented plaintiff’s sole employee from viewing the highly
8 confidential documents, and held that if plaintiff wanted access to the documents at all, it would
9 need to retain outside trial counsel. (Id.; see also Voice Domain Techs., LLC v. Apple, Inc. (D.
10 Mass., Oct. 8, 2014, No. 13-cv-40138-TSH), 2014 WL 5106413 at *4, *5 [imposing AEO
11 designation even where employee who wore “many hats” at plaintiff company, including founder
12 and inventor who was “synonymous” with the company, argued that if he was not permitted to
13 access the information plaintiff could not “mak[e] sound litigation decisions” because the
14 employee “was especially situated to take positions directly harmful and antagonistic to
15 [defendant]” even where the “Court ha[d] no cause to doubt [employee]’s integrity”]; Gordon v.
16 Countryside Nursing & Rehab. Ctr., LLC (N.D. Ill. July 16, 2012, No. 11 C 2433) 2012 WL
17 2905607 at *2 [imposing a highly confidential designation on certain documents where individual
18 plaintiff argued access to such information was necessary for him to “properly assist in the
19 prosecution of his claims”].)

20 In opposition to this authority, Defendants rely on Nativi v. Deutsche Bank Nat’l Trust
21 Co. (2014) 223 Cal.App.4th 261, 318, which is unavailing. In that case, tenants evicted from a
22 foreclosed property sued banks and the mortgage services involved in the foreclosure for
23 wrongful eviction and related causes of action. (Id. at 270.) The tenants did not allege trade
24 secret causes of action and were not competitors with the banks and mortgage servicer. Unlike
25 here, the parties in that case did not agree that there was good cause for a general protective order.

26 Defendants also argue an AEO designation would prevent Abramowitz from meaningfully
27 participating in his defense. That is wrong. Palantir’s proposal gives Abramowitz access to the
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1 same information Palantir employees can access⁴—all information that is either undesignated or
2 designated “Confidential.” Abramowitz is represented by counsel capable of evaluating any
3 information designated “Highly Confidential.” Courts routinely hold that a party’s interest in
4 protecting its highly confidential competitively sensitive information outweighs a competitor’s
5 interest in reviewing such information in connection with litigation. (See Brown Bag Software v.
6 Symantec Corp. (9th Cir. 1992) 960 F.2d 1465, 1471 [upholding AEO protective order in case
7 between competitors and noting that magistrate judge “weighed not only the risk of disclosure to
8 Symantec, but also the potential impairment of Brown Bag’s case against Symantec”]; Tailored
9 Lighting, Inc. v. Osram Sylvania Prods, Inc. (W.D.N.Y. 2006) 236 F.R.D. 146, 149 [“While the
10 additional cost to TLI that will result from the proposed order is a relevant consideration, the
11 burden of that cost simply does not outweigh the substantial risk of competitive injury that attends
12 disclosure of such trade secret information to the opposing party’s president and patent
13 inventor.”]; Quotron Sys., Inc. v. Automatic Data Processing, Inc. (S.D.N.Y. 1992) 141 F.R.D.
14 37, 40 [“Quotron has not demonstrated a need for Quotron employees’ access to the documents
15 sufficient to outweigh these concerns” of “potential commercial espionage”]; ST Sales Tech
16 Holdings, LLC v. Daimler Chrysler Co. (E.D. Tex. Mar. 14, 2008, No. 6:07–CV–346) 2008 WL
17 5634214 at *7 [ordering AEO designation in protective order after considering “whether there is a
18 demonstrated need for access to the documents sufficient to outweigh the concerns such access
19 gives rise to”]; Nutratch, Inc. v. Syntech (SSPF) Int’l, Inc. (C.D. Cal. 2007) 242 F.R.D. 552, 556
20 [issuing protective order with AEO designation and finding that President’s declaration that he
21 needed access to materials to “assist, advise and direct . . . counsel with the direction and conduct
22 of discovery, and with litigation strategy” did not outweigh legitimate fear of competitive harm];
23 Mot. at 8-9 [collecting cases].)⁵

24 ⁴ Defendants’ assertions that the AEO designation “would not similarly bar Palantir” is incorrect
25 and his protest that “Abramowitz, unlike Palantir, does not have in-house counsel to manage the
26 litigation” (Opp. at 2, 6) is irrelevant because Palantir’s Proposed Protective Order applies to all
27 parties by its plain terms, and would prevent Palantir employees, including in-house counsel,
28 from reviewing AEO materials.

⁵ In light of this body of law, Defendants’ refusal to stipulate to an AEO designation may be
another delay tactic, which began with Defendants’ inappropriate removal of the case to federal

1 **B. An Attorneys’ Eyes Only Provision Will Not Create Unnecessary Collateral**
2 **Litigation Regarding Document Designations.**

3 Defendants’ argument that an AEO designation would create needless collateral discovery
4 practice and that Defendants will be excluded from depositions without cause is a straw man.
5 (Opp. at 6.) Palantir’s Proposed Protective Order does not permit any party to designate material
6 as Highly Confidential without *a good faith belief* that the material satisfies the definition of
7 Highly Confidential included in the Order. (Declaration of Shira Liu filed in support of Mot.
8 (“Liu Decl.”), Ex. 1, ¶ 2.) To assume the parties will improperly apply the designation—without a
9 good faith belief it is appropriate and in violation of the clear terms of Palantir’s Proposed
10 Protective Order—is irrational, contrary to the parties’ obligations as officers of the Court, and
11 runs up against the Court’s authority to sanction parties for misuse of the discovery process under
12 Code of Civil Procedure § 2023.030. Defendants offer no support for their position. AEO
13 designations are commonplace, but they would not be if they are unworkable or if parties
14 routinely shirked their ethical obligations.

15 In a footnote, Defendants also complain the AEO designations could be used to exclude
16 Abramowitz from a deposition and create a 21-day window in which he could not read deposition
17 transcripts. (Opp. at 6, n.2.) Palantir’s Proposed Protective Order does not allow for such
18 pretextual invocations of the AEO designation and presumes the parties will act in good faith in
19 invoking the provision allowing counsel to request that individuals such as Abramowitz *or*
20 *Palantir employees* temporarily leave a deposition when AEO material is discussed. The
21 provision would not prevent the parties from attending any other portions of depositions,
22 including those portions concerning “Confidential” information. Palantir believes that allowing
23 21 days for designations provides for orderly designations during time periods when many

24
25 court. (Declaration of Shira Liu in support of Reply filed concurrently herewith (“Liu Reply
26 Decl.”) ¶ 3.) In addition, Defendants recently caused a further delay of discovery by rejecting
27 Palantir’s offer to produce its trade secret disclosure statement, subject to Defendants agreement
28 that Palantir may designate the disclosure as AEO pursuant to (and with the protections of)
Palantir’s Proposed Protective Order for the time being and would then re-designate it as
appropriate when the Court enters a protective order. (Id. ¶ 4.)

1 depositions are scheduled together closely, but does not object to shortening this time period.
2 Palantir previously offered to shorten this time period in response to Defendants’ concern during
3 the meet and confer process. (Declaration of Shira Liu filed in support of Palantir’s Reply in
4 support of Motion for a Protective Order (“Liu Reply Decl.”), ¶ 5.)

5 **II. Expert Identification Provisions Are Appropriate In Cases Concerning Trade**
6 **Secrets.**

7 Defendants argue, without citation to a single case, that the proposed expert identification
8 provisions – which are designed to protect both parties – should not apply in this case.
9 Defendants’ unsupported argument is wrong. Courts that have addressed the issue find such
10 safeguards appropriate in cases involving trade secrets or competitively sensitive information.
11 (See Wreal LLC v. Amazon.com, Inc. (S.D. Fla., Nov. 14, 2014, No. 14-21385-CIV) 2014 WL
12 12160650 at *1 [requiring expert identification]; A/R Roofing, L.L.C. v. CertainTeed Corp. (D.
13 Kan. Dec. 5, 2005, No. 05-1158-WEB) 2005 WL 6794228 at *3 [same]; Biovail Corp. Intern. v.
14 Hoechst Aktiengesellschaft (D.N.J., Nov. 12, 1999, No. CIV.A. 98-1434(MTB)) 1999 WL
15 33454801 at *7 [same].)

16 In Wreal, the party opposing an expert identification provision made the same arguments
17 Defendants make here – the expert identification provision would allow the opposing party to
18 “simply (for strategic reasons) object to a disclosed consulting expert and block [the other party]
19 from consulting with that expert until the Court rules otherwise.” (Wreal LLC, supra, 2014 WL
20 12160650, at *2.) The Court found that because the case concerned trade secret or other
21 confidential research, the expert identification provisions were appropriate despite the objection
22 and noted that “other courts have recognized the concerns advanced by [the party seeking the
23 expert identification provision] and have authorized protective orders designed to address them.”
24 (Id. at *3 [citing In re Neubauer (D. Md. 1994) 173 B.R. 505, 508].) The court also found it
25 “significant that the United States Patent and Trademark Office’s model protective order for
26 intellectual property cases . . . includes the very type of provision [the party] requests here. In
27 addition, several district courts, including the District of Columbia and the Southern District of
28 California, have similar models.” (Id.)

1 The expert disclosure provision applies equally to all parties and does not serve to give
2 either party an advantage—“[t]he desirability, if not necessity, of obtaining the identity of an
3 opponents’ consultants rests primarily on the need to ensure the confidentiality of the information
4 and not on an attempt to gain an unfair advantage.” (Biovail Corp. Intern., *supra*, 1999 WL
5 33454801, at *7.) The plain language of Palantir’s Proposed Protective Order shows Defendants’
6 claim that Palantir could “veto” any proposed expert Defendants seek to use after having spent
7 considerable time and money on the expert is incorrect. (Opp. at 8.) Palantir’s Proposed
8 Protective Order provides “[w]ithin *five* days of receipt of the disclosure of the outside expert or
9 expert consultant, the designating party or parties may object by electronic mail to the outside
10 expert *for good cause*” and may later object “to *continued access* by that Person [only] *for good*
11 *cause*.” (Liu Decl., Ex. 1, ¶¶ 9, 12 [emphases added].) The fact that Defendants are only able to
12 argue against Palantir’s Proposed Protective Order by exaggerating and misreading the terms is
13 evidence that they do not have valid criticisms of it.

14 Defendants’ only remaining argument is that Palantir agreed to a protective order without
15 this provision in another litigation pending in Delaware. (Opp. at 8.) First, whether or not
16 Palantir required such provisions in an unrelated litigation is irrelevant because protective orders
17 must be tailored to the facts of the case. (See e.g., United States v. Salgado (E.D. Wash. Mar. 24,
18 2017, No. 1:16-cv-03186-SMJ) 2017 WL 1365234 at * 2 [finding the protective order must
19 consider the interests “in a specific case to decide whether issuing a protective order is
20 appropriate and necessary.”].) Second, as Defendants well know, the Delaware case does not
21 involve trade secrets.

