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4 **UNITED STATES DISTRICT COURT**
5 **SOUTHERN DISTRICT OF CALIFORNIA**
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7
8 HANGINOUT, INC.,

9 Plaintiff,

10 vs.

11 GOOGLE INC.,

12 Defendant.

CASE NO. 13-CV-2811 AJB NLS

**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
STIPULATED PROTECTIVE
ORDER AS MODIFIED BY THE
COURT**

(Dkt. No. 56.)

13
14 The Court having read the parties' joint motion for the entry of a stipulated
15 protective order governing discovery in this matter (dkt. no. 56), finding no
16 objection and good cause appearing,

17 **IT IS HEREBY ORDERED** that this motion is **GRANTED**.

18 **IT IS FURTHER ORDERED** that the following stipulated protective order,
19 **as modified by the court**, shall govern the disclosure of confidential information
20 between the parties as well as any non-party to this action.

21 To expedite the production of discovery material, to facilitate the prompt
22 resolution of disputes over confidentiality of discovery material, to adequately
23 protect information the parties are entitled to keep confidential, to ensure that only
24 the materials the parties are entitled to keep confidential are subject to such
25 treatment, and to ensure that the parties are permitted reasonable necessary uses of
26 confidential discovery material in preparation for and in the conduct of this
27 litigation, pursuant to Fed. R. Civ. P. 26(c), it is hereby ORDERED THAT:

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1 **I. INFORMATION SUBJECT TO THIS ORDER**

2 **A. Protected Information Generally**

3 1. All documents, tangible things, physical objects, written discovery
4 responses, testimony, or other information produced by the producing party in this
5 litigation is considered “Discovery Material.” This Order applies not only to
6 Discovery Material produced in this litigation, but also to any information copied or
7 extracted therefrom or otherwise reflecting Protected Information, in any form. Any
8 Discovery Material containing or including confidential information may be
9 designated as such by the producing party by marking it “CONFIDENTIAL” or
10 “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” prior to or at the time copies
11 are furnished to the receiving party, and shall be treated in accordance with the
12 terms of this Order. Each of the identified categories of confidential Discovery
13 Material shall be identified collectively in this Order as “Protected Information.”

14 2. All Protected Information not reduced to documentary, tangible or
15 physical form, or which cannot be conveniently designated as set forth in paragraph
16 I.A.1 or pursuant to another confidentiality designation set forth in this Order, shall
17 be designated by the producing party by informing the receiving party of the
18 designation in writing.

19 3. Any Discovery Material (including physical objects and tangible
20 things) made available for inspection by counsel for the receiving party prior to
21 producing copies of items selected by the receiving party shall initially be
22 considered, as a whole, to constitute Protected Information (unless otherwise
23 designated at the time of inspection) and shall be subject to this Order. Thereafter,
24 the producing party shall have a reasonable time to review and designate the
25 appropriate documents as CONFIDENTIAL or CONFIDENTIAL – OUTSIDE
26 COUNSEL ONLY prior to furnishing copies to the receiving party.

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1 4. Any Discovery Material that is obtained by any party from any person
2 pursuant to discovery in this litigation shall be used solely for purposes of this
3 litigation.

4 5. Nothing in this Order shall limit any producing party's use or
5 disclosure of its own Protected Information.

6 6. The following Discovery Material is not Protected Information:

7 a. Any Discovery Material that is or, after its disclosure to a
8 receiving party, becomes part of the public domain as a result of publication not
9 involving a violation of this Order or other obligation to maintain the confidentiality
10 of such material;

11 b. Any Discovery Material that the receiving party can show was
12 already publicly known prior to the disclosure; and,

13 c. Any Discovery Material that the receiving party can show by
14 written records was received by it from an alternate source that obtained the material
15 lawfully and under no obligation of confidentiality to the producing party.

16 **B. Protect Information Designated Confidential**

17 1. For purposes of this Order, Protected Information designated
18 CONFIDENTIAL shall mean all Discovery Material produced for or disclosed in
19 connection with this action to a receiving party that constitutes confidential or
20 commercially sensitive technical, sales, marketing, personal, or financial
21 information of the producing party (including any party to this action and any non-
22 party producing information or material voluntarily or pursuant to a subpoena or a
23 court order in connection with this action), or information that the producing party is
24 under a legal obligation to maintain as confidential, whether embodied in
25 documentary, tangible or physical form, or the factual knowledge of persons, and
26 which has been so designated by the producing party.

