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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IMPACT ENGINE, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendants.

Case No.: 19-cv-1301-CAB-BGS

**ORDER GRANTING MOTION FOR
PROTECTIVE ORDER**

[ECF No. 68]

The parties’ Joint Motion for Entry of a Protective Order (ECF No. 68) is currently before the Court. Having reviewed and considered the motion and proposed order, and good cause appearing, the Court **GRANTS** the Joint Motion for Entry of Protective Order (ECF No. 68) **AS FOLLOWS**:

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. 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

1 information or items that are entitled to confidential treatment under the applicable legal
2 principles.

3 THEREFORE:

4 **1. DEFINITIONS**

5 1.1 Challenging Party: a Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 1.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
8 is generated, stored or maintained) or tangible things that qualify for protection under
9 Federal Rule of Civil Procedure 26(c).

10 1.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
11 (as well as their support staff).

12 1.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

14 1.5 Designating Party: a Party or Non-Party that designates information or items
15 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
17 CONFIDENTIAL – SOURCE CODE”.

18 1.6 Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among
20 other things, testimony, transcripts, and tangible things), that are produced or generated in
21 disclosures or responses to discovery in this matter.

22 1.7 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this action, (2) is not a past or current employee of
25 a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to
26 become an employee of a Party or of a Party’s competitor.

27 1.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
28 or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to

1 another Party or Non-Party would create a substantial risk of serious harm that could not
2 be avoided by less restrictive means.

3 1.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
4 extremely sensitive “Confidential Information or Items” representing computer code and
5 associated comments and revision histories, and pseudo-code or other algorithms
6 describing the software design, disclosure of which to another Party or Non-Party would
7 create a substantial risk of serious harm that could not be avoided by less restrictive
8 means.

9 1.10 House Counsel: attorneys who are members in good standing of at least one
10 state bar, who are employees of a Party, and who have responsibility for managing this
11 action. House Counsel does not include Outside Counsel of Record or any other outside
12 counsel.

13 1.11 Non-Party: any natural person, partnership, corporation, association, or other
14 legal entity not named as a Party to this action.

15 1.12 Outside Counsel of Record: attorneys who are not employees of a party to
16 this action but are retained to represent or advise a Party and have appeared in this action
17 on behalf of that Party or are affiliated with a law firm which has appeared on behalf of
18 that Party.

19 1.13 Party: any party to this action.

20 1.14 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this action.

22 1.15 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium, and
25 professional jury or trial consultants) and their employees and subcontractors, who (1)
26 have been retained by a Party or its counsel to provide litigation support services with
27 respect to this action, (2) are (including any employees and subcontractors) not a past or
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1 current employee of a Party or of a Party’s competitor, and (3) at the time of retention,
2 are not anticipated to become an employee of a Party or of a Party’s competitor.

3 1.16 Protected Material: any Disclosure or Discovery Material that is designated
4 as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

6 1.17 Receiving Party: a Party that receives Disclosure or Discovery Material from
7 a Producing Party.

8 **2. SCOPE**

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

23 **3. DESIGNATING PROTECTED MATERIAL**

24 3.1 Exercise of Restraint and Care in Designating Material for Protection. Each
25 Party or Non-Party that designates information or items for protection under this Order
26 must take care to limit any such designation to specific material that qualifies under the
27 appropriate standards. To the extent it is practical to do so, the Designating Party must
28 designate for protection only those parts of material, documents, items, or oral or written

1 communications that qualify – so that other portions of the material, documents, items, or
2 communications for which protection is not warranted are not swept unjustifiably within
3 the ambit of this Order.

4 3.2 Mass, indiscriminate, or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper purpose
6 (e.g., to unnecessarily encumber or retard the case development process or to impose
7 unnecessary expenses and burdens on other Parties) expose the Designating Party to
8 sanctions.

9 3.3 If it comes to a Designating Party’s attention that information or items that it
10 designated for protection do not qualify for protection at all or do not qualify for the level
11 of protection initially asserted, that Designating Party must promptly notify all other
12 Parties that it is withdrawing the mistaken designation.

13 3.4 Manner and Timing of Designations. Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 3.5 below), or as otherwise stipulated or
15 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
16 must be clearly so designated before the material is disclosed or produced.

17 3.5 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix the legend “CONFIDENTIAL”
21 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
22 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains
23 protected material.