22 **III. Defendants’ Proposed Protective Order Does Not Even Attempt to Justify Its**
23 **Additional Provisions, Which Should Be Disregarded.**

24 Defendants offer their own Proposed Protective Order in connection with their motion.
25 That draft order largely mirrors Palantir’s proposal, with the obvious exception that it omits
26 Palantir’s proposed AEO designation and expert identification provisions. Defendants’ proposal
27 also includes additional provisions to which the parties have not agreed and excludes other
28 provisions that are in Palantir’s Proposed Protective Order without any argument in support of

1 these modifications. (Liu Reply Decl. ¶ 2, Ex. A.) Nevertheless, Palantir does not oppose the
2 changes made by Defendants other than discussed below.

3 Defendants' Proposed Protective Order requires each party to disclose the identities of its
4 officers, directors, partners, members, or employees who are provided access to "Confidential"
5 information. (Id. ¶ 2, Ex. A ¶ 5.b.) Defendants have not provided facts or argument justifying this
6 provision. Under Palantir's Proposed Protective Order, employees would have to sign and agree
7 to the terms of the order (and be subject to the Court's enforcement of those provisions) before
8 they receive access to discovery materials. (Liu Decl., Ex. 1 ¶ 6.b.) Defendants' modification
9 appears to be a means for Defendants to intrude on Palantir's litigation strategy by gaining insight
10 into which Palantir employees are involved in handling the case. Unlike Palantir's proposed
11 expert designation provision, Defendants' proposal does not advance the goals of a protective
12 order. Among other things, Palantir's proposed expert designation provision permits a party to
13 identify conflicts of interest that may be unknown to the party designating the expert and
14 immediately raise them with the other side. Defendants' proposal provides no such relevant
15 information tailored to a specific purpose. It should be rejected.

16 **IV. Conclusion**

17 For the reasons stated above, Palantir respectfully requests the Court enter the Protective
18 Order submitted with Palantir's Motion. (Liu Decl., Ex. 1.)

19
20 Dated: May 15, 2017

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KIRKLAND & ELLIS LLP**

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INC.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

PALANTIR TECHNOLOGIES INC., a
Delaware corporation,

Plaintiff,

v.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 16CV299476

**DECLARATION OF AKASH JAIN IN
SUPPORT OF PLAINTIFF PALANTIR
TECHNOLOGIES INC.'S REPLY IN
SUPPORT OF MOTION FOR A
PROTECTIVE ORDER AND
OPPOSITION TO DEFENDANTS'
MOTION FOR A PROTECTIVE ORDER**

Date: June 13, 2017

Time: 9:00 a.m.

Dept.: 9

Judge: Hon. Mary E. Arand

Complaint Filed: September 1, 2016

Trial Date: Not set

DECLARATION OF AKASH JAIN

I, Akash Jain, declare as follows:

1. I have personal knowledge of the matters set forth herein. If called upon to testify, I could and would testify competently thereto.

2. I have been employed at Palantir Technologies, Inc. ("Palantir") since August 2005 and hold the position of Director of Engineering, where I have helped to oversee product and internal development at the company. In my position at Palantir, I have personal knowledge of many of Palantir's trade secrets and of its efforts to protect the confidentiality of its trade secrets and other confidential information.

3. I have reviewed the Complaint in this lawsuit. My understanding is that this lawsuit concerns, among other things, certain of Palantir's highly confidential information, including its trade secrets and other non-public information of similar competitive and business sensitivity. Palantir undertakes significant efforts to protect the security and confidentiality of such information as well as the property where such information is located. (e.g., physical locations and network security). Some of those efforts are further described in the Complaint that Palantir filed in this case.

4. I have reviewed the following patent applications filed by Marc Abramowitz with the United States Patent and Trademark Office: (1) Patent Application No. 14/918,398, filed on October 20, 2015; (2) Patent Application No. 14/919,506, filed on October 21, 2015; (3) Patent Application No. 14/926,343, filed on October 29, 2015; (4) Patent Application No. 14/926,408, filed on October 29, 2015; and (5) Patent Application No. 14/975,373, filed on December 18, 2015. In addition to reflecting that Mr. Abramowitz misappropriated Palantir's trade secrets, these patent applications reflect that Mr. Abramowitz is operating in the same industry as Palantir, and therefore is an actual or potential competitor.

5. The materials at issue in this litigation include highly sensitive technical information about the foundation of Palantir's operations and the services it provides to clients, including Palantir's trade secrets. If such information were available to Palantir's competitors,

BOIES SCHILLER & FLEXNER LLP

1 including Mr. Abramowitz, or the public, Palantir would suffer a serious commercial
2 disadvantage.


3

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed this 14 day of May, 2017, in Palo Alto, California.

7

8



AKASH JAIN

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13 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**
16 **UNLIMITED JURISDICTION**

17 PALANTIR TECHNOLOGIES INC., a
18 Delaware corporation,

19 *Plaintiff,*

20 v.

21 MARC L. ABRAMOWITZ, in his individual
22 capacity and as trustee of the MARC
23 ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
24 liability company, and DOES 1 through 50,
inclusive,

25 *Defendants.*

Case No. 16CV299476

**DECLARATION OF SHIRA R. LIU IN
SUPPORT OF PALANTIR'S REPLY TO
MOTION FOR A PROTECTIVE ORDER
AND OPPOSITION TO DEFENDANTS'
MOTION FOR A PROTECTIVE ORDER**

Date: June 13, 2017

Time: 9:00 a.m.

Dept.: 9

Judge: Hon. Mary E. Arand

Complaint Filed: September 1, 2016

Trial Date: Not set

1 **DECLARATION OF SHIRA R. LIU**

2 I, Shira R. Liu, declare as follows:

3 1. I am an attorney duly admitted to practice law in the State of California and am an
4 associate with the law firm of Boies Schiller Flexner LLP, counsel to Plaintiff Palantir
5 Technologies Inc. (“Plaintiff” or “Palantir”). I make this declaration in support of the Plaintiff’s
6 Reply to Motion for a Protective Order and Opposition to Defendants’ Motion for a Protective
7 Order. I have personal knowledge of the facts set forth herein, or am informed and believe them
8 to be true. If called as a witness, I could and would competently testify to the matters stated
9 herein.

10 2. Attached as Exhibit A is a comparison of the additions to and deletions in
11 Defendants’ proposed Protective Order as compared to Palantir’s proposed Protective Order.

12 3. On October 11, 2016, Defendants removed this case to federal court in the
13 Northern District of California. The district court judge granted Palantir’s motion to remand
14 almost five months later on March 9, 2017.

15 4. On May 9, 2017, counsel for Palantir communicated with counsel for Defendants
16 offering to produce its trade secret disclosure statement, subject to Defendants’ agreement that
17 Palantir may designate the disclosure as “attorneys eyes only” pursuant to (and with the
18 protections of) Palantir’s proposed protective order for the time being and would then re-
19 designate it as appropriate when the court enters a protective order based on the pending motions.
20 Defendants rejected this offer. A true and correct copy of both communications is attached hereto
21 as Exhibit B.

22 5. Counsel for Palantir and Defendants met and conferred regarding the terms of the
23 Protective Order. During those communications, counsel for Palantir offered to shorten the
24 proposed 21 day-period during which the parties are allowed to designate deposition transcripts.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of May, 2017, in Santa Monica, California.



Shira R. Liu

EXHIBIT A

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Legend:

~~Red strikethrough~~: Palantir's proposed language struck by Defendants

Blue underline: Defendants' proposed language added to Palantir's Proposed Protective Order

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

PALANTIR TECHNOLOGIES INC., a
Delaware corporation,

Plaintiffs,

v.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST NO.
2, KT4 PARTNERS LLC, a Delaware limited
liability company, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 16CV299476

**[PROPOSED] PROTECTIVE ORDER
GOVERNING THE PROTECTION AND
EXCHANGE OF CONFIDENTIAL
MATERIAL**

Judge Mary E. Arand
Trial Date: Not Set
Dept.: 9

**[PROPOSED] STIPULATED PROTECTIVE ORDER GOVERNING THE
PROTECTION AND EXCHANGE OF CONFIDENTIAL MATERIAL**

IT IS HEREBY ORDERED that this Protective Order shall govern the handling of any information produced or disclosed by any party named in the above captioned litigation or any non-party (the "Producing Party") in connection with the above captioned litigation (hereinafter "Litigation" or "Action"), including documents or electronic files exchanged, things viewed, depositions, deposition exhibits, interrogatory responses, responses to requests for admission, and

1 pretrial and trial testimony, and all copies, extracts, summaries, compilations, designations and
2 portions of any of the foregoing (such information shall hereinafter be referred to as "Discovery
3 Material"). This Order is entered in the exercise of this Court's inherent power to manage
4 litigation for the express purpose of facilitating discovery and the exchange of documents. This
5 Order is made without prejudice to the right of any party to apply to the Court for modification of
6 this Order on good cause shown, or to challenge the application of this order to any particular
7 Discovery Material produced during the course of ~~discovery~~discover in this case.

8
9 1. "Confidential" Information. Any Producing Party may designate any Discovery Material as
10 "Confidential" under the terms of this Protective Order if such Producing Party in good faith
11 believes that such Discovery Material contains "Confidential Information." The term
12 "Confidential Information" shall be interpreted to mean confidential, proprietary, and/or
13 commercially sensitive information or information entitled to confidential treatment under
14 applicable law.

15
16 2. "Highly Confidential-~~Attorneys' Eyes Only~~ Software" Information. Any Producing Party may
17 designate ~~any Discovery Material as "Highly Confidential-Attorneys' Eyes Only~~information
18 "Highly Confidential Software" if such Producing Party in good faith believes that such
19 Discovery Material contains Highly Confidential ~~Information. "Highly Confidential" means~~
20 ~~those subsets of Confidential Information that a party believes would create a substantial risk of~~
21 ~~serious financial or other injury if disclosed to another Party or non-Party, and that such risk~~
22 ~~cannot be avoided by less restrictive means. The following information, if non-public, shall be~~
23 ~~presumed to merit the "Highly Confidential-Attorneys' Eyes Only" designation: trade secrets,~~
24 ~~pricing information, financial data, sales information, sales or marketing forecasts or plans,~~
25 ~~business plans or strategy, sales or marketing plans or strategy, product and business development~~
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1 ~~information, engineering documents, testing documents, employee information, personal financial~~
2 ~~information, offerings, sales or purchases of stock or securities, and other non-public information~~
3 ~~of similar competitive and business sensitivity.~~3. ~~"Highly Confidential Software" Information.~~

4 ~~Any Producing Party may designate information "Highly Confidential Software" if such~~
5 ~~Producing Party in good faith believes that such Discovery Material contains Highly Confidential~~
6 ~~Software Information. "Highly Confidential Software" Information~~ Software Information.

7 "Highly Confidential Software" Information means extremely sensitive highly
8 confidential information or items representing computer software or code and associated
9 comments and revision histories, formulas, engineering specifications, or schematics that define
10 or otherwise describe in detail the algorithms or structure of software or hardware designs,
11 disclosure of which to another Party or Non-Party would create a substantial risk of serious harm
12 that could not be avoided by less restrictive means.

13
14 ~~4.3.~~ Use of "Confidential" or "Highly Confidential ~~Attorneys' Eyes Only~~" or "Highly Confidential
15 Software" Discovery Material. "Confidential," ~~"Highly Confidential Attorneys' Eyes Only,"~~ or
16 "Highly Confidential Software" Discovery Material, and information derived therefrom, shall be
17 used solely for purposes of this Action and shall not be used for any other purpose, including,
18 without limitation, any business, proprietary, commercial or governmental purpose.