27 2. Protected Information designated CONFIDENTIAL and the
28 contents therein shall be available only to:

1 a. Outside litigation counsel of record and supporting personnel employed
2 in the law firm(s) of outside litigation counsel of record, such as attorneys,
3 paralegals, legal translators, legal secretaries, law clerks, project managers and
4 litigation support personnel;

5 b. Up to two in-house counsel of any party with responsibility for
6 managing this litigation, who are members of at least one state bar in good standing,
7 and supporting personnel employed by the legal department of any party to this
8 litigation and one officer-level employee of a party who either has responsibility for
9 making decisions dealing directly with the litigation in this action or who is assisting
10 outside counsel in preparation for proceedings in this action, provided, however, that
11 this person cannot be employed by or perform consulting work for any other
12 company. For avoidance of doubt, Hanginout designates Justin Malone as its one
13 officer-level employee, and he will execute the Confidentiality Agreement attached
14 hereto as Attachment A;

15 c. Technical advisors and their necessary support personnel engaged by
16 counsel of record for the parties, subject to the provisions of section III herein, and
17 provided that such individuals have first been given a copy of this Order and have
18 executed the Confidentiality Agreement attached hereto as Attachment A. The term
19 “technical advisor” shall mean independent outside expert witnesses, consulting
20 experts, or technical consultants (i.e., not employees of a party) retained by counsel
21 of record for the parties who are deemed reasonably necessary to assist such counsel
22 in connection with this litigation;

23 d. Independent contractors engaged by counsel of record for the parties, to
24 the extent reasonably necessary to assist such counsel in connection with this
25 litigation, including but not limited to (i) legal translators retained to translate in
26 connection with this action; (ii) independent stenographic reporters and
27 videographers retained to record and transcribe testimony in connection with this
28 action; (iii) graphics or design services retained by counsel for purposes of preparing

1 demonstrative or other exhibits for deposition, trial, or other court proceedings in the
2 actions; (iv) non-technical jury or trial consulting services not including mock
3 jurors; (v) electronic discovery vendors retained to assist with the organization and
4 management of electronic discovery; and (vi) private investigators, provided that
5 such persons or entities have first been given a copy of this Order and have executed
6 the Confidentiality Agreement attached hereto as Attachment A, and a signed copy
7 has been provided to the producing party

8 e. Any fact witness during the course of a deposition subject to the
9 provisions of section V herein; and

10 f. The Court, its personnel, and any other person (such as a master
11 or mediator) who serves in a judicial or quasi-judicial function, profession
12 stenographic reporters engaged to transcribe testimony (under seal or with other
13 suitable precautions determined by the Court), and jurors.

14 **C. Information Designated Confidential—Outside Counsel Only**

15 1. For purposes of this Order, Protected Information designated
16 CONFIDENTIAL – OUTSIDE COUNSEL ONLY shall mean Protected
17 Information that contains extremely sensitive information, the disclosure of which to
18 another party would create a risk of competitive injury that could not be avoided by
19 less restrictive means. Protected Information designated CONFIDENTIAL –
20 OUTSIDE COUNSEL ONLY includes, but is not limited to: (i) marketing,
21 financial, sales, web traffic, research and development, or technical, data or
22 information; (ii) commercially sensitive competitive information, including, without
23 limitation, information obtained from a nonparty pursuant to a current
24 Nondisclosure Agreement (“NDA”); (iii) information or data relating to future
25 products not yet commercially released and/or strategic plans; (iv) trade secret, or
26 other confidential research and development information; and, (v) commercial
27 agreements, settlement agreements or settlement communications, the disclosure of
28 which is likely to cause harm to the competitive position of the producing party.

1 2. Protected Information alternatively designated
2 “CONFIDENTIAL OUTSIDE ATTORNEYS’ EYES ONLY,” “HIGHLY
3 CONFIDENTIAL” or “RESTRICTED CONFIDENTIAL” shall be treated as if
4 designated CONFIDENTIAL – OUTSIDE COUNSEL ONLY. In determining
5 whether Protected Information should be designated as CONFIDENTIAL –
6 OUTSIDE COUNSEL ONLY, each party agrees to use such designation only in
7 good faith.