24 (b) A Party or Non-Party that makes original documents or materials
25 available for inspection need not designate them for protection until after the
26 inspecting Party has indicated which material it would like copied and
27 produced. During the inspection and before the designation, all of the
28 material made available for inspection shall be deemed “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting
2 Party has identified the documents it wants copied and produced, the
3 Producing Party must determine which documents, or portions thereof,
4 qualify for protection under this Order. Then, before producing the specified
5 documents, the Producing Party must affix the appropriate legend
6 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to
8 each page that contains Protected Material. If only a portion or portions of
9 the material on a page qualifies for protection, the Producing Party also must
10 clearly identify the protected portion(s) (e.g., by making appropriate
11 markings in the margins) and must specify, for each portion, the level of
12 protection being asserted.

13 (c) for testimony given in deposition or in other pretrial or trial
14 proceedings, that the Designating Party when practical identify on the
15 record, before the close of the deposition, hearing, or other proceeding, all
16 protected testimony and specify the level of protection being asserted. When
17 it is impractical to identify separately each portion of testimony that is
18 entitled to protection and it appears that substantial portions of the testimony
19 may qualify for protection, the Designating Party may invoke on the record
20 (before the deposition, hearing, or other proceeding is concluded) a right to
21 have up to 21 days to identify the specific portions of the testimony as to
22 which protection is sought and to specify the level of protection being
23 asserted. Only those portions of the testimony that are appropriately
24 designated for protection within the 21 days shall be covered by the
25 provisions of this Stipulated Protective Order. Alternatively, a Designating
26 Party may specify, at the deposition or up to 21 days afterwards if that
27 period is properly invoked, that the entire transcript shall be treated as
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1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

3 (d) Parties shall give the other Parties reasonable notice (a minimum
4 of two business days) if they reasonably expect a deposition, hearing or
5 other proceeding to include Protected Material so that the other Parties can
6 ensure that only authorized individuals who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at
8 those proceedings. The use of a document as an exhibit at a deposition shall
9 not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
11 CONFIDENTIAL – SOURCE CODE.”

12 (e) Transcripts containing Protected Material shall have an obvious
13 legend on the title page that the transcript contains Protected Material, and
14 the title page shall be followed by a list of all pages (including line numbers
15 as appropriate) that have been designated as Protected Material and the level
16 of protection being asserted by the Designating Party. The Designating Party
17 shall inform the court reporter of these requirements. Any transcript that is
18 prepared before the expiration of a 21-day period for designation shall be
19 treated during that period as if it had been designated “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
21 otherwise agreed. After the expiration of that period, the transcript shall be
22 treated only as actually designated.

23 (f) for information produced in some form other than documentary
24 and for any other tangible items, that the Producing Party affix in a
25 prominent place on the exterior of the container or containers in which the
26 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
28 CONFIDENTIAL – SOURCE CODE”. If only a portion or portions of the

1 information or item warrant protection, the Producing Party, to the extent
2 practicable, shall identify the protected portion(s) and specify the level of
3 protection being asserted.

4 3.6 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
5 to designate qualified information or items does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material. Upon
7 timely correction of a designation, the Receiving Party must make reasonable efforts to
8 assure that the material is treated in accordance with the provisions of this Order.

9 **4. DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations
11 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
12 writing or a Court order otherwise directs. Final disposition shall be deemed to be the
13 later of (1) dismissal of all claims and defenses in this action, with or without prejudice;
14 or (2) entry of a final judgment herein after the completion and exhaustion of all appeals,
15 rehearings, remands, trials, or reviews of this action, including the time limits for filing
16 any motions or applications for extension of time pursuant to applicable law.

17 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 5.1 Timing of Challenges. Any Party may challenge a designation of
19 confidentiality during the timeframe as provided by Section V of the Chambers’ Rules
20 for the Honorable Bernard G. Skomal.