19
20 "Confidential," ~~"Highly Confidential Attorneys' Eyes Only,"~~ or "Highly Confidential Software"
21 Discovery Material shall not be given, shown, made available to or communicated in any way to
22 any person other than as permitted by this Protective Order.

23
24 ~~5.4.~~ Manner of Designating Materials. The designation of Discovery Material as "Confidential,"
25 ~~"Highly Confidential Attorneys' Eyes Only,"~~ or "Highly Confidential Software" for purposes of
26 this Protective Order shall be made in the following manner by the Producing Party.

1 a. In the case of documents, including any and all exhibits, briefs, memoranda,
2 interrogatory responses, responses to request for admission, or other materials
3 (apart from transcripts or recordings of oral testimony from any deposition, pretrial
4 or trial proceedings, which isare subject to Paragraph 54(e) below), by affixing the
5 legend "Confidential," ~~"Highly Confidential Attorneys' Eyes Only,"~~ or "Highly
6 Confidential Software" to all pages of any document containing "Confidential,"
7 ~~"Highly Confidential Attorneys' Eyes Only,"~~ or "Highly Confidential Software"
8 Discovery Materials, respectively. The legend shall not obscure or interfere with
9 the legibility of the designated information.
10

11 b. In the case of documents produced electronically as a "TIF" or similar image
12 format, by affixing the legend "Confidential," ~~"Highly Confidential Attorneys'~~
13 ~~Eyes Only,"~~ or "Highly Confidential Software" to all pages of the imaged
14 document containing any "Confidential," ~~"Highly Confidential Attorneys' Eyes~~
15 ~~Only,"~~ or "Highly Confidential Software" Discovery Materials, respectively.
16

17 c. In the case of documents produced electronically in their native format, by
18 appending the legend "Confidential," ~~"Highly Confidential Attorneys' Eyes Only,"~~
19 or "Highly Confidential Software" to the Bates number associated with the
20 document. It is the responsibility of any person producing a hard copy or image of
21 a native file produced in this fashion to affix the Bates number and the legend
22 "Confidential" ~~or "Highly Confidential"~~ to the hard copy document or image.
23

24 d. In the case of video tapes, audio tapes, and electronic media such as computer
25 disks or compact discs (CD), which contain or include "Confidential," ~~"Highly~~
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1 ~~Confidential Attorneys' Eyes Only,~~" or "Highly Confidential Software" Discovery
2 Material, by affixing the required legend on the package thereof.

3 e. For deposition testimony, in one of the following manners:

4 i. At any deposition, counsel for the person providing testimony may
5 designate their entire transcript "Confidential," ~~"Highly Confidential~~
6 ~~Attorneys' Eyes Only," or "Highly Confidential Software"~~ at any time
7 during the proceeding, including at the outset. In addition, upon any
8 inquiry with regard to the content of Discovery Material marked
9 ~~"Confidential," "Highly Confidential Attorneys' Eyes Only," or~~ "Highly
10 Confidential Software" or when counsel for a person (party or nonparty)
11 deems that the answer to a question may result in the disclosure of
12 ~~"Confidential," "Highly Confidential Attorneys' Eyes Only," or~~ "Highly
13 Confidential Software" Information of his or her client within the meaning
14 of this Protective Order, counsel for the person whose information is
15 involved, at his or her option, may state on the record before or during the
16 deposition that such testimony shall be treated as ~~"Confidential," "Highly~~
17 ~~Confidential Attorneys' Eyes Only," or~~ "Highly Confidential Software"
18 Discovery Material, ~~respectively,~~ and, in lieu of taking other steps available
19 in such situation, may direct that the question and answer be transcribed
20 separately from the remainder of the deposition or proceeding and be filed
21 in a sealed envelope marked in the manner set forth in Paragraph ~~40~~7
22 hereof. When such a direction has been given, the disclosure of the
23 testimony shall be limited in the manner specified within this Protective
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1 Order, and the information contained herein shall not be used for any
2 purpose other than for purposes of this suit. Counsel for the person whose
3 "~~Confidential," "Highly Confidential Attorneys' Eyes Only," or "Highly~~
4 Confidential Software" Information is involved may also request that all
5 persons other than the reporter, the Court and its personnel, counsel, and
6 authorized individuals leave the deposition during the confidential portion
7 of the deposition. The failure of such other persons to comply with a
8 request to leave the deposition, unless the Court orders the testimony to go
9 forward, shall constitute substantial justification for counsel to advise the
10 witness that he or she need not answer the question. If it is later
11 determined that a party was improperly excluded from part or all of a
12 deposition, in addition to any other remedy such party might seek, such
13 party shall have the right to re-depose the witness on the subject matter(s)
14 that was/were designated as "Highly Confidential Software."

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17 ii. —Within 21 days from the receipt of a final transcript or recording of
18 the deposition, counsel of record may designate the testimony or portions
19 thereof as "~~Confidential," "Highly Confidential Attorneys' Eyes Only,"~~ or
20 "Highly Confidential Software" Discovery Material and give written notice
21 to opposing counsel. The parties shall treat all depositions and rough
22 ~~drafts, draft~~ or other transcripts of depositions as "~~Confidential," "Highly~~
23 ~~Confidential Attorneys' Eyes Only," or "Highly Confidential Software"~~
24 Discovery Material until 21 days after receiving a copy of a rough or draft
25 transcript thereof. After 21 days, only those portions of the transcript
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1 designated in writing (or on the record at the deposition or proceeding) as
2 "Confidential," ~~"Highly Confidential Attorneys' Eyes Only,"~~ or "Highly
3 Confidential Software" shall be deemed "Confidential," ~~"Highly~~
4 ~~Confidential Attorneys' Eyes Only,"~~ or "Highly Confidential Software"
5 Discovery Material, respectively. Counsel for the party designating a
6 transcript, recording, or portions thereof "Confidential," ~~"Highly~~
7 ~~Confidential Attorneys' Eyes Only,"~~ or "Highly Confidential Software"
8 shall be responsible for notifying the court reporter and opposing counsel
9 in writing of those portions of the transcript that are "Confidential,"
10 ~~"Highly Confidential Attorneys' Eyes Only,"~~ or "Highly Confidential
11 Software." The parties may modify this procedure for any other particular
12 deposition, through agreement on the record at such deposition or
13 proceeding or otherwise by written stipulation, without further order of the
14 Court.
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16
17 ~~f. In the case of documents and things being made available for inspection, at the~~
18 ~~request of counsel for the Producing Party, all documents and things produced for~~
19 ~~inspection during discovery shall initially be considered to contain, at a minimum,~~
20 ~~wholly Confidential information, and shall be produced for inspection only to~~
21 ~~persons representing the Receiving Party who fall within the category described in~~
22 ~~Paragraph 6(a) of this Protective Order. At the initial (or any subsequent)~~
23 ~~inspection of the original documents and things, if requested by the Producing~~
24 ~~Party, the Receiving Party shall not make copies of the documents produced.~~
25 ~~Copies of documents and copies or photographs of things requested by the~~
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1 ~~Receiving Party shall be made, Bates numbered and delivered to the Receiving~~
2 ~~Party; such process shall be performed as promptly as reasonably practicable and~~
3 ~~shall not await the production or inspection of other documents and things. After~~
4 ~~the Receiving Party has designated documents or things for copying, and before~~
5 ~~copies are transmitted to the Receiving Party, counsel for the Producing Party shall~~
6 ~~designate and mark the documents and things, as appropriate, as "Confidential,"~~
7 ~~"Highly Confidential Attorneys' Eyes Only," or "Highly Confidential Software" in~~
8 ~~accordance with Paragraphs 1-3 of this Order. Except as provided below in this~~
9 ~~Paragraph, documents and things not so designated shall be considered thereafter~~
10 ~~outside the provisions of this Protective Order. Failure to so designate and mark as~~
11 ~~provided above in this Paragraph shall not preclude the Producing Party from~~
12 ~~thereafter in good faith making such designation and requesting the Receiving~~
13 ~~Party to so mark and treat such documents and things so designated. After such~~
14 ~~designations, such documents and things shall be fully subject to this Protective~~
15 ~~Order. The Receiving Party, however, shall incur no liability for disclosures made~~
16 ~~prior to notice of such designations.~~

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19 6-5. Who May Access "Confidential" Information. Discovery Materials designated
20 "Confidential" may be disclosed, summarized, described, or otherwise communicated or made
21 available in whole or in part only to the following:

- 22
- 23 a. Outside counsel, together with secretaries, paralegals, document clerks, and
 - 24 other support staff reporting directly to them and who are necessary to assist
 - 25 counsel with the preparation or trial of this Action;
 - 26 b. For each party:
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i. Any counsel who is a member of the party's respective in-house legal staff, along with secretaries, paralegals and similar support staff assisting in-house counsel with the management of files relating to this Action.

Each party hereto represents that such in-house counsel has been (or will be prior to receiving Confidential Discovery Material) informed of the terms of this Protective Order and has agreed to be bound by its terms and conditions; and

ii. Those officers, directors, partners, members, or employees of all non-designating Parties, such number which shall be limited to five individuals (whose identities shall be disclosed to all designating parties prior to disclosure), that counsel for such Parties deems reasonably necessary to aid counsel in the prosecution and defense of this Action; provided, however, that prior to the Disclosure of Confidential materials to any such officer, director, partner, member, or employee, counsel for the Party making the disclosure shall deliver a copy of this Protective Order to such person, shall explain that such person is bound to follow the terms of such Order, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A; and witnesses and potential witnesses, subject to and conditioned upon the witness's acceptance of and compliance with the terms and conditions of this Protective Order; and

c. ~~Consultants~~ Subject to Paragraph 9, consultants or experts specifically retained for this

1 Action, together with their assistants; ~~provided, however, that prior to the~~
2 ~~Disclosure of Confidential materials to any such consultant or expert or any~~
3 ~~assistant to any such consultant or expert, counsel for the Party making the~~
4 ~~disclosure shall deliver a copy of this Protective Order to such person, shall~~
5 ~~explain that such person is bound to follow the terms of such Order, and shall~~
6 ~~secure the signature of such person on a statement in the form attached hereto as~~
7 ~~Exhibit A; and~~

8
9 d. The Court and its staff, the jury, any discovery referee or Special Master
10 appointed by the Court to assist in resolving discovery ~~disputes~~, reporters retained
11 in connection with depositions, to the extent necessary to transcribe the testimony
12 and identify exhibits marked in the course of the testimony subject to Paragraph
13 ~~54~~(e) of this Protective Order; and

14 e. Commercial copy services, translators, data entry and computer support
15 organizations, and graphics, translation, design and/or trial consulting services,
16 hired by and assisting outside counsel for a party, provided that outside counsel
17 shall secure the signature of a duly authorized representative of each such service
18 in the form attached hereto as Exhibit A and maintain the original of Exhibit A;
19
20 and

21 f. Court reporters in this Proceeding (whether at depositions, hearings, or any other
22 proceeding); and

23 g. Mock jury participants, provided, however, that prior to the Disclosure of
24 Confidential Materials to any such mock jury participant, counsel for the Party
25 making the disclosure shall deliver a copy of this Protective Order to such person,
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1 shall explain that such person is bound to follow the terms of such Order, shall
2 secure the signature of such person on a statement in the form attached hereto as
3 Exhibit A, and shall maintain the original of Exhibit A; and
4 h. Any mediator who is assigned or retained to hear this matter, and his or her
5 staff; provided, however, that counsel for the Party making any Disclosure shall
6 deliver a copy of this Protective Order to such person, shall explain that such
7 person is bound to follow the terms of such Order, shall secure the signature of
8 such person on a statement in the form attached hereto as Exhibit A, shall maintain
9 the original of Exhibit A; and
10
11 i. Such other persons as hereafter may be designated by written agreement in this
12 Action or by order of the Court.