8 3. Protected Information designated CONFIDENTIAL – OUTSIDE
9 COUNSEL ONLY and the contents therein shall be available only to the persons or
10 entities listed in paragraphs I.B.2.a, c, d, e and f, subject to any terms set forth or
11 incorporated therein, and not to any person or entity listed in paragraph I.B.2.b.

12 **II. USE OF PROTECTED INFORMATION AT HEARING OR TRIAL**

13 In the event that a party intends to use any Protected Information during any
14 hearing or trial, that party shall provide a minimum of two (2) business days’ notice
15 to the producing party. Subject to challenges under section IV, the parties will not
16 oppose any reasonable request by the producing party that courtroom be sealed, if
17 allowed by the Court, during the presentation of any testimony, evidence, or
18 argument relating to or involving the use of any Protected Information.

19 **III. DISCLOSURE OF TECHNICAL ADVISORS**

20 **A. Purpose**

21 Protected Information designated by the producing party and such copies of
22 Protected Information as are reasonably necessary for maintaining, defending, or
23 evaluating this litigation may be furnished and disclosed to the receiving party’s
24 technical advisors and their necessary support personnel.

25 **B. No Disclosure Without Protective Order Subscription**

26 No disclosure of Protected Information to a technical advisor or their
27 necessary support personnel shall occur until that person has signed the form
28 attached hereto as Attachment A, and a signed copy has been provided to the

1 producing party; and to the extent there has been an objection under paragraph III.C,
2 that objection is resolved according to the procedures set forth below.

3 **C. Prior Notice of Intent to Disclose Protected Information to a**
4 **Technical Advisor**

5 A party desiring to disclose Protected Information to a technical advisor shall
6 also give prior written notice of the intended disclosure by email to all counsel of
7 record in the litigation, and the producing party shall have ten (10) business days
8 after such notice is given to object in writing to the disclosure. The party desiring to
9 disclose Protected Information to a technical advisor must provide the following
10 information for each technical advisor: name, address, curriculum vitae, current
11 employer, employment history for the past ten (10) years, and a listing of cases in
12 which the witness has testified as an expert at trial or by deposition within the
13 preceding five (5) years. No Protected Information shall be disclosed to such
14 expert(s) or consultant(s) until after the expiration of the foregoing notice period and
15 resolution of any objection.

16 **D. Objections to Technical Advisors**

17 A party objecting to disclosure of Protected Information to a technical advisor
18 shall state with particularity the ground(s) of the objection. The objecting party's
19 consent to the disclosure of Protected Information to a technical advisor shall not be
20 unreasonably withheld, and its objection must be based on that party's good faith
21 belief that disclosure of its Protected Information to the technical advisor will result
22 in specific business or economic harm to that party.

23 **E. Resolution of Objections to Technical Advisors**

24 If after consideration of the objection, the party desiring to disclose the
25 Protected Information to a technical advisor refuses to withdraw the technical
26 advisor or withdraw the Bates ranges that are the subject of the objection, that party
27 shall provide notice to the objecting party. Thereafter, **the parties shall file a joint**
28 **motion pursuant to Chambers' Rules**, within ten (10) business days of receiving

1 such notice, for a ruling on its objection. A failure to file a motion within the ten
2 (10) business day period, absent an agreement of the parties to the contrary or for an
3 extension of such ten (10) business day period, shall operate as an approval of
4 disclosure to the technical advisor. The parties agree to cooperate in good faith to
5 shorten the time frames set forth in this paragraph if necessary to abide by any
6 discovery or briefing schedules.

7 **F. Burden for Objections to Technical Advisors**

8 1. The objecting party shall have the burden of showing to the Court
9 “good cause” for preventing the disclosure of its Protected Information to the
10 technical advisor. For purposes of this paragraph, “good cause” includes, but is not
11 limited to, a particularized showing that: (i) the Protected Information is
12 confidential commercial information, (ii) disclosure of the Protected Information is
13 likely to harm the objecting party’s business, or (iii) the challenged technical advisor
14 currently has, previously had, or is reasonably likely in the future to develop, a
15 relationship with a competitor of the producing party that would create a reasonable
16 risk of disclosure, whether intentional or not, of the Protected Information or any
17 part of it to that competitor.