21 5.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
22 process by providing written notice of each designation it is challenging and describing
23 the basis for each challenge. To avoid ambiguity as to whether a challenge has been
24 made, the written notice must recite that the challenge to confidentiality is being made in
25 accordance with this specific paragraph of the Protective Order. The Parties shall attempt
26 to resolve each challenge in good faith and must begin the process by conferring directly
27 (in voice to voice dialogue; other forms of communication are not sufficient) within 14
28 days of the date of service of notice. In conferring, the Challenging Party must explain

1 the basis for its belief that the confidentiality designation was not proper and must give
2 the Designating Party an opportunity to review the designated material, to reconsider the
3 circumstances, and, if no change in designation is offered, to explain the basis for the
4 chosen designation. A Challenging Party may proceed to the next stage of the challenge
5 process only if it has engaged in this meet and confer process first or establishes that the
6 Designating Party is unresponsive to the request to meet and confer as described in
7 Section V of the Chambers' Rules for the Honorable Bernard G. Skomal.

8 5.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
9 intervention, the parties shall jointly contact Judge Skomal's chambers and speak with
10 the research attorney assigned to the case, as described in Section V of the Chambers'
11 Rules for the Honorable Bernard G. Skomal, and will proceed in adjudicating the dispute
12 as directed by the Court.

13 5.4 The burden of persuasion in any such challenge proceeding shall be on the
14 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to
15 harass or impose unnecessary expenses and burdens on other Parties) may expose the
16 Challenging Party to sanctions. All Parties shall continue to afford the material in
17 question the level of protection to which it is entitled under the Designating Party's
18 designation until the Court rules on the challenge.

19 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 6.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this case
22 only for prosecuting, defending, or attempting to settle this litigation, and shall not be
23 used for any business purpose, in connection with any other legal proceeding, or directly
24 or indirectly for any other purpose whatsoever. Such Protected Material may be disclosed
25 only to the categories of persons and under the conditions described in this Order.¹ When
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27 ¹ In the event a Non-Party witness is authorized to receive Protected Material that is to be used during his/her
28 deposition but is represented by an attorney not authorized under this Order to receive such Protected Material,
the attorney must provide at least seven calendar days prior to commencement of the deposition an executed

1 the litigation has been terminated, a Receiving Party must comply with the provisions of
2 section 14 below (FINAL DISPOSITION).

3 6.2 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order. Protected Material shall not be copied or otherwise
6 reproduced by a Receiving party, except for transmission to qualified recipients, without
7 the written permission of the Producing Party or by further order of the Court.

8 6.3 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
10 may disclose any information or item designated “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as
12 well as employees of said Outside Counsel of Record to whom it is
13 reasonably necessary to disclose the information for this litigation;

14 (b) up to one House Counsel or officer overseeing this lawsuit of the
15 Receiving Party to whom disclosure is reasonably necessary for this
16 litigation and who have signed the “Acknowledgment and Agreement to Be
17 Bound” (Exhibit A);

18 (c) Experts (as defined in this Order) of the Receiving Party to whom
19 disclosure is reasonably necessary for this litigation and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the Court and its personnel;

22 (e) stenographic reporters, videographers and/or their staff, and
23 Professional Vendors to whom disclosure is reasonably necessary for this
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27 “Acknowledgment and Agreement to Be Bound” in the form attached hereto as Exhibit A. In the event such
28 attorney declines to sign the “Acknowledgment and Agreement to Be Bound” prior to the examination, the
Parties, by their attorneys, shall jointly seek a protective order from the Court prohibiting the attorney from
disclosing Protected Material in order for the deposition to proceed.

1 litigation and who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A);

3 (f) during their depositions, witnesses in the action to whom
4 disclosure is reasonably necessary and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless the
6 Designating Party objects to such disclosure or except as otherwise ordered
7 by the Court. Before making such a disclosure, Receiving Party must
8 provide notice sufficient to allow the Designating Party to object. Pages of
9 transcribed deposition testimony or exhibits to depositions that reveal
10 Protected Material must be separately bound by the court reporter and may
11 not be disclosed to anyone except as permitted under this Stipulated
12 Protective Order;

13 (g) the author or recipient of a document containing the information or
14 a custodian or other person who otherwise possessed or personally knows
15 the information;

16 (h) during their depositions or at trial in this action only: (i) any
17 current or former officer, director, or employee of the Producing Party or
18 original source of the information; (ii) any person designated by the
19 Producing Party to provide testimony pursuant to Rule 30(b)(6) of the
20 Federal Rules of Civil Procedure; and/or (iii) any person who authored,
21 previously received (other than in connection with this litigation), or was
22 directly involved in creating, modifying, or editing the “CONFIDENTIAL”
23 information or item, as evident from its face or reasonably certain in view of
24 other testimony or evidence. Persons authorized to view
25 “CONFIDENTIAL” Information or Items pursuant to this sub-paragraph
26 shall not retain or be given copies of the “CONFIDENTIAL” Information or
27 Items except while so testifying. Only printed copies of such Information or
28 Items will be provided to testifying witnesses during their testimony, unless