13 ~~7-6.~~ 6. Who May Access "Highly Confidential ~~Attorneys' Eyes Only~~" Information. ~~Discovery~~
14 ~~Materials Software~~ Information. To the extent production of software or source code becomes
15 necessary in this case, a Producing Party may designate source code as "Highly Confidential
16 Software" if it comprises or includes confidential, proprietary or trade secret source code.

17
18 a. Protected Material designated as "Highly Confidential ~~Attorneys' Eyes Only~~
19 Software" may be disclosed, summarized, described, or otherwise communicated
20 or made available in whole or in part ~~on the same terms as set forth~~ only to the
21 individuals identified in Paragraphs ~~65~~(a), (c), (d), (e), (f), (g), (h), and (i) of this
22 Protective Order. ~~Such Discovery Material may not be disclosed to persons~~
23 ~~representing the Receiving Party who fall within the categories described in~~
24 ~~Paragraph 6(b) of this Protective Order. Discovery Materials designated "Highly~~
25 ~~Confidential Attorneys' Eyes Only" may be disclosed, summarized, described, or~~
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1 ~~otherwise communicated or made available in whole or in part on the same terms~~
2 ~~as set forth in Paragraphs 6(c) to consultants or experts specifically retained for~~
3 ~~this Action, together with their assistants, provided that the notification procedures~~
4 ~~described in Paragraph 9 have been complied with.~~

5 ~~8. Access to "Highly Confidential Software" Information. Discovery Materials designated~~
6 ~~"Highly Confidential Software" shall be subject to all of the protections afforded to "Highly~~
7 ~~Confidential Attorneys' Eyes Only" information, and may be disclosed only to the individuals to~~
8 ~~whom "Highly Confidential Attorneys' Eyes Only" information may be disclosed, and only on the~~
9 ~~terms under which "Highly Confidential Attorneys' Eyes Only" information may be disclosed to~~
10 ~~those persons.~~

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12 ab. Any software or source code to be disclosed in discovery shall be made
13 available for inspection, in a format allowing it to be reasonably reviewed and
14 searched, during normal business hours or at other mutually agreeable times, at an
15 office of the Producing Party's counsel or another mutually agreed upon location.
16 The software or source code shall be made available for inspection on a secured
17 computer in a secured room without Internet access or network access to other
18 computers, and the Receiving Party shall not copy, remove, or otherwise transfer
19 any portion of the software or source code onto any recordable media or
20 recordable device. The Producing Party may visually monitor the activities of the
21 Receiving Party's representatives during any software or source code review, but
22 only to ensure that there is no unauthorized recording, copying, or transmission of
23 the software or source code.
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1 bc. The Receiving Party may request paper copies of limited portions of software
2 or source code that are reasonably necessary for the preparation of court filings,
3 pleadings, expert reports, or other papers, or for deposition or trial, but shall not
4 request paper copies for the purposes of reviewing the software or source code
5 other than electronically as set forth in ~~Paragraph 8~~paragraph (ab) in the first
6 instance. The Producing Party shall provide all such software or source code in
7 paper form including bates numbers and the label "Highly Confidential Software."
8 The Producing Party may challenge the amount of software or source code
9 requested in hard copy. If the Producing Party makes such a challenge, it shall not
10 be required to produce the disputed hard copies until the Court resolves the
11 dispute.
12

13 ~~e. The Receiving Party shall maintain a log indicating the names of any individual
14 who has inspected any portion of the software or source code in electronic or paper
15 form, the dates and times of inspection, and the names of any individuals to whom
16 paper copies of portions of software or source code were provided.~~

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18 d. The Receiving Party shall maintain all paper copies of any printed portions of
19 the software or source code in a secured, locked area. The Receiving Party shall
20 not create any electronic or other images of the paper copies and shall not convert
21 any of the information contained in the paper copies into any electronic format.
22 The Receiving Party shall only make additional paper copies if such additional
23 copies are (1) necessary to prepare court filings, pleadings, or other papers
24 (including a testifying expert's expert report), provided that the Receiving Party
25 provides notice to the Producing Party before including "Highly Confidential
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1 Software" information in a court filing, pleading, or expert report, (2) necessary
2 for deposition, or (3) otherwise necessary for the preparation of its case. Any
3 paper copies used during a deposition shall be retrieved by the Producing Party at
4 the end of each day and must not be given to or left with a court reporter or any
5 other individual.

6 ~~9. Experts and Consultants. Prior to disclosing any "Highly Confidential Materials-Attorneys'~~
7 ~~Eyes Only" or "Highly Confidential Software" Discovery Materials to any person under~~
8 ~~Paragraph 6(c), the Party seeking to disclose such information shall provide the designating party~~
9 ~~or parties written notice that includes (i) the name of the outside expert or expert consultant, (ii)~~
10 ~~an up-to-date curriculum vitae of the outside expert or expert consultant; (iii) the present~~
11 ~~employer and title of the outside expert or expert consultant; (iv) an identification of all of the~~
12 ~~outside expert's or expert consultant's past and current employment and consulting relationships,~~
13 ~~including direct relationships and relationships through entities owned or controlled by the~~
14 ~~outside expert or expert consultant, including but not limited to an identification of any individual~~
15 ~~or entity with or for whom the person is employed; and (v) a list of the cases in which the outside~~
16 ~~expert or expert consultant has testified at deposition or trial within the last five years.~~

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19 ~~— Within five days of receipt of the disclosure of the outside expert or expert consultant, the~~
20 ~~designating party or parties may object by electronic mail to the outside expert for good cause. In~~
21 ~~the absence of an objection at the end of the five-day period, the outside expert or expert~~
22 ~~consultant shall be deemed approved under this Protective Order. There shall be no disclosure of~~
23 ~~"Highly Confidential Materials-Attorneys' Eyes Only" or "Highly Confidential Software,"~~
24 ~~Discovery Materials to the outside expert or expert consultant prior to expiration of this five-day~~
25 ~~period. If the designating party objects to disclosure to the outside expert or expert consultant~~
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1 within such five-day period, the Parties shall meet and confer via telephone or in person within
2 five days following the objection and attempt in good faith to resolve the dispute on an informal
3 basis. If the dispute is not resolved, the Party objecting to the disclosure will have five days from
4 the date of the meet and confer to seek relief from the Court. If relief is not sought from the
5 Court within that time, the objection shall be deemed withdrawn. If relief is sought, designated
6 materials shall not be disclosed to the person in question until the Court resolves the objection.

7 —For purposes of this section, "good cause" shall include an objectively reasonable concern that
8 the outside expert or expert consultant will, intentionally or inadvertently, use or disclose "Highly
9 Confidential Materials—Attorneys' Eyes Only" or "Highly Confidential Software" materials in a
10 way or ways that are inconsistent with the provisions contained in this Protective Order.

11 a. An initial failure to object to a Person under this section shall not preclude a Party from later
12 objecting to continued access by that Person for good cause. If an objection is made, the Parties
13 shall meet and confer via telephone or in person within five days following the objection and
14 attempt in good faith to resolve the dispute on an informal basis. If the dispute is not resolved,
15 the Party objecting to the disclosure will have five days from the date of the meet and confer to
16 seek relief from the Court. The designated person may continue to have access to information
17 that was provided to that person prior to the date of the objection but no additional "Highly
18 Confidential Materials—Attorneys' Eyes Only" or "Highly Confidential Software" materials shall
19 be disclosed to that person until the Court resolves the matter or the objecting party withdraws its
20 objection. Notwithstanding the foregoing, if the objecting party fails to move for a protective
21 order within five days after the meet and confer, the objection shall be deemed withdrawn.

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25 ~~10.~~ 7. Filings with the Court:
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1 a. Discovery Motions. Any party that files or otherwise submits to the Court any
2 "Confidential," ~~"Highly Confidential Materials Attorneys' Eyes Only,"~~ or "Highly
3 Confidential Software" material that is subject to this Protective Order, or includes
4 any portion of such material in any pleading, motion, exhibit or other paper filed
5 or submitted to the Court, in connection with a Discovery Motion, must file all
6 such documents in sealed envelopes or other appropriate sealed containers. On the
7 outside of the envelopes or other containers, a copy of the first page of the
8 documents shall be attached. If Confidential Material is included in the first page
9 of the attached to the outside of the envelopes or other containers, it may be
10 deleted from the outside copy. The words "CONFIDENTIAL," ~~"HIGHLY~~
11 ~~CONFIDENTIAL ATTORNEYS' EYES ONLY,"~~ or "HIGHLY
12 CONFIDENTIAL SOFTWARE" shall be stamped on the envelopes or other
13 containers and a statement substantially similar to the following shall also be
14 clearly printed on the envelopes or other containers:
15

16 "This envelope [or other container] is sealed pursuant to Order of the Court,
17 contains Confidential Information, and is not to be opened or the contents
18 revealed, except by Order of the Court or agreement by the parties. The contents
19 of this envelope [or other container] are being submitted in connection with a
20 Discovery Motion or for a purpose other than the adjudication of a material
21 controversy or use at trial and, therefore, are not subject to the California Sealed
22 Records Rules, California Rule of Court 2.550, et seq."
23

24 The foregoing statement will provide a sufficient basis for filing the materials
25 under seal in the manner described above, with no need for further briefing or
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1 motion practice. Any party objecting to maintaining any such materials under seal
2 shall present its arguments pursuant to duly noticed motion with the Court.

3 b. ———For purposes of this Protective Order, a "Discovery Motion" is a
4 motion, along with responsive briefing and supporting materials, directed at
5 resolving a dispute concerning a party's rights or access to discovery in the
6 prosecution and/or defense of the claims in this Action, and includes, but is not
7 limited to, any motion or proceeding relating to a party's right to access
8 information in the custody or control of another person or entity, to take any
9 person's or entity's deposition, to compel any person's or entity's admission or
10 denial of an alleged fact or contention, to compel the testimony of any person or
11 entity, to compel the disclosure of any document or communication, or to use any
12 other tool or method of discovery allowed. A "Discovery Motion" excludes any
13 motion that seeks adjudication or resolution of any claim or defense or any portion
14 thereof, or any factual or legal issue; or seeks any substantive procedural change.
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17 ~~11.8.~~ All Other Filings. With respect to all filings not categorized as "Discovery Motions" as
18 ~~defined~~described in ~~Paragraph 10(b)~~paragraph 7(a) above, any party that files or intends to file
19 "Confidential," ~~"Highly Confidential Materials - Attorneys' Eyes Only,"~~ or "Highly Confidential
20 Software" Discovery Material with the Court, regardless of whether that party intends to request
21 the Court to have material sealed, must comply with the requirements of California Rule of Court
22 2.551(b)(3) and: ~~(i)~~(i) lodge the unredacted material subject to this Protective Order and any
23 pleadings, memorandums, declarations, and other documents that disclose the contents of such
24 material, in the manner stated in California Rule of Court 2.551(d); (ii) file copies of the
25 documents under (i) that are redacted so that they do not disclose the contents of the material
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1 subject to this Protective Order; and (iii) give written notice to the Producing Party that the
2 records and other documents lodged under (~~1~~) will be placed in the public court file unless that
3 party files a timely motion or application to seal the records pursuant to California Rule of Court
4 2.551(b)(1)-(2).