18 2. A party who has not previously objected to disclosure of Protected
19 Information to a technical advisor or whose objection has been resolved with respect
20 to previously produced Protected Information shall not be precluded from raising an
21 objection to a technical advisor at a later time with respect to Protected Information
22 that is produced after the time for objecting to such a technical advisor has expired.
23 Any such objection shall be handled in accordance with the provisions set forth
24 above in section III.

25 **IV. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

26 **A. Use of Reasonable Care and No Waiver**

27 The parties shall use reasonable care when designating Protected Information.
28 Nothing in this Order shall prevent a receiving party from contending that any

1 Protected Information has been improperly designated. A receiving party may at
2 any time request that the producing party cancel or modify the Protected
3 Information designation with respect to any document or any information contained
4 therein.

5 **B. Objections to Confidentiality Designations**

6 **Any party may object to a designation of the materials as Confidential**
7 **Information within thirty days of the challenging party's receipt of the**
8 **materials in issue.** In the event that a party objects to the designation of Protected
9 Information, such a challenge shall be written, shall be served on counsel for the
10 producing party, and shall particularly identify the Protected Information that the
11 receiving party contends should be differently designated. The parties shall use
12 their best efforts to resolve promptly and informally such disputes and shall advise
13 one another of both the factual and legal basis for their respective positions. If the
14 dispute is not resolved consensually between the parties, **the parties shall file a**
15 **joint motion for determination of discovery dispute, as outlined in Chambers**
16 **Rules, no later than forty-five days after the challenging party's receipt of the**
17 **designated material in issue.** The burden of demonstrating the confidential nature
18 of Protected Information shall at all times be and remain on the designating party.

19 **C. Treatment of Protected Information During Challenge to a**
20 **Designation**

21 Unless otherwise resolved by agreement between the parties, until a
22 determination by the Court, the Protected Information in issue shall be treated as
23 having been properly designated and subject to the terms of this Order.

24 **V. LIMITATIONS ON THE USE OF PROTECTED INFORMATION**

25 **A. Restrictions on Use of Protected Information**

26 All Protected Information shall be held in confidence by each person to whom
27 it is disclosed, shall be used only for purposes of this litigation (and TTAB U.S.
28 Opp. No. 91/217,437), shall not be used for any business purpose or in connection

1 with any other legal proceeding (except for U.S. Opp. No. 91/217,437), and shall
2 not be disclosed to any person who is not entitled to receive such Protected
3 Information as herein provided. All produced Protected Information shall be
4 carefully maintained so as to preclude access by persons who are not entitled to
5 receive such Protected Information.

6 **B. Examinations and Court Filings Concerning Protected Information**

7 Except as may be otherwise ordered by the Court, any person may be
8 examined as a witness at depositions and trial and may testify concerning all
9 Protected Information of which such person has prior knowledge. Without in any
10 way limiting the generality of the foregoing:

11 1. A present director, officer, and/or employee of a producing party
12 may be examined and may testify concerning all Protected Information which has
13 been produced by that party and of which the witness has personal knowledge;

14 2. A former director, officer, agent and/or employee of a producing
15 party may be interviewed, examined and may testify concerning all Protected
16 Information of which he or she has personal knowledge, including any Protected
17 Information that refers to matters of which the witness has personal knowledge,
18 which has been produced by that party and which pertains to the period or periods of
19 his or her employment; and

20 3. Non-parties may be examined or testify concerning any
21 Protected Information of a producing party, which appears on its face or from other
22 documents or testimony to have been received from or communicated to the non-
23 party as a result of any contact or relationship with the producing party or a
24 representative of the producing party. Any person other than the witness, his or her
25 attorney(s), or any person qualified to receive Protected Information under this
26 Order shall be excluded from the portion of the examination concerning such
27 Protected Information, unless the producing party consents to persons other than
28 qualified recipients being present at the examination. If the witness is represented

1 by an attorney who is not qualified under this Order to receive such Protected
2 Information, then prior to the examination, the attorney must provide a signed
3 statement, in the form of Attachment A hereto, that he or she will comply with the
4 terms of this Order and maintain the confidentiality of Protected Information
5 disclosed during the course of the examination. In the event that such attorney
6 declines to sign such a statement prior to the examination, the parties, by their
7 attorneys, shall jointly seek a protective order from the Court prohibiting the
8 attorney from disclosing Protected Information.