1 size or format of the Information or Items as produced renders printing
2 impracticable;

3 (i) mock jurors who have signed who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

5 (j) any mediator who is assigned or selected to hear this Action, and
6 his or her staff, subject to their agreement to maintain confidentiality to the
7 same degree as required by this Protective Order.

8 6.4 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

9 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in
10 writing by the Designating Party, a Receiving Party may disclose any information or item
11 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action, as
13 well as employees of said Outside Counsel of Record to whom it is
14 reasonably necessary to disclose the information for this litigation;

15 (b) Experts of the Receiving Party (1) to whom disclosure is
16 reasonably necessary for this litigation, (2) who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to
18 whom the procedures set forth in paragraph 6.6, below, have been followed;

19 (c) the Court and its personnel;

20 (d) stenographic reporters, videographers and their respective staff,
21 professional jury or trial consultants, and Professional Vendors to whom
22 disclosure is reasonably necessary for this litigation and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (e) the author or recipient of a document containing the information or
25 a custodian or other person who otherwise possessed or personally knows
26 the information, unless the Designating Party objects to the disclosure;

27 (f) during their depositions or at trial in this action only: (i) any
28 current or former officer, director, or employee of the Producing Party or

1 original source of the information; (ii) any person designated by the
2 Producing Party to provide testimony pursuant to Rule 30(b)(6) of the
3 Federal Rules of Civil Procedure; and/or (iii) any person who authored,
4 previously received (other than in connection with this litigation), or was
5 directly involved in creating, modifying, or editing the “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or item, as
7 evident from its face or reasonably certain in view of other testimony or
8 evidence. Persons authorized to view “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” information or items pursuant to this sub-
10 paragraph shall not retain or be given copies of the “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items
12 except while so testifying. Only printed copies of the “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information will be
14 provided to testifying witnesses during their testimony, unless size or format
15 of the Information or Items as produced renders printing impracticable; and

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17 (h) any mediator who is assigned or selected to hear this Action, and
18 his or her staff, subject to their agreement to maintain confidentiality to the
19 same degree as required by this Protective Order.

20 6.5 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
21 or Items. Unless otherwise ordered by the Court or permitted in writing by the
22 Designating Party, a Receiving Party may disclose any information or item designated
23 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this action, as
25 well as employees of said Outside Counsel of Record to whom it is
26 reasonably necessary to disclose the information for this litigation;

27 (b) up to four Experts of the Receiving Party (1) to whom disclosure
28 is reasonably necessary for this litigation, (2) who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to
2 whom the procedures set forth in paragraph 6.6, below, and specifically
3 identified as eligible to access “HIGHLY CONFIDENTIAL – SOURCE
4 CODE” Information or Items, have been followed;

5 (c) the Court and its personnel;

6 (d) stenographic reporters, videographers and their respective staff
7 who have signed the “Acknowledgment and Agreement to Be Bound”
8 (Exhibit A) and are transcribing or videotaping a deposition wherein
9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items are
10 being discussed, provided that such reporters and videographers shall not
11 retain or be given copies of any portions of the source code, which if used
12 during a deposition, will not be attached as an exhibit to the transcript but
13 instead shall be identified only by its production numbers; and

14 (e) while testifying at deposition or trial in this action only: (i) any
15 current or former officer, director or employee of the Producing Party or
16 original source of the information; (ii) any person designated by the
17 Producing Party to provide testimony pursuant to Rule 30(b)(6) of the
18 Federal Rules of Civil Procedure; and/or (iii) any person who authored,
19 previously received (other than in connection with this litigation), or was
20 directly involved in creating, modifying, or editing the “HIGHLY
21 CONFIDENTIAL – SOURCE CODE” Information or Items, as evident
22 from its face or reasonably certain in view of other testimony or evidence.
23 Persons authorized to view “HIGHLY CONFIDENTIAL – SOURCE
24 CODE” Information or Items pursuant to this sub-paragraph shall not retain
25 or be given copies of the “HIGHLY CONFIDENTIAL – SOURCE CODE”
26 Information or Items except while so testifying. Only printed copies of the
27 Source Code will be provided to testifying witnesses during their testimony;
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1 6.6 Procedures for Approving or Objecting to Disclosure of “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
3 SOURCE CODE” Information or Items to Experts.