5 If the Producing Party was served with written notice as provided above and fails to file a
6 motion or an application to seal the records within 10 days or to obtain a Court order extending
7 the time to file such a motion or an application, the Court clerk will promptly remove all the
8 documents lodged conditionally under seal pursuant to (i) above (California Rule of Court
9 2.551(b)(3)(A)(i),(d)) from the envelope or container where they were located and place them in
10 the public file. If the Producing Party does file a motion or an application to seal within 10 days
11 or such later time as the Court has ordered, the records and other documents are to remain
12 "lodged" conditionally under seal until the Court rules on the motion or application and thereafter
13 are to be filed as ordered by the Court. The parties agree that prior to trial in this Action, they
14 will work together in good faith to propose, for the Court's consideration and approval,
15 mechanism(s) providing an opportunity for the reasonable advance notice and orderly resolution
16 of any disputed over the confidentiality of materials in advance of their use at trial.

17 9. Notwithstanding Paragraph 5(C) above, "Confidential" or "Highly Confidential Software"
18 Discovery Material may be provided to persons listed therein only to the extent necessary for
19 such expert or consultant to prepare a written opinion, to prepare to testify, or to assist counsel in
20 this Litigation, provided that such expert or consultant (i) is not currently an employee of, or
21 advising or discussing employment with, or a consultant to, any Party or any potential competitor
22 or transaction counterparty of any Party, as far as the expert or consultant can reasonably
23 determine, and (ii) is using said Discovery Material solely in connection with this Litigation, and
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1 further provided that such expert or consultant agrees to be bound by the terms of this Stipulation
2 by signing an undertaking in the form attached as Exhibit A hereto. Counsel for the Party
3 showing, providing, or disclosing "Confidential" or "Highly Confidential Software" Discovery
4 Material to any person required to execute an undertaking pursuant to this Paragraph shall be
5 responsible for obtaining such signed undertaking and retaining the original, executed copy
6 thereof. Under no circumstances shall an expert or consultant who is a competitor or an employee
7 of a competitor of a Party, or who is providing services to any of the foregoing, be provided
8 access to "Confidential" or "Highly Confidential Software" Discovery Material absent further
9 order of the Court or consent of the Producing Party. "Competitors" are persons or entities
10 endeavoring to engage in the same or similar lines of business, provide the same or similar
11 services, sell the same or similar products, and/ or operate in the same markets, as well as any
12 persons who are actually engaged in any of these activities.

13
14 ~~12.~~ 10. No Admission or Prejudice. Producing or receiving "Confidential," "~~Highly Confidential~~
15 ~~Materials-Attorneys' Eyes Only;~~" or "Highly
16 Confidential Software" Discovery Material under, or otherwise acting in accordance with the
17 terms of this Protective Order, or failing to object thereto, shall not:
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- 19 a. Operate as an admission by any party that any particular information does or
20 does not comprise or reflect trade secrets, proprietary or commercially sensitive
21 information or any other type of confidential information;
- 22 b. Operate as an admission by any party that the restrictions and procedures set
23 forth herein constitute adequate protection for any particular information deemed
24 by and party to be "Confidential," "~~Highly Confidential Materials-Attorneys' Eyes~~
25 ~~Only;~~" or "Highly Confidential Software" ~~information;~~
26

- 1 c. Prejudice or waive in any way the rights of the parties to object to the
2 production of documents they consider not subject to discovery for any reason;
- 3 d. Prejudice or waive in any way the rights of any party to object to the
4 authenticity or admissibility into evidence of any documents, testimony or other
5 evidence subject to this Protective Order;
- 6 e. Prejudice or waive in any way the rights of a party of seek determination by the
7 Court whether any Discovery Material should or should not be subject to the terms
8 of this Protective Order;
- 9 f. Prejudice or waive in any way the rights of a party to petition the Court for a
10 further protective order relating to any purportedly confidential information;
- 11 g. Prejudice or waive in any way any claim, cross-claim or defense in this Action;
- 12 h. Prevent the parties to this Protective Order from agreeing in writing or on the
13 record during a deposition or hearing in this Action to alter or waive the provisions
14 or protections provided for herein with respect to any particular Discovery
15 Material;
- 16 i. Operate as a consent to any discovery; or
- 17 j. Prejudice or waive in any way the rights of any party to ~~contest~~consent, under
18 Paragraph ~~18~~16 of this Order, ~~to~~ the other party's designation of any material as
19 "Confidential," ~~"Highly Confidential Materials-Attorneys' Eyes Only,"~~ or "Highly
20 Confidential Software."
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24 ~~13.~~ 11. Materials Which Are "Exempt". This Protective Order has no effect upon, and shall not
25 apply to, a Producing Party's use or disclosure of its own "Confidential," ~~"Highly Confidential~~
26 ~~Materials-Attorneys' Eyes Only,"~~ or "Highly Confidential Software" Discovery Material for any
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1 purpose. Nothing contained herein shall impose any restrictions on the use or disclosure by a
2 Receiving Party of documents, materials or information designated as "Confidential" ~~or "Highly~~
3 ~~Confidential Materials-Attorneys' Eyes Only"~~ obtained lawfully by such party independently of
4 any proceeding in this Action, or which:

- 5 a. Was already known or obtained by such Receiving Party by lawful means prior
6 to acquisition from, or disclosure by, another party in this Action;
7
8 b. Is or becomes publically known through no fault or act of the Receiving Party;
9 or
10 c. Is rightfully obtained by the Receiving Party from a third party which has
11 authority to provide such "Confidential" ~~or "Highly Confidential Materials-~~
12 ~~Attorneys' Eyes Only"~~ information to the Receiving Party without restriction as to
13 disclosure by the Receiving Party.

14 ~~14.12.~~ Joinder of Parties. In the event additional parties join or are joined in this Action, ~~each~~
15 ~~additional party~~ they shall not have access to "Confidential," ~~"Highly Confidential Materials-~~
16 ~~Attorneys' Eyes Only,"~~ or "Highly Confidential Software" Discovery Material until the newly-
17 joined party or its counsel has executed and, at the request of any party, filed with the Court its
18 agreement to be fully bound by this Protective Order or an alternative protective order which is
19 satisfactory to all parties and the Court.
20

21 ~~15.13.~~ Applicability to Third Parties. The terms of this Protective Order shall apply to any third
22 party that produces Discovery Material that is designated by such third party as "Confidential,"
23 ~~"Highly Confidential Materials-Attorneys' Eyes Only,"~~ or "Highly Confidential Software."
24 Nothing in this Paragraph permits a party to designate as "Confidential," ~~"Highly Confidential~~
25 ~~Materials-Attorneys' Eyes Only,"~~ or "Highly Confidential Software" any Discovery Materials
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1 produced in this litigation by a third party which that third party did not itself designate as
2 "Confidential," ~~"Highly Confidential Materials Attorneys' Eyes Only,"~~ or "Highly Confidential
3 Software," unless the third party has "Confidential," ~~"Highly Confidential Materials Attorneys'
4 Eyes Only,"~~ or "Highly Confidential Software" information of a party and ~~it is demonstrated that~~
5 the third party is legally obligated to maintain the materials as confidential. If the parties dispute
6 whether a third party is legally obligated to maintain the materials as confidential, the materials in
7 question shall be deemed "Confidential," ~~"Highly Confidential Materials Attorneys' Eyes Only,"~~
8 or "Highly Confidential Software," as designated by the party seeking confidentiality protections,
9 until the Court resolves the dispute.

11 ~~16.~~14. Governance of Action; Modification. The provisions of this Protective Order shall govern
12 discovery and all proceedings in this Action and any appeals therefrom. Each of the parties
13 hereto is entitled to seek modification of this Protective Order by application to the Court on
14 notice to the other parties thereto for good cause. '

16 ~~17.~~15. Termination. The provisions of this Protective Order shall, absent written permission from
17 the Producing Party ~~or~~of further order of the Court, continue to be binding throughout and after
18 the conclusion of this Action, including, without limitation, any appeals therefrom. Within 60
19 days after receiving notice of the entry of an order, judgment or decree finally disposing of this
20 Action, including any appeals therefrom, all persons having received "Confidential," ~~"Highly
21 Confidential Materials Attorneys' Eyes Only,"~~ or "Highly Confidential Software" Discovery
22 Material shall, at the option of the Receiving Party, either destroy or return to counsel for the
23 Producing Party such information and all copies thereof (including summaries and excerpts) that
24 are . maintained in hard copy form or in any readily accessible data locations and all active media.
25 Nothing in this Protective Order will require the Receiving Party to search inactive media
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1 (including, but not limited to, backup tapes and/or disaster-recovery tapes or media) to destroy
2 from such sources Discovery Material covered by this Order. Counsel shall make reasonable
3 efforts to ensure that any consultants it has retained abide by this provision. Counsel for the
4 Receiving Party shall provide a certification in writing to counsel for the Producing Party that all
5 "Confidential," ~~"Highly Confidential Materials-Attorneys' Eyes Only,"~~ or "Highly Confidential
6 Software" Discovery Materials in its possession has been destroyed or returned pursuant to this
7 Paragraph, or otherwise certify to the opposing party that reasonable efforts have been taken to
8 destroy or return the records. Outside counsel of record from the Receiving Party shall be entitled
9 to retain papers submitted ~~by any other party~~ to the Court, deposition and trial transcripts and
10 exhibits, and attorney work product (including filings, transcripts, and attorney work product that
11 contains "Confidential," ~~"Highly Confidential Materials-Attorneys' Eyes Only,"~~ or "Highly
12 Confidential Software" Discovery Material), provided that such counsel, and employees of such
13 counsel, shall not disclose any such Discovery Material contained in such filings, transcripts, or
14 attorney work product to any person or entity except pursuant to a written agreement with the
15 Producing Party. All materials returned to the parties or their counsel by the Court likewise shall
16 be disposed of in accordance with this Paragraph.

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19 ~~18-16.~~ Disputing a Designation. If the Receiving Party disagrees with a "Confidential," ~~"Highly~~
20 ~~Confidential Materials-Attorneys' Eyes Only,"~~ or "or
21 "Highly Confidential Software" designation, it may notify the Producing Party in writing of such
22 disagreement, and both parties will thereupon confer in good faith as to the proper status of such
23 Discovery Material. If the parties are unable to reach agreement within 10 business days, the
24 parties shall file a Joint Statement with the Court setting forth their respective positions
25 concerning the disputed designation or designations. Upon receipt of the parties' Joint Statement,
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1 the Court will set briefing schedules and/or schedule further proceedings relating to the disputed
2 designations as it deems appropriate. Pending resolution of the disputed designations by the
3 Court, the Receiving Party shall treat such Discovery Material as required under this Protective
4 Order. No party shall be obligated to challenge the propriety of a confidential designation, and a
5 failure to do so during or after this litigation shall not preclude a subsequent attack on the
6 propriety of such designation. The provisions of this Protective Order are not intended to shift the
7 burden of establishing confidentiality.