9 4. Every fact witness shall be informed at the start of a deposition
10 that he or she may be shown documents designated as Protected Information in this
11 litigation and that such Protected Information and the contents therein are being
12 furnished to the witness solely for use in this litigation. Every fact witness shall be
13 shown a copy of this Order. No fact witness may retain any documents designated
14 as Protected Information. No fact witness shall be shown or examined regarding
15 Protected Information other than as described under Sections V(B)(1-3).

16 5. Nothing shall be filed under seal, and the court shall not be
17 required to take any action, without separate prior order by the Judge before whom
18 the hearing or proceeding will take place, after application by the affected party with
19 appropriate notice to opposing counsel. The parties shall follow and abide by
20 applicable law, including Civ. L.R. 79.2, ECF Administrative Policies and
21 Procedures, Section II.j, and the chambers' rules, with respect to filing documents
22 under seal.

23 6. All transcripts of depositions, exhibits, answers to
24 interrogatories, pleadings, briefs, and other documents submitted to the Court that
25 have been designated as Protected Information, or which contain information so
26 designated, shall be filed under seal in a manner prescribed by the Court for such
27 filings unless the Court orders otherwise. To avoid unnecessary sealing of Court
28 records and motion practice relating to sealed filings, any party preparing a filing

1 with the Court that may contain Protected Information may identify to the producing
2 party or non-party the specific Protected Information at issue and request a waiver
3 of the confidentiality protections for that specific Protected Information. Upon
4 receipt of such a request to waive confidentiality protections, the producing party or
5 non-party shall respond in good faith within forty-eight (48) hours.

6 7. If a receiving party seeks to file any transcripts of depositions,
7 exhibits, answers to interrogatories, pleadings, briefs, or other documents designated
8 as Protected Information with the Court, the receiving party will be responsible for
9 filing a motion asserting that the information should be filed under seal, based on its
10 designation as Protected Information under this Order. The receiving party will act
11 in good faith to give notice to the designating party at least 48 hours before its filing
12 of its intent to file Protected Information, and the designating party will either
13 authorize the public filing of the materials or the receiving party must prepare an
14 application to file under seal. The designating party may choose to submit
15 additional supporting evidence for the assertion that the information is confidential,
16 non-public and should be filed under seal. The parties will cooperate in good faith
17 to accommodate any Protected Information that is added or deleted from the filing
18 within the 48-hour period.

19 8. Outside attorneys of record for the parties are hereby authorized
20 to be the persons who may retrieve confidential exhibits and/or other confidential
21 matters filed with the Court upon termination of this litigation without further order
22 of this Court, and are the persons to whom such confidential exhibits or other
23 confidential matters may be returned by the Clerk of the Court, if they are not so
24 retrieved. No material or copies thereof so filed shall be released, except by order of
25 the Court, to outside counsel of record, or as otherwise provided for hereunder.

26 9. Protected Information shall not be copied or otherwise produced
27 by a receiving party, except for transmission to qualified recipients, without the
28 written permission of the producing party, or, in the alternative, by further order of

1 the Court. Nothing herein shall, however, restrict a qualified recipient from making
2 working copies, abstracts, digests and analyses of Protected Information designated
3 CONFIDENTIAL or CONFIDENTIAL – OUTSIDE COUNSEL ONLY for use in
4 connection with this litigation, and such working copies, abstracts, digests and
5 analyses shall be deemed Protected Information under the terms of this Order.
6 Further, nothing herein shall restrict a qualified recipient from converting or
7 translating Protected Information designated CONFIDENTIAL or
8 CONFIDENTIAL – OUTSIDE COUNSEL ONLY into machine-readable form for
9 incorporation into a data retrieval system used in connection with this action,
10 provided that access to that Protected Information, in whatever form stored or
11 reproduced, shall be limited to qualified recipients.