4 (a) Unless otherwise ordered by the court or agreed to in writing by
5 the Designating Party, a Party that seeks to disclose to an Expert (as defined
6 in this Order) any information or item that has been designated “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
8 CONFIDENTIAL – SOURCE CODE” by another Party pursuant to
9 paragraphs 6.4 and 6.5 first must make a written request to the other Party
10 that (1) sets forth the full name of the Expert and the city and state of his or
11 her primary residence, (2) attaches a copy of the Expert’s current resume, (3)
12 identifies the Expert’s current employer(s), (4) identifies each person or
13 entity from whom the Expert has received compensation or funding for work
14 in his or her areas of expertise or to whom the expert has provided
15 professional services, including in connection with a litigation, at any time
16 during the preceding five years, and (5) identifies (by name and number of
17 the case, filing date, and location of court if available) any litigation in
18 connection with which the Expert has offered expert testimony, including
19 through a declaration report, or testimony at a deposition or trial, during the
20 preceding four years.² The parties expressly agree that the written request
21 requirements of this section do not constitute a waiver of any privilege or
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24 ² The Parties recognize that Experts may have privilege and/or confidentiality obligations to a third-party that
25 would not permit the Expert to disclose certain information called for in this paragraph. If the Expert believes any
26 of this information is subject to any privilege or confidentiality obligation to a third-party, then the Expert should
27 provide whatever information the Expert believes can be disclosed without violating any such obligation. The
28 Parties agree to confer in good faith in all such instances within seven (7) days of disclosure, and further agree
that (1) the Party seeking to make such a disclosure shall endeavor to provide the information called for by this
paragraph where possible; and (2) that the Party objecting to such a disclosure shall act in good faith in asserting
and/or maintaining any such objections. The Party objecting to the disclosure will have seven (7) days from the
date of the meet and confer to seek relief from the Court. If relief is not sought within that time, the objection
shall be deemed withdrawn.

1 protection and do not create any discovery obligations beyond those required
2 in the Federal Rules of Civil Procedure.

3 (b) A Party that makes a request and provides the information
4 specified in the preceding respective paragraphs may disclose the subject
5 Protected Material to the identified Expert unless, within 14 days of
6 delivering the request, the Party receives a written objection from the
7 Designating Party. Any such objection must set forth in detail the grounds
8 on which it is based.

9 (c) A Party that receives a timely written objection must meet and
10 confer with the Designating Party (through direct voice to voice dialogue) to
11 try to resolve the matter by agreement under the framework provided by
12 Rule V of the Chambers' Rules for the Honorable Bernard G. Skomal. If no
13 agreement is reached, the parties shall jointly contact Judge Skomal's
14 chambers and speak with the research attorney assigned to the case, as
15 described in Rule V of the Chambers' Rules for the Honorable Bernard G.
16 Skomal, and will proceed in adjudicating the dispute as directed by the
17 Court.

18 (d) In any such proceeding, the Party opposing disclosure to the
19 Expert shall bear the burden of proving that the risk of harm that the
20 disclosure would entail (under the safeguards proposed) outweighs the
21 Receiving Party's need to disclose the Protected Material to its Expert.

22 (e) A party who has not previously objected to disclosure of Protected
23 Material to an Expert or whose objection has been resolved with respect to
24 previously produced Protected Material shall not be precluded from raising
25 an objection to an Expert at a later time with respect to Protected Material if
26 new information about that Expert is disclosed or discovered. Any such
27 objection shall be handled in accordance with the provisions set forth above.