8 ~~19.~~ 17. Other Court Proceedings / Subpoena or Legal Process / Disclosure to Government
9 Agency. By entering this Order and limiting the disclosure of information in this case, the Court
10 does not intend to preclude another court from finding that information may be relevant and
11 subject to disclosure in another case. If any Receiving Party is (a) subpoenaed in another action,
12 (b) served with a legally binding demand in another action to which it is a party, (c) served with
13 any legal process by one not a party to this Action, or (d) legally obligated to disclose materials,
14 and if such subpoena or obligation would require the production of Discovery Material which was
15 produced or designated as "Confidential," ~~"Highly Confidential Materials Attorneys' Eyes Only,"~~
16 or "Highly Confidential Software" by someone other than the Receiving Party, the Receiving
17 Party, upon determining that such Discovery Materials are called for, shall (i) give actual written
18 notice, at the earliest practicable time, by hand or electronic mail transmission, of such subpoena,
19 demand or legal process, to those who produced or designated the material "Confidential,"
20 ~~"Highly Confidential Materials Attorneys' Eyes Only,"~~ or "Highly Confidential Software," and
21 (ii) set forth the existence of this Protective Order and request the highest form of confidentiality
22 treatment allowed for the Discovery Material produced. In the event the party that produced or
23 designated the material "Confidential," ~~"Highly Confidential Materials Attorneys' Eyes Only,"~~ or
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1 "Highly Confidential Software" seeks, within ten (10) days of the actual notice discussed above,
2 to intervene in the action or proceeding in which the materials are sought for the purpose of
3 objecting to the production and, the Receiving Party shall, to the extent permissible, avoid
4 producing the materials until such objections are resolved. Nothing herein shall be construed as
5 requiring the Receiving Party of anyone else covered by this Protective Order to challenge or
6 appeal any order issued under the circumstances of this Paragraph requiring production of
7 "Confidential," ~~"Highly Confidential Materials Attorneys' Eyes Only,"~~ or "Highly Confidential
8 Software" Discovery Material covered by this Protective Order, or to subject itself to any
9 penalties for noncompliance with any legal process or order, or to seek any relief from this Court.
10 ~~20-18.~~ Rendering Legal Advice. Nothing herein shall bar or otherwise restrict an attorney who is
11 a qualified recipient of "Confidential," ~~"Highly Confidential Materials Attorneys' Eyes Only,"~~ or
12 "Highly Confidential Software" Discovery Material under the terms of Paragraphs 1-~~32~~32 of this
13 Protective Order from rendering advice to his or her client with respect to this Action and, in the
14 course thereof, from generally relying upon his or her examination of such Discovery Material.
15 In rendering such advice or in otherwise communicating with the client, the attorney shall not
16 disclose the specific content of any such Discovery Material of another person or party, whether
17 specifically, generally, inferentially, in summary or otherwise, where such disclosure would not
18 otherwise be permitted under the terms of this Protective Order.
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21 ~~21-19.~~ Inadvertent Production. The inadvertent production of any privileged or otherwise
22 protected exempted information, as well as the inadvertent production of information without an
23 appropriate designation of confidentiality, shall not be deemed a waiver of impairment of any
24 claim of privilege or protection, including, but not limited to, the attorney-client privilege, the
25 protection afforded to work-product materials, or the subject matter thereof or the confidential
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1 nature of any such information, as to the inadvertently produced document and as to any related
2 material. The Producing Party must notify the Receiving Party promptly, in writing, upon
3 discovery that a document has been inadvertently produced. Upon receiving written notice from
4 the Producing Party that confidential information has been inadvertently produced with the
5 incorrect designation, the Receiving Party shall immediately treat the materials as if they bear the
6 corrected designation, and may dispute the corrected designation pursuant to the provisions of
7 this Protective Order. Upon receiving written notice from the Producing Party that privileged
8 and/or protected material has been inadvertently produced, all such information, and all copies
9 thereof, shall be returned to the Producing Party within five business days or receipt of such
10 notice and the Receiving Party shall not use such information for any purpose until further Order
11 of the Court. All copies of the documents in electronic format must also be returned or destroyed,
12 pursuant to the terms set forth in Paragraph ~~17.~~15. If the Receiving Party contests that the
13 information is privileged or protected, the Receiving Party shall give the Producing Party written
14 notice of the reason for said disagreement and shall be entitled to retain one copy of the disputed
15 document for use in resolving the dispute. The Receiving party shall, within 20 business days
16 from the initial notice by the Producing Party, move the Court for an Order compelling the
17 production of the material. If no such motion is filed, upon expiration of the 20-day period all
18 copies of the disputed document shall be returned or destroyed in accordance with ~~this~~ Paragraph
19 and Paragraph ~~17.~~15. Any analyses, memoranda or protected information shall immediately be
20 placed in sealed envelopes, and must be destroyed unless (a) the Producing Party agrees in
21 writing that the inadvertently-produced is not privileged or protected, or (b) the Court rules that
22 the inadvertently-produced information is not privileged or protected.
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1 ~~22.20.~~ Adequate Location of Materials. All Discovery Materials containing "Confidential" ~~or~~
2 "~~Highly Confidential Attorneys' Eyes Only~~" Information shall be maintained at a location and
3 under circumstances to ensure that access is limited to those persons entitled to have access under
4 the Protective Order. All Discovery Materials containing "Highly Confidential Software" shall be
5 maintained at a location and under circumstances set forth in Paragraph ~~8.~~6.d.

6 ~~23.21.~~ Right to Seek Further Relief. Nothing in this Protective Order shall be deemed to preclude
7 any party from seeking and obtaining, on an appropriate showing, such additional protection with
8 respect to the confidentiality of documents or other Discovery Material as that party may consider
9 appropriate; nor shall any party be precluded from claiming that any matter designated hereunder
10 is not entitled to protection or is entitled to a more limited form of protection than designated.
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13 **IT IS SO ORDERED.**

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15 Dated: _____, 2017

16 Judge Mary E. Arand
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EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____ [NAME],

[POSITION AND EMPLOYER], am about to receive

~~Confidential Materials and/or Highly~~

1. Confidential Materials supplied in connection with the Action, Case No. 16CV299476. I certify that I understand that the Confidential Materials ~~and/or Highly Confidential Materials~~ are provided to me subject to the terms and restrictions of the Protective Order filed in this Action. I have been given a copy of the Protective Order; I have read it, and I agree to be bound by its terms.

2. I understand that the Confidential Materials ~~and Highly Confidential Materials~~, as defined in the Protective Order, including any notes or other records that may be made regarding any such materials, shall not be disclosed to anyone except as expressly permitted by the Protective Order. I will not copy or use, except solely for the purposes of this Action, any ~~Confidential Materials or Highly~~ Confidential Materials obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Action.

3. I further understand that I am to retain all copies of all Confidential Material ~~and Highly Confidential Materials~~ provided to me in the Action in a secure manner, and that all copies of such materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such materials will be returned to counsel who provided me with such materials.

4. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this ___ day of ___, 20___, at _____

Date Signature

Printed Name

City and State where sworn and signed

EXHIBIT B

From: Pitt, Jonathan <JPitt@wc.com>
Sent: Tuesday, May 09, 2017 1:38 PM
To: John Zach; Simon, Barry
Cc: David Zifkin; Shira Liu
Subject: RE: Palantir/Abramowitz

John,

Thanks for your email. I tried your office after receiving your email, but did not hear back.

While we agree with the goal of expediting things, we cannot agree to accept documents or information from you—particularly the trade-secret disclosure, which is at the heart of our defense of this case—with conditions that would deprive our client, who has been sued as an individual, with the ability to confer with us regarding material issues in the action, and to participate in his own defense. That is why we disagree with the imposition of an “attorneys’ eyes only” protective order, and why we cannot agree to abide by an “attorneys’ eyes only” protective order while waiting for the court to resolve that issue.

To be clear, we would gladly agree to accept the disclosure on terms that would require us to treat it as “Confidential” under either of our proposed protective orders, which would require Mr. Abramowitz (who, as we have explained, has not been, and is not, engaged in any active trade or business related to the matters at issue in this litigation) to use the information solely for purposes of this litigation. We think such treatment would be appropriate, particularly given that the disclosure by definition constitutes information that you claim Mr. Abramowitz already has.

We are glad to defer your deadline on moving to compel until after the court rules on our respective motions for protective order. We would agree to hold that deadline in abeyance until 30 days after that ruling. I don’t think that needs to be submitted to the Court as a stipulation, but if you disagree, we’d be glad to agree to one.

Best,
Jonathan

Jonathan B. Pitt
Williams & Connolly LLP
725 Twelfth Street, N.W., Washington, DC 20005
(P) 202-434-5341 | (F) 202-434-5029
jpitt@wc.com | www.wc.com/jpitt

From: John Zach [mailto:JZach@BSFLLP.com]
Sent: Tuesday, May 09, 2017 2:09 PM
To: Pitt, Jonathan <JPitt@wc.com>; Simon, Barry <BSimon@wc.com>
Cc: David Zifkin <dzifkin@BSFLLP.com>; Shira Liu <sliu@BSFLLP.com>
Subject: Palantir/Abramowitz

Hi Jonathan:

Following up on our call last week about Palantir’s trade secret disclosure and motions relating to the pending discovery requests. To reiterate our offer, we are prepared to serve you with Palantir’s trade secret disclosure prior to the Court ruling on the parties’ respective motions for a protective order, subject to your agreement that we may designate the disclosure as “attorneys eyes only” pursuant to (and with the protections of) Palantir’s proposed protective order for the

time being. Then, once the Court rules on the motions, we will re-designate it as appropriate under the Court-approved protective order. The purpose of this proposal is to expedite the disclosure and avoid any unnecessary delay in advancing the case.

In addition, please advise whether you agree to an extension the time to file any motion to compel with respect to the pending discovery requests until after the Court's hearing on the protective order motions.

Please call if you want to discuss further – I'm generally around today and tomorrow afternoon. Look forward to hearing from you.

Best, John

John T. Zach
Boies, Schiller & Flexner LLP
575 Lexington Avenue
212.303.3648 (desk)
646.642.7183 (cell)
jzach@bsflp.com

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting this electronic message from your computer. [v.1]

This message and any attachments are intended only for the addressee and may contain information that is privileged and confidential. If you have received this message in error, please do not read, use, copy, distribute, or disclose the contents of the message and any attachments. Instead, please delete the message and any attachments and notify the sender immediately. Thank you.