12 10. Testimony given at deposition may be designated as Protected
13 Information by outside litigation counsel of record by making a statement orally to
14 that effect on the record at any time during the deposition. Within fifteen (15)
15 business days of receipt of the final certified transcript of any deposition, the
16 producing party may request that the original and all copies of the deposition
17 transcript, in whole or in part, be marked CONFIDENTIAL or CONFIDENTIAL –
18 OUTSIDE COUNSEL ONLY. Confidential designations shall be made by
19 notifying all parties in writing of the specific pages and lines of the transcript that
20 should be treated as Protected Information. Deposition transcripts shall be treated
21 by default as CONFIDENTIAL – OUTSIDE COUNSEL ONLY until the expiration
22 of the time to make a confidentiality designation unless otherwise agreed to by the
23 parties. Any portions so designated shall thereafter be treated in accordance with
24 the terms of this Order. Objections to confidentiality designations under this
25 paragraph shall be governed by the procedure set forth in section IV above.

26 **C. Unauthorized Disclosure of Protected Information**

27 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Information to any person or in any circumstance not authorized under

1 this Order, the receiving party must immediately: (i) notify in writing the producing
2 party of the unauthorized disclosure(s); (ii) use its best efforts to retrieve all copies
3 of the Protected Information; (c) inform the person or persons to whom
4 unauthorized disclosures were made of all the terms of this Order; and (d) request
5 that such person or persons execute the confidentiality agreement attached hereto as
6 Attachment A. Compliance with this paragraph V.C upon the discovery of an
7 unauthorized disclosure of Protected Information is mandatory and shall not excuse
8 a violation of this Order or exempt a violating party from sanctions pursuant to
9 paragraph V.D below.

10 **D. Violations**

11 If any party violates the limitations on the use of Protected Information as
12 described in this section V, the party violating this Order shall be subject to
13 sanctions as ordered by the Court. In the event motion practice is required due to a
14 violation of the terms of this Order, the prevailing party on such a motion shall be
15 awarded costs, expenses, and fees, including attorney or other professional fees,
16 incurred in connection with the discovery of the violation and the preparation, filing,
17 and arguing of the motion or any other proceedings resulting from the violation.

18 **VI. NON-PARTY USE OF THIS PROTECTIVE ORDER**

19 **A. Purpose**

20 A non-party producing Discovery Material voluntarily or pursuant to a
21 subpoena or a court order may designate such Discovery Material as Protected
22 Information pursuant to the terms of this Protective Order.

23 **B. Non-Party Access**

24 A non-party's use of this Protective Order to protect its Protected Information
25 does not entitle that non-party access to the Protected Information produced by any
26 party or non-party in this case.

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1 **VII. NO WAIVER OF PRIVILEGE**

2 Nothing in this Protective Order shall require production of Discovery
3 Material that a party contends is protected from disclosure by the attorney-client
4 privilege, the work product immunity, common interest doctrine, or other privilege,
5 doctrine, right, or immunity (collectively “Privileged Information”). If Privileged
6 Information is nevertheless inadvertently or unintentionally produced, such
7 production shall in no way prejudice or otherwise constitute a waiver or estoppel as
8 to any such privilege, doctrine, right or immunity. Any party that inadvertently
9 produces Privileged Information may obtain the return of those materials by
10 promptly notifying the recipient(s) and expressly articulating the basis for the
11 asserted privilege or immunity. The recipient(s) shall gather and return all copies of
12 the inadvertently produced Privileged Information to the producing party, or certify
13 to the producing party that they have been destroyed and/or deleted.

14 Notwithstanding this provision, outside litigation counsel of record are not required
15 to delete inadvertently produced Privileged Information that may reside on their
16 respective firm’s electronic back-up systems that are over-written in the normal
17 course of business, provided such inadvertently produced Privileged Information is
18 not used for any other purpose following counsel’s receipt of the producing party’s
19 notice that the Privileged Information should not have been produced. Disputes
20 regarding whether Discovery Material is discoverable shall be resolved in the same
21 manner as disputes regarding whether Discovery Material that has been produced
22 qualifies as Protected Information, subject to the terms of this section VII.

23 **VIII. MISCELLANEOUS PROVISIONS**

24 **A. Waiver**

25 Any of the notice requirements herein may be waived, in whole or in part, but
26 only in writing signed by the attorney-in-charge for the party against whom such
27 waiver will be effective.