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1 **7. PROSECUTION AND ACQUISITION BAR**

2 7.1 (a) Absent written consent from the Producing Party, any individual who
3 receives “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
4 CONFIDENTIAL – SOURCE CODE” information designated by the opposing Party
5 shall not be involved in the prosecution of patents or patent applications relating to
6 creating, editing, sharing and/or distributing template-based communications, including
7 but not limited to creating, editing, sharing, and distributing template-based
8 advertisements, including without limitation the patents asserted in this action and any
9 patent or application claiming priority to or otherwise related to the patents asserted in
10 this action, before any foreign or domestic agency, including the United States Patent and
11 Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution”
12 includes any activity related to (i) the preparation or prosecution (for any person or
13 entity) of patent applications, including among others reexamination and reissue
14 applications or (ii) directly or indirectly participating, drafting, amending, advising, or
15 otherwise affecting the scope or maintenance of patent claims. Up to four outside counsel
16 who have reviewed material subject to a Prosecution Bar under this section may
17 participate in reexamination, *inter partes* review, covered business method review, post-
18 grant review, or reissue application proceedings for the patents asserted in this action or
19 any issued patent in the same patent family as the patents asserted in this action, but may
20 not participate in or advise on any claim prosecution, amendments to any claim language,
21 or substitution of new claims. Nothing in this provision shall prohibit any attorney of
22 record in this litigation from discussing any aspect of this case that is reasonably
23 necessary for the prosecution or defense of any claim or counterclaim in this litigation
24 with that attorney’s client. In addition, no prohibition set forth in this paragraph shall
25 apply to or result from any material that such person had lawfully received or authored
26 prior to and apart from this litigation. The parties expressly agree that the Prosecution
27 Bar set forth herein shall be personal to any attorney, expert, or other individual who
28 reviews materials subject to the Prosecution Bar under this section and shall not be

1 imputed to any other persons at that person’s firm or organization. It is expressly agreed
2 that attorneys who work on this matter without reviewing materials subject to the
3 Prosecution Bar under this section shall not be restricted from engaging in prosecution
4 (as that term is defined herein) on matters that fall within the Prosecution Bar. This
5 Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
7 information is first received by the affected individual and shall end two (2) years after
8 final termination of this action.

9 7.2 Absent written consent from the Producing Party, any individual who
10 receives access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
11 “HIGHLY CONFIDENTIAL – SOURCE CODE” information designated by the
12 opposing Party shall not be involved in activity related to: (i) the acquisition of patents or
13 patent applications (for any person or entity) relating to creating, editing, sharing and/or
14 distributing web-based communications, including but not limited to creating, editing,
15 sharing, and distributing advertisements; or (ii) advising or counseling clients regarding
16 the same. This Acquisition Bar shall begin when access to “HIGHLY CONFIDENTIAL
17 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
18 information is first received by the affected individual and shall end two (2) years after
19 final disposition of this action as provided herein.

20 **8. SOURCE CODE**

21 8.1 To the extent production of source code becomes necessary in this case, a
22 Producing Party may designate material as “HIGHLY CONFIDENTIAL - SOURCE
23 CODE” if it comprises, includes, or substantially discloses confidential, proprietary or
24 trade secret source code or algorithms. This material may include, among things,
25 technical design documentation that comprises, includes, or substantially discloses source
26 code or algorithms.

27 8.2 Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
28 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL

1 – ATTORNEYS’ EYES ONLY” information including the Prosecution Bar set forth in
2 Paragraph 7 and the Acquisition Bar set forth in Paragraph 7, and may be disclosed only
3 as set forth in Paragraph 6.5.

4 8.3 Any source code produced in discovery shall only be made available for
5 inspection, not produced except as set forth below, in a format allowing it to be
6 reasonably reviewed and searched, during normal business hours or at other mutually
7 agreeable times, at (1) an office of the Producing Party or the Producing Party’s primary
8 outside counsel of record or (2) another mutually agreed upon location. Source code
9 made available for inspection in the manner described herein shall be designated
10 “HIGHLY CONFIDENTIAL – SOURCE CODE,” consistent with Paragraph 8.1 of this
11 Order. Any location under (1) or (2) shall be within the United States. The source code
12 shall be made available for inspection on a secured computer (the “Source Code
13 Computer”) in a secured, locked room without Internet access or network access to other
14 computers, and the Receiving Party shall not copy, remove, or otherwise transfer any
15 portion of the source code onto any recordable media or recordable device. The secured
16 computer shall have disk encryption and be password protected. Use or possession of
17 any input/output device (e.g., USB memory stick, mobile phone or tablet, camera or any
18 camera-enabled device, CD, floppy disk, portable hard drive, laptop, or any device that
19 can access the Internet or any other network or external system, etc.) is prohibited while
20 accessing the computer containing the source code. All persons entering the locked room
21 containing the source code must agree to submit to reasonable security measures to
22 ensure they are not carrying any prohibited items before they will be given access to the
23 locked room. The computer containing source code will be made available for inspection
24 during regular business hours, upon reasonable notice to the producing party, which shall
25 not be less than 3 business days in advance of the requested inspection. The Producing
26 Party may visually monitor the activities of the Receiving Party’s representatives during
27 any source code review, but only to ensure that there is no unauthorized recording,
28 copying, or transmission of the source code.