1 **BOIES, SCHILLER & FLEXNER LLP**
David Boies (*Pro Hac Vice* appl. pending)
2 (dboies@bsfllp.com)
3 333 Main Street
Armonk, NY 10504
4 Tel: (914) 749-8200; Fax: (914) 749-8300

David Zifkin (SBN 232845) (dzifkin@bsfllp.com)
5 Shira Liu (SBN 274158) (sliu@bsfllp.com)
401 Wilshire Boulevard, Suite 850
6 Santa Monica, CA 90401
Tel: (310) 752-2400; Fax: (310) 752-2490

7 **KIRKLAND & ELLIS LLP**
8 Jay P. Lefkowitz (*Pro Hac Vice* appl. pending)
(lefkowitz@kirkland.com)
9 Nathaniel J. Kritzer (*Pro Hac Vice* appl. pending)
(nathaniel.kritzer@kirkland.com)
10 601 Lexington Ave
New York, NY 10022
11 Tel: (212) 446-4800; Fax: (212) 446-4900

12 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **UNLIMITED JURISDICTION**

16 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
17 Delaware corporation,)
18 *Plaintiff,*) **PROOF OF SERVICE**

19 v.)

20 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
21 capacity and as trustee of the MARC) Trial Date: Not set
22 ABRAMOWITZ CHARITABLE TRUST NO.)
23 2, KT4 PARTNERS LLC, a Delaware limited)
liability company, and DOES 1 through 50,)
inclusive,)

24 *Defendants.*)
25 _____)

1 **PROOF OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am employed in the County of Los Angeles. At the time of service I was over 18 years
4 of age and not a party to this action. My business address is 401 Wilshire Blvd., Suite 850, Santa
5 Monica, CA 90401. On May 15, 2017 I served the following document(s):

- 6 **1. PALANTIR’S REPLY IN SUPPORT OF MOTION FOR A PROTECTIVE ORDER AND OPPOSITION TO DEFENDANTS’ MOTION FOR A PROTECTIVE ORDER**
- 7 **2. DECLARATION OF SHIRA R. LIU IN SUPPORT OF PALANTIR’S REPLY TO MOTION FOR A PROTECTIVE ORDER AND OPPOSITION TO DEFENDANTS’ MOTION FOR A PROTECTIVE ORDER**
- 8 **3. DECLARATION OF AKASH JAIN IN SUPPORT OF PALANTIR TECHNOLOGIES INC.’S REPLY IN SUPPORT OF MOTION FOR A PROTECTIVE ORDER AND OPPOSITION TO DEFENDANTS’ MOTION FOR A PROTECTIVE ORDER**

9 I personally served the documents on the **person/s** below, as follows:

10 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

11 Jack P. DiCano
12 Ian Chen
13 525 University Avenue
14 Palo Alto, California 94301
15 Telephone: (650) 470-4660
16 jack.dicano@skadden.com
17 ian.chen@skadden.com

18 **WILLIAMS & CONNOLLY LLP**

19 Barry S. Simon
20 Jonathan B. Pitt
21 Stephen L. Wohlgemuth
22 725 Twelfth Street, N.W.
23 Washington, D.C. 20005
24 bsimon@wc.com
25 jpitt@wc.com
26 swohlgemuth@wc.com

27 The documents were served by the following means:

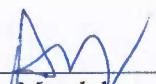
<input type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the
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	office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and: <input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. <input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.
<input checked="" type="checkbox"/>	By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input type="checkbox"/>	By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i>
<input type="checkbox"/>	By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that the foregoing document(s) were printed on recycled paper.

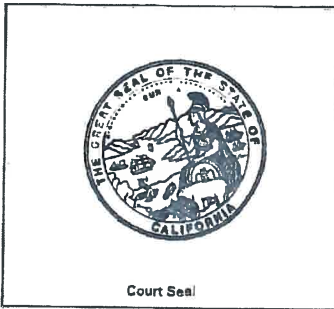
Executed on May 15, 2017 at Santa Monica, California.



Aimee Mandel

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): BOIES, SCHILLER & FLEXNER LLP Kaitlyn Murphy (SBN 293309) 1999 Harrison Street, Suite 900, Oakland, CA 94612 TELEPHONE NO.: (510) 874-1000 FAX NO. (Optional): (510) 874-1460 E-MAIL ADDRESS (Optional): kmurphy@bsflp.com ATTORNEY FOR (Name): Palantir Technologies Inc.</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Downtown Superior Court</p>	
<p>SHORT TITLE: Palantir Technologies Inc. v. Marc L. Abramowitz, et al.</p>	
<p>COMMISSION TO TAKE DEPOSITION OUTSIDE CALIFORNIA <input type="checkbox"/> ORDERED BY COURT <input checked="" type="checkbox"/> ISSUED BY THE CLERK OF THE COURT</p>	<p>CASE NUMBER: 16CV299476</p>

- The Superior Court of California hereby authorizes the deposition, upon oral examination, of (identity of deponent):
 Records Custodian, eAppeals LLC, 4000 Hollywood Blvd., Suite 650, North Hollywood, FL 33021
- The deposition is to be taken in (state of the United States, territory, or insular possession subject to its jurisdiction):
 Florida
- The deposition will be conducted (check one):
 - Under the supervision of a person who is authorized to administer oaths by the laws of the United States or those of the place where the examination is to be held, and who is not otherwise disqualified under California Code of Civil Procedure sections 2025.320 and 2025.340(b)-(f); or
 - Before (name of appointee):
 who is appointed to administer oaths and to take testimony.
- The documents or things to be produced at the time and place of the deposition are
 described in Attachment 4 none.
- Additional terms required by the foreign jurisdiction to initiate the process are contained in Attachment 5. Number of pages attached: _____.
- Under California Code of Civil Procedure section 2026.010, California authorizes that a commission to take an out-of-state deposition may be issued by the clerk of the court or, if the foreign jurisdiction requires it, by order of the court.
- The Superior Court of the State of California hereby requests that process issue in the above-referenced place where the examination is to be held, requiring the attendance and enforcing the obligations of the deponent to produce documents and answer questions.



Clerk of the Court

Date: **MAY 18 2017**

Judge

OR

Clerk, by **T. NGO**, Deputy

FAXED

Attachment 4

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): BOIES, SCHILLER & FLEXNER LLP Kaitlyn Murphy (SBN 293309) 1999 Harrison Street, Suite 900, Oakland, CA 94612 TELEPHONE NO.: (510) 874-1000 FAX NO.: (510) 874-1460 E-MAIL ADDRESS: kmurphy@bsflp.com ATTORNEY FOR (Name): Palantir Technologies Inc.</p>	<p style="text-align: center;">FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Downtown Superior Court</p>	
<p>PLAINTIFF/PETITIONER: PALANTIR TECHNOLOGIES INC. DEFENDANT/RESPONDENT: MARC L. ABRAMOWITZ, ET AL.</p>	
<p style="text-align: center;">DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS</p> <p style="text-align: right;">CASE NUMBER: 16CV299476</p>	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Records Custodian, eAppeals, LLC, 4000 Hollywood Blvd., Suite 650, North Hollywood, FL 33021

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): First Legal Records c/o Pro Process On (date) : July 7, 2017 At (time): 9:00 a.m. Location (address): 2311 Flamingo Dr. Miramar, FL 33023	
Do not release the requested records to the deposition officer prior to the date and time stated above.	

- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
 - b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
 - c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

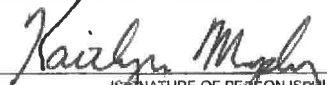
Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: May 18, 2017

Kaitlyn Murphy
(TYPE OR PRINT NAME)


(SIGNATURE OF PERSON ISSUING SUBPOENA)
Attorney for Plaintiff Palantir Technologies Inc.

(Proof of service on reverse)

(TITLE)

PLAINTIFF/PETITIONER: PALANTIR TECHNOLOGIES INC.	CASE NUMBER: 16CV299476
DEFENDANT/RESPONDENT: MARC L. ABRAMOWITZ, ET AL.	

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. (1) Witness fees were paid.
Amount: \$ _____

(2) Copying fees were paid.
Amount: \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (*date*):

3. Person serving:

- a. Not a registered California process server.
- b. California sheriff or marshal.
- c. Registered California process server.
- d. Employee or independent contractor of a registered California process server.
- e. Exempt from registration under Business and Professions Code section 22350(b).
- f. Registered professional photocopier.
- g. Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

1 **ATTACHMENT 3**

2 The following instructions and definitions are provided to assist in responding to these Requests
3 and are applicable to each Request set forth herein:

4 **DEFINITIONS**

5 1. The term "ACTION" means Palantir Technologies Inc. v. Marc L. Abramowitz et
6 al., Case No. 16CV299476, filed in Santa Clara County Superior Court on September 1, 2016.

7 2. The term "COMMUNICATIONS" shall refer to any and all non-privileged
8 written, oral, telephonic, or other utterances of any nature whatsoever, shared, shown, and/or
9 transferred between and or among any PERSON or PERSONS, including without limitation, any
10 statement, inquiries, discussions, conversations, dialogues, correspondence, consultations,
11 negotiations, agreements, understandings, meetings, letters, e-mails, notations, telegrams,
12 advertisements, interviews, and all other transmittals of information.

13 3. The term "CONCERNING" shall be construed in its broadest sense and shall
14 mean directly or indirectly describing, setting forth, discussing, mentioning, commenting upon,
15 evidencing, constituting, contradicting, relating to, regarding, with respect to, referring to, in
16 connection with, or referring to the subject or topic at issue, either in whole or in part.

17 4. The term "DEFENDANTS" means and refers to Marc L. Abramowitz, the Marc
18 Abramowitz Charitable Trust No. 2, and KT4 Partners LLC, and any of their respective present or
19 former parents, subsidiaries, affiliates, joint ventures, principals, agents, employees, attorneys, or
20 representatives.

21 5. The term "DOCUMENT" or "DOCUMENTS" shall exclude privileged
22 communications and shall otherwise have the same broad scope and meaning they have under
23 California Evidence Code §§ 250, 255, and 260, and shall include electronically stored
24 information, as defined in California Code of Civil Procedure §2016.020, and shall encompass
25 every writing or record of every type and description, including original and any copy thereof,
26 and every tangible thing that is or has been in YOUR possession, custody or control, or of which
27 YOU have knowledge, including but not limited to, correspondence, contracts, electronic mail,
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1 print-outs of Internet web pages, memoranda, stenographic notes, handwritten notes, drafts
2 (including, but not limited to, differences from the original due to handwritten notes, editing,
3 interlineation, blind copies, omissions, or any other alterations), studies, publications, books,
4 pamphlets, catalogs, advertisements, direct mail solicitations, applications, forms, notebooks,
5 diaries, models, devices, sketches, pictures, photographs, films, tapes, computer records, voice
6 recordings, maps, reports, surveys, bulletins, invoices, data compilations, electronic files and
7 records, and statistical compilations, regardless of whether a particular DOCUMENT is
8 confidential, and regardless of the form of storage (such as on paper, microfiche, magnetic tape,
9 magnetic disk (hard or floppy), CD-ROM, optical disk, or electronic storage device).

10 "DOCUMENTS" shall include "COMMUNICATIONS," as defined above.

11 6. The term "IDENTIFY" or "IDENTIFYING" means:

12 a. With respect to a natural person, to state the person's name, present, or last known
13 business and residential addresses, present or last known position or business affiliation, his or
14 her position or business affiliation at the time in question, a general description of the business in
15 which he or she is engaged and a telephone number for the individual;

16 b. With respect to an entity, to state the entity's name, present, or last known business
17 address and a general description of the business;

18 c. With respect to an event or occurrence, to provide the date of the event or
19 occurrence, where it occurred, who was present, what was said and what happened;

20 d. With respect to a DOCUMENT, state the date, author(s), addressee(s) and
21 recipient(s) and a description of the type of DOCUMENT or other means to IDENTIFY it. YOU
22 may submit the DOCUMENT itself or state the Bates number(s) of the DOCUMENT in lieu of
23 IDENTIFYING it. If any such DOCUMENT exists but is no longer in YOUR possession,
24 custody or control, state the disposition of the DOCUMENT, its present location, and custodian.