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1 **B. Inadvertent or Unintentional Production**

2 Nothing in this Protective Order shall require production of information that a
3 party contends is protected from disclosure by the attorney-client privilege, the work
4 product immunity or other privilege, doctrine, right, or immunity. Pursuant to Fed.
5 R. Evid. 502(d), the production of a privileged or work-product-protected document
6 is not a waiver of privilege or protection from discovery in this case or in any other
7 federal or state proceeding. For example, the mere production of privilege or work-
8 product-protected documents in this case as part of a mass production is not itself a
9 waiver in this case or any other federal or state proceeding. A producing party may
10 assert privilege or protection over produced documents at any time by notifying the
11 receiving party in writing of the assertion of privilege or protection. In addition,
12 information that contains privileged matter or attorney work product shall be
13 immediately returned if such information appears on its face to have been
14 inadvertently produced.

15 **C. Conclusion of Litigation**

16 Within sixty (60) business days after the entry of a final non-appealable
17 judgment or order, or the expiration of the deadline for any party to appeal any final
18 judgment or order, or the complete settlement of all claims asserted against all
19 parties in this action, each party shall, at the option of the producing party, either
20 return or destroy all physical objects and documents which embody Protected
21 Information it has received, and shall destroy in whatever form stored or
22 reproduced, all physical objects and documents, including but not limited to,
23 correspondence, memoranda, notes and other work product materials, which contain
24 or refer to any category of Protected Information. All Protected Information not
25 embodied in physical objects and documents shall remain subject to this Order. In
26 the event that a party is dismissed before the entry of a final non-appealable
27 judgment or order, this same procedure shall apply to any Protected Information
28 received from or produced to the dismissed party. Notwithstanding this provision,

1 outside litigation counsel of record are not required to delete Protected Information
2 that may reside on their respective firm's electronic back-up systems that are over-
3 written in the normal course of business. Notwithstanding the foregoing, outside
4 counsel shall be entitled to maintain two (2) copies of all pleadings, motions and
5 trial briefs (including all supporting and opposing papers and exhibits thereto),
6 written discovery requests and responses (and exhibits thereto), deposition
7 transcripts (and exhibits thereto), trial transcripts, and exhibits offered or introduced
8 into evidence at any hearing or trial, and their attorney work product which refers or
9 is related to any Protected Information designated CONFIDENTIAL or
10 CONFIDENTIAL – OUTSIDE COUNSEL ONLY for archival purposes only. If a
11 party opts to destroy Protected Information designated CONFIDENTIAL or
12 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, the party must provide a
13 Certificate of Destruction to the producing party.

14 **D. Subpoenas**

15 If at any time documents containing Protected Information are subpoenaed by
16 any court, arbitral, administrative or legislative body, or are otherwise requested in
17 discovery, the person to whom the subpoena or other request is directed shall
18 immediately give written notice thereof to every party or non-party who has
19 produced such documents and to its counsel, and shall provide each such party with
20 an opportunity to object to the production of such documents. If a producing party
21 does not take steps to prevent disclosure of such documents within ten (10) business
22 days of the date written notice is given, the party to whom the referenced subpoena
23 is directed may produce such documents in response thereto, but shall take all
24 reasonable measures to have such documents treated in accordance with terms of
25 this Protective Order.

26 **E. Communications with Testifying Experts**

27 Testifying experts shall not be subject to discovery of any draft of their
28 reports in this case and such draft reports, notes, outlines, or any other writings

1 leading up to an issued report(s) in this litigation are exempt from discovery. In
2 addition, all communications between counsel for a party and that party's testifying
3 expert, and all materials generated by a testifying expert with respect to that
4 person's work, are exempt from discovery unless they relate to the expert's
5 compensation or identify facts, data or assumptions relied upon by the expert in
6 forming any opinions in this litigation and such information is not already disclosed
7 in the expert's report.

8 **F. Privilege Log**

9 As the parties previously stipulated, communications between them and their
10 respective legal counsel need not be logged, even if responsive to a discovery
11 request, and may be withheld.