1 8.4 No person shall copy, e-mail, transmit, upload, download, print, photograph
2 or otherwise duplicate any portion of the designated “HIGHLY CONFIDENTIAL -
3 SOURCE CODE” material, except that the Receiving Party may request paper copies of
4 limited portions of source code, but only if and to the extent reasonably necessary for the
5 preparation of court filings, pleadings, expert reports, or other papers, or for deposition or
6 trial. In no event may the Receiving Party print more than 40 consecutive pages, or an
7 aggregate total of more than 500 pages, of source code during the duration of the case
8 without prior written approval by the Producing Party or by order from the Court. The
9 Receiving Party shall not request paper copies for the purposes of reviewing the source
10 code other than electronically as set forth in paragraph (c) in the first instance. Within 5
11 business days or such additional time as necessary due to volume requested, the
12 Producing Party will provide the requested material on watermarked or colored paper
13 bearing Bates numbers and the legend “HIGHLY CONFIDENTIAL - SOURCE CODE”
14 unless objected to as discussed below. At the Receiving Party’s request, up to two
15 additional sets (or subsets) of printed source code may be requested and provided by the
16 Producing Party in a timely fashion. Even if within the limits described, the Producing
17 Party may challenge the amount of source code requested in hard copy form or whether
18 the source code requested in hard copy form is reasonably necessary to any case
19 preparation activity pursuant to the dispute resolution procedure and timeframes set forth
20 in Paragraph 5 whereby the Producing Party is the “Challenging Party” and the Receiving
21 Party is the “Designating Party” for purposes of dispute resolution. Contested printouts
22 do not need to be produced to the Receiving Party until the matter is resolved by the
23 Court.

24 8.5 The Receiving Party shall maintain a record of any individual who has
25 inspected any portion of the source code in electronic or paper form. The Receiving
26 Party shall maintain all printed portions of the source code in a secured, locked area
27 under the direct control of counsel responsible for maintaining the security and
28 confidentiality of the designated materials. Any paper copies designated “HIGHLY

1 CONFIDENTIAL - SOURCE CODE” shall be stored or viewed only at (i) the offices of
 2 outside counsel for the Receiving Party, (ii) the offices of outside experts or consultants
 3 who have been approved to access source code; (iii) the site where any deposition is
 4 taken (iv) the Court; or (v) any intermediate location necessary to transport the
 5 information to a hearing, trial or deposition. Except as provided in subsection (i) of this
 6 section, the Receiving Party shall not create any electronic or other images of the paper
 7 copies and shall not convert any of the information contained in the paper copies into any
 8 electronic format. Any printed pages of source code, and any other documents or things
 9 reflecting source code that have been designated by the producing party as “HIGHLY
 10 CONFIDENTIAL - SOURCE CODE” may not be copied, digitally imaged or otherwise
 11 duplicated, except in limited excerpts necessary to attach as exhibits to depositions,
 12 expert reports, or court filings as discussed below. Any paper copies used during a
 13 deposition shall be retrieved by the Receiving Party at the end of each day and must not
 14 be given to or left with a court reporter or any other unauthorized individual.³

15 8.6 The Receiving Party’s outside counsel and/or expert shall be entitled to take
 16 notes relating to the source code but may not copy any portion of the source code into the
 17 notes. No copies of all or any portion of the source code may leave the room in which
 18 the source code is inspected except as otherwise provided herein. Further, no other
 19 written or electronic record of the source code is permitted except as otherwise provided
 20 herein.