25 7. The term "PALANTIR" means and refers to Palantir Technologies Inc., and any of
26 its present or former affiliates, joint ventures, principals, agents, employees, attorneys, or
27 representatives.

1 section 2016.020, and production of the same shall comply with the requirements of California
2 Code of Civil Procedure section 1985.8. YOU are requested to produce any electronically stored
3 information in native form without deletion or alteration of metadata. Any information, data, or
4 other "DOCUMENT" maintained by YOU in a computer coded or encrypted form must be
5 produced together with all necessary programming and other necessary software and hardware
6 needed to recover the information and present it in an accessible and readable format.

7 3. DOCUMENTS must be produced in full, without abbreviation or expurgation,
8 regardless of whether YOU consider any part of the DOCUMENTS to be irrelevant and/or
9 nonresponsive.

10 4. DOCUMENTS not otherwise responsive to any of the Requests herein must be
11 produced if they mention, discuss, refer to, or explain one or more DOCUMENTS called for by
12 the Requests, or are attached to a DOCUMENT or thing called for by the Requests.

13 5. If YOU object to or claim attorney-client or any other privilege, or the attorney
14 work product doctrine, CONCERNING any Request in whole or in part, then YOU must:

15 a) Set forth with particularity the privilege or work product claim and furnish
16 a list identifying each DOCUMENT that YOU claim is privileged or constitutes
17 work product, together with:

18 i) a description of the nature and subject matter, including the title and
19 type of documents;

20 ii) the date of preparation;

21 iii) the name and title of the author(s);

22 iv) the name and title of the addressee(s);

23 v) the name and title of all PERSONS to whom the DOCUMENT was
24 sent, including blind carbon copies;

25 vi) the number of pages;

26 vii) the DOCUMENT request(s) to which the information or
27 DOCUMENT is otherwise responsive; and

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viii) the complete basis on which YOU contend YOU are entitled to withhold the information or DOCUMENT in whole or in part from production.

b) Redact the information that YOU claim is protected by the attorney-client or other privilege, or the attorney work product doctrine, and produce the remainder of the DOCUMENT.

6. If YOU object to a Request for any reason, then YOU must also state whether you are withholding any documents because of those objections, and, if so, how many.

7. If YOU are withholding any document(s) or category of documents responsive to a particular Request on the basis of any objection(s), then YOU must identify which objection(s) YOU believe justify YOUR decision to withhold each particular document or category of documents. If YOU are unable to answer any document request, the reasons for YOUR inability to answer shall be separately stated in detail for each document request.

8. If YOU know of the existence, past or present, of any DOCUMENT requested herein, but are unable to produce such DOCUMENT or portion thereof because it is not presently in YOUR possession, custody, or control, or in the possession, custody, or the control of YOUR agents, contractors, subcontractors, independent contractors, investigators, accountants, attorneys, or representatives, then YOU must so state in YOUR response and identify (by title, if any, nature of the DOCUMENT, and subject matter of the DOCUMENT) such DOCUMENT and identify (by name, address, and/or telephone number) the PERSON in whose possession, custody, or control the DOCUMENT was last known to reside.

9. If any DOCUMENT requested herein has been lost, discarded, or destroyed, YOU must identify the DOCUMENT so lost, discarded, or destroyed as completely as possible in YOUR response to the Request, including, without limitation, the following information: date, content, author(s), and recipient(s) of the DOCUMENT(S); date of disposal; manner of disposal; and PERSON(S) disposing of the DOCUMENT(S). YOU must further identify in YOUR

1 response to the Request the name, address, and telephone number of the PERSON in whose
2 possession, custody, or control the DOCUMENT was last known to reside.

3 10. If any DOCUMENT requested herein was amended or otherwise modified at any
4 time, YOU must provide both the original and amended versions of the DOCUMENT.

5 11. If, in responding to any Request herein, YOU assert that there is any ambiguity (in
6 either the Request or in a definition or an instruction applicable thereto), YOU must not use
7 YOUR assertion as a basis for refusing to respond to the Request, but must set forth as part of
8 YOUR response the language YOU claim is ambiguous and YOUR interpretation of such
9 language.

10 12. No part of a document request shall be left unanswered merely because an
11 objection was interposed to another part of the document request.

12 13. For purposes of interpreting or construing any Request herein, YOU must give the
13 words and terms used their most expansive and inclusive interpretation unless they are otherwise
14 specifically limited in the Request itself. This includes, without limitation, the following:

- 15 a) the use of a verb in any tense must be construed as the use of that verb in
16 all other tenses;
- 17 b) the use of a word in its singular form must be deemed to include within its
18 use the plural form as well;
- 19 c) the use of a word in its plural form must be deemed to include within its
20 use the singular form as well;
- 21 d) the connectives “and” and “or” must be construed either disjunctively or
22 conjunctively; and
- 23 e) the masculine form of a word must be interpreted to include the feminine
24 and/or the gender-neutral form.

25 14. These terms of the Requests shall be construed as necessary to bring within the
26 scope of the Requests all DOCUMENTS that might otherwise be construed to be outside of their
27 scope.

1 obligations to YOU, including obligations imposed by employment OR consulting agreements.

2 **REQUEST NO. 5.** DOCUMENTS sufficient to show ANY meetings, either in person,
3 telephonic, OR over video conference, between ANY DEFENDANT and YOUR employees,
4 consultants, OR advisors, including, but not limited to, ANY meetings with management,
5 business development, research, marketing, technology development, programming, legal, OR
6 other personnel.

7 **REQUEST NO. 6.** ALL DOCUMENTS CONCERNING ANY services performed by OR
8 provided on behalf of ANY DEFENDANT for YOUR benefit OR in furtherance of YOUR
9 business, including, but not limited to, ANY such services OR advice relating to YOUR health
10 care related software and services.

11 **REQUEST NO. 7.** ALL DOCUMENTS CONCERNING ANY business, technological,
12 financial, marketing, OR business development information OR advice provided to YOU by OR
13 on behalf of ANY DEFENDANT, including, but not limited to, ANY such information OR
14 advice relating to YOUR health care related software and services.

15 **REQUEST NO. 8.** ALL DOCUMENTS CONCERNING ANY COMMUNICATION to OR
16 from ANY DEFENDANT AND YOUR employees OR consultants, including, but not limited to,
17 ANY management, business development, research, marketing, technology development,
18 programming, legal, OR other personnel.

19 **REQUEST NO. 9.** ALL DOCUMENTS CONCERNING, or having ANY reference to,
20 PALANTIR, its business, its personnel, OR its advisors, that were provided to YOU by OR on
21 behalf of ANY DEFENDANT, including, but not limited to, PALANTIR's research,
22 technologies, developments, systems, methods, concepts, practices, services, AND customers in
23 the areas of healthcare (including but not limited to clinical trials), cyber insurance, health
24 insurance, cybersecurity, AND natural resources exploration.

25 **REQUEST NO. 10.** ALL DOCUMENTS CONCERNING ANY reference to the PATENT
26 APPLICATIONS OR the technologies, developments, systems, methods, concepts, AND
27 practices contained therein, including, but not limited to, ANY such reference to technologies,
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1 developments, systems, methods, concepts, practices AND patent applications provided to YOU
2 by, OR on behalf of, ANY DEFENDANT.

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16 *Attorneys for Plaintiff* PALANTIR TECHNOLOGIES INC.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF SANTA CLARA**

19 **UNLIMITED JURISDICTION**

20 PALANTIR TECHNOLOGIES INC., a) Case No. 16CV299476
21 Delaware corporation,)

22 *Plaintiff,*) **PROOF OF SERVICE**

23 v.)

24 MARC L. ABRAMOWITZ, in his individual) Complaint Filed: September 1, 2016
25 capacity and as trustee of the MARC) Trial Date: Not set
26 ABRAMOWITZ CHARITABLE TRUST NO.)
27 2, KT4 PARTNERS LLC, a Delaware limited)
28 liability company, and DOES 1 through 50,)
inclusive,)
Defendants.)

1 **PROOF OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am employed in the County of Santa Clara. At the time of service I was over 18 years of
4 age and not a party to this action. My business address is 435 Tasso Street, Suite 205, Palo Alto,
CA 94301. On May 19, 2017 I served the following document(s):

- 5 **1. NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION TO KT4**
- 6 **PARTNERS LLC RE: EAPPEALS LLC**
- 7 **2. NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION TO MARC**
- 8 **ABRAMOWITZ CHARITABLE TRUST NO. 2 RE: EAPPEALS LLC**
- 9 **3. NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION TO MARC L.**
- 10 **ABRAMOWITZ RE: EAPPEALS LLC**
- 11 **4. NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION TO KT4**
- 12 **PARTNERS LLC RE: ERECEIVABLES, INC.**
- 13 **5. NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION TO MARC**
- 14 **ABRAMOWITZ CHARITABLE TRUST NO. 2 RE: ERECEIVABLES, INC.**
- 15 **6. NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION TO MARC L.**
- 16 **ABRAMOWITZ RE: ERECEIVABLES, INC.**
- 17 **7. NOTICE OF PRODUCTION RE: EAPPEALS LLC**
- 18 **8. NOTICE OF PRODUCTION RE: ERECEIVABLES, INC.**
- 19 **9. COMMISSION TO TAKE DEPOSITION OUTSIDE CALIFORNIA RE:**
- 20 **EAPPEALS LLC**
- 21 **10. COMMISSION TO TAKE DEPOSITION OUTSIDE CALIFORNIA RE:**
- 22 **ERECEIVABLES, INC.**

23 I personally served the documents on the **person/s** below, as follows:

24 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

25 Jack P. DiCanio
26 Ian Chen
27 525 University Avenue
28 Palo Alto, California 94301
Telephone: (650) 470-4660
jack.dicanio@skadden.com
ian.chen@skadden.com

The documents were served by the following means:

<input checked="" type="checkbox"/>	By personal service. I caused to be personally delivered the documents to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of
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	age between the hours of eight in the morning and six in the evening.
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p>	<p><input type="checkbox"/> By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:</p> <p style="padding-left: 40px;"><input type="checkbox"/> deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.</p> <p style="padding-left: 40px;"><input type="checkbox"/> placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.</p> <p>I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Monica, California.</p>
<p>11</p> <p>12</p> <p>13</p>	<p><input type="checkbox"/> By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>
<p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p><input type="checkbox"/> By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and/or by electronically transmitting the documents and providing them to a professional messenger service for service. <i>[A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.]</i></p>
<p>18</p> <p>19</p> <p>20</p>	<p><input type="checkbox"/> By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.</p>

21 (STATE) I declare under penalty of perjury under the laws of the State of
 22 California that the above is true and correct and that the foregoing
 23 document(s) were printed on recycled paper.

24 Executed on May 19, 2017 at Palo Alto, California.

25
 26 
 27 Paulyne Kirkes
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