12 **G. Modification of Protections**

13 This Order is entered without prejudice to the right of any party, either by
14 agreement with other parties to this action, or by applying to the Court if agreement
15 cannot be reached among parties, to extend additional protection, or to reduce or
16 rescind the restrictions of this Order, when convenience or necessity requires.
17 Furthermore, without application to the Court, any party that is a beneficiary of the
18 protections of this Order may enter a written agreement releasing any other party
19 hereto from one or more requirements of this Order even if the conduct subject to
20 the release would otherwise violate the terms herein. The Court may modify the
21 protective order in the interests of justice or for public policy reasons.

22 **H. No Agreement Concerning Discoverability**

23 The identification or agreed upon treatment of certain types of Discovery
24 Material does not reflect agreement by the parties that the disclosure of such
25 categories of Discovery Material is required or appropriate in this action. The
26 parties reserve the right to argue that any particular category of Discovery Material
27 should not be produced.

28 ///

1 **I. No Limitation on Legal Representation**

2 Nothing in this Protective Order shall preclude or impede outside litigation
3 counsel of record’s ability to communicate with or advise their client in connection
4 with this litigation based on such counsel’s review and evaluation of Protected
5 Information, provided however, that such communications or advice shall not
6 disclose or reveal the substance or content of any Protected Information other than
7 as permitted under this Protective Order.

8 **J. Agreement Upon Execution**

9 Each of the parties agrees to be bound by the terms of this Protective Order as
10 of the date counsel for such party executes this Protective Order, even if prior to
11 entry of this order by the Court.

12 **K. Section Headings**

13 The section headings used in this Order shall be intended for convenience
14 only and shall not be deemed to supersede or modify any provisions.


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L. Interpretation, Enforcement and Continuing Jurisdiction

The United States District Court for the Southern District of California is responsible for the interpretation and enforcement of this Agreed Protective Order. After termination of this litigation, the provisions of this Agreed Protective Order shall continue to be binding except with respect to that Discovery Material that become a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Protected Information for enforcement of the provision of this Agreed Protective Order following termination of this litigation. All disputes concerning Protected Information produced under the protection of this Agreed Protective Order shall be resolved by the United States District Court for the Southern District of California.

So ORDERED and SIGNED this 12th day of September, 2014.



Hon. Nita L. Stormes
U.S. Magistrate Judge

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3
4
5 HANGINOUT, INC.,

6 Plaintiff,

7 vs.

8 GOOGLE INC.,

9 Defendant.

CASE NO. 13-CV-2811 AJB NLS

10
11 **ATTACHMENT A TO THE STIPULATED PROTECTIVE ORDER**
12 **CONFIDENTIALITY AGREEMENT**

13
14 1. My name is _____.

15 2. I reside at
16 _____.

17 3. My present employer is
18 _____.

19 4. My present occupation or job description is
20 _____.

21 5. I have been engaged as
22 _____ on behalf of

23 _____ in
24 the preparation and conduct of the above-captioned litigation.

25
26 6. I have received a copy of the Agreed Protective Order dated
27 _____, 2014, and I have carefully read and understand its provisions. I agree
28 to comply with and be bound by all the provisions of said Order. I understand that I

1 am to retain all copies of any documents designated as CONFIDENTIAL or
2 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or any similar designation, in a
3 secure manner and in accordance with the terms of said Order, and that all copies
4 are to remain in my personal custody until I have completed my assigned duties,
5 whereupon the copies and any writings prepared by me containing any information
6 containing any Protected Information or documents designated CONFIDENTIAL or
7 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, or any similar designation, are
8 to be returned to counsel who provided me with such material.

9
10 7. I will not divulge Protected Information to persons other than those
11 specifically authorized by said Order, and I will not copy or use except solely for the
12 purpose of this action, any Protected Information obtained pursuant to said Order,
13 except as provided in said Order. I also agree to notify any stenographic or clerical
14 personnel who are required to assist me of the terms of said Order.

15 8. In accordance with paragraph III.C of the Order (if applicable), I have
16 attached to this Confidentiality Agreement my curriculum vitae and any other
17 required information sufficient to identify my current employer and employment
18 history for the past ten (10) years, and a listing of cases in which I have testified as
19 an expert at trial or by deposition within the preceding five (5) years.

20
21 9. The Bates ranges of the Protected Information to be disclosed to me
22 have been identified to the producing party.

23
24 10. I state under penalty of perjury under the laws of the United States of
25 America that the foregoing is true and correct.

26
27 By: _____

28 Executed on _____, 20____.