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 16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**

18 FACEBOOK, INC. and INSTAGRAM, LLC,  
 19 Plaintiffs,  
 20 v.  
 21 ONLINENIC INC., DOMAIN ID SHIELD  
 SERVICE CO., LIMITED, and DOES 1-20,  
 22 Defendants.

Case No. 5:19-cv-07071-SVK  
**STIPULATED [~~PROPOSED~~]**  
**FEDERAL RULE OF EVIDENCE 502(D)**  
**ORDER AND CLAWBACK AGREEMENT**  
 Hon. Susan van Keulen

1 **1. PURPOSE**

2 Pursuant to Federal Rules of Evidence 502(d), the production or disclosure of any privileged or  
3 otherwise protected documents (as defined by Fed. R. Civ. P. 34(a)(1)) and accompanying metadata  
4 (“Documents”), shall not result in the waiver of any privilege or other protection (including, without  
5 limitation, the attorney-client privilege, the work-product doctrine, the joint defense privilege, or any other  
6 applicable privilege) associated with such Documents as to the receiving party or any third parties. The  
7 production or disclosure shall not result in any waiver, including subject matter waiver, of any kind, in  
8 this or in any other state or federal proceeding regardless of the circumstances of disclosure pursuant to  
9 Federal Rule of Evidence 502(d). This Paragraph shall be interpreted to provide the maximum protection  
10 allowed by Federal Rule of Evidence 502(d) with regard to Documents.

11 **2. CLAWBACK AGREEMENT**

12 In the event that a producing party discovers that it produced Documents subject to a legally  
13 recognized claim of privilege or work-product protection, it shall provide written notice of the claim to  
14 the receiving party (a “Clawback Notice”), identifying the subject Documents within thirty days of the  
15 discovery.

16 **3. PROCEDURES FOLLOWING CLAWBACK NOTICE**

17 a) Within ten business days of receipt of a Clawback Notice (regardless of whether the  
18 receiving party agrees with the producing party’s claim of privilege) or a receiving party’s own  
19 determination that information it received is privileged or work-product-protected, the receiving party  
20 must promptly return and/or destroy the Document(s), all copies thereof, and any notes that reproduce,  
21 copy, or otherwise disclose the substance of the information for which privilege is claimed, and notify the  
22 producing party when this is complete.

23 b) If a receiving party challenges a claim that a Document specified in a Clawback Notice is  
24 privileged or work-product-protected, the receiving party shall notify the producing party of its positions  
25 within fourteen days of receiving the Clawback Notice asserting the claim. Within fourteen days of the  
26 producing party’s receiving notification of the dispute, the parties shall meet and confer in an effort to  
27 resolve their disagreement. If the parties are unable to resolve their disagreement, either party may submit  
28 the issue to the Court for a determination and may submit the Document(s) at issue for in camera review

1 pursuant to Civil Local Rule 79-5. In submitting such a dispute to the Court, the parties must follow the  
2 procedure outlined in Civil Local Rule 37 and this Court’s Civil and Discovery Referral Matters Standing  
3 Order. The Document(s) covered by the Clawback Notice shall not be used or disclosed by the receiving  
4 party during the time in which the parties are meeting and conferring about the privileged nature of the  
5 Document(s) or during the time in which the privilege dispute is before the Court.

6 **4. PROHIBITION ON USE OF PRIVILEGED INFORMATION**

7 To the extent any party is aware that it has obtained privileged or work-product-protected  
8 information, or has received a Clawback Notice, or it is reasonably apparent that the party has obtained,  
9 privileged or work-product-protected information through production, disclosure, or communications,  
10 such information may not be submitted to the Court (except in connection with a challenge of the privilege  
11 assertion) or presented for admission into evidence or sought in discovery in this proceeding or in any  
12 other proceeding or action. The party must immediately notify the opposing party of its possession of such  
13 privileged information and return or destroy such information or Documents. Any Documents at issue in  
14 a privilege challenge that are filed with the Court must be filed under seal for in camera review pursuant  
15 to Civil Local Rule 79-5.  
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18 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

19  
20 DATED: February 13, 2020

Tucker Ellis LLP

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23 By: /s/David J. Steele  
24 David J. Steele  
25 Howard A. Kroll  
26 Steven E. Lauridsen

27 Attorneys for Plaintiffs,  
28 FACEBOOK, INC. and INSTAGRAM, LLC

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DATED: February 13, 2020

LexAnalytica, PC

By: /s/Perry J. Narancic  
Perry J. Narancic

Attorneys for Defendants,  
ONLINENIC, INC. and DOMAIN ID  
SHIELD SERVICES CO., LIMITED


**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that all other signatories listed and on whose behalf this filing is made concur in the filing of this document and have granted permission to use an electronic signature.

/s/David J. Steele

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

DATED: February 18, 2020

  
Susan van Keulen  
United States Magistrate Judge