21 8.7 A list of names of persons who will view the source code will be provided to
 22 the Producing Party in conjunction with any written (including email) notice requesting
 23 inspection. The Receiving Party shall maintain a daily log of the names of persons who
 24

25
 26
 27 ³ The nature of the source code at issue in a particular case may warrant additional protections or restrictions, For
 28 example, it may be appropriate under certain circumstances to require the Receiving Party to provide notice to the
 Producing Party before including “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing,
 pleading, or expert report.

1 enter the locked room to view the source code and when they enter and depart. The
2 Producing Party shall be entitled to a copy of the log.

3 8.8 The Receiving Party’s outside counsel shall maintain a log of all copies of
4 the source code (received from a Producing Party) that are delivered by the Receiving
5 Party to any person. The log shall include the names of the recipients and reviewers of
6 copies and locations where the copies are stored. Upon request by the Producing Party,
7 the Receiving Party shall provide reasonable assurances and/or descriptions of the
8 security measures employed by the Receiving Party and/or person that receives a copy of
9 any portion of the source code.

10 8.9 Except as provided in this paragraph, the Receiving Party may not create
11 electronic images, or any other images, of the source code from the paper copy for use on
12 a computer (e.g., may not scan the source code to a PDF, or photograph the code). The
13 Receiving Party may create an electronic copy or image of limited excerpts of source
14 code only to the extent necessary in a pleading, exhibit, expert report, discovery
15 document, deposition transcript, other Court document, or any drafts of these documents
16 (“SOURCE CODE DOCUMENTS”). The Receiving Party shall only include such
17 excerpts as are reasonably necessary for the purposes for which such part of the Source
18 Code is used. Images or copies of Source Code shall not be included in correspondence
19 between the parties (references to production numbers shall be used instead) and shall be
20 omitted from pleadings and other papers except to the extent permitted herein. The
21 Receiving Party may create an electronic image of a selected portion of the Source Code
22 only when the electronic file containing such image has been encrypted using
23 commercially reasonable encryption software including password protection. The
24 communication and/or disclosure of electronic files containing any portion of source code
25 shall at all times be limited to individuals who are authorized to see source code under the
26 provisions of this Protective Order. Additionally, all electronic copies must be labeled
27 “HIGHLY CONFIDENTIAL - SOURCE CODE.”
28

1 8.10 To the extent portions of source code are quoted in a SOURCE CODE
2 DOCUMENT, either (1) the entire document will be stamped and treated as HIGHLY
3 CONFIDENTIAL – SOURCE CODE or (2) those pages containing quoted Source Code
4 will be separately bound, and stamped and treated as HIGHLY CONFIDENTIAL –
5 SOURCE CODE.

6 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
7 **OTHER LITIGATION**

8 9.1 If a Party is served with a subpoena issued by a court, arbitral,
9 administrative, or legislative body, or with a court order issued in other litigation that
10 compels disclosure of any information or items designated in this action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
12 “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

- 13 (a) promptly notify in writing the Designating Party. Such notification
- 14 shall include a copy of the subpoena or court order;
- 15 (b) promptly notify in writing the person who caused the subpoena or
- 16 order to issue in the other litigation that some or all of the material covered
- 17 by the subpoena or order is subject to this Protective Order. Such
- 18 notification shall include a copy of this Stipulated Protective Order; and
- 19 (c) cooperate with respect to all reasonable procedures sought to be
- 20 pursued by the Designating Party whose Protected Material may be
- 21 affected.⁴

22 9.2 If the Designating Party timely⁵ seeks a protective order, the Party served
23 with the subpoena or court order shall not produce any information designated in this
24

25 ⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order
26 and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the
27 court from which the subpoena or order issued.

28 ⁵ The Designating Party shall have at least 14 days from the service of the notification pursuant to Section 10(a) to
seek a protective order.

1 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by
3 the court from which the subpoena or order issued, unless the Party has obtained the
4 Designating Party’s permission. The Designating Party shall bear the burden and expense
5 of seeking protection in that court of its confidential material – and nothing in these
6 provisions should be construed as authorizing or encouraging a Receiving Party in this
7 action to disobey a lawful directive from another court.

8 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
9 **PRODUCED IN THIS LITIGATION**

10 10.1 The terms of this Order are applicable to information produced by a Non-
11 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
13 SOURCE CODE”. Such information produced by Non-Parties in connection with this
14 litigation is protected by the remedies and relief provided by this Order. Nothing in these
15 provisions should be construed as prohibiting a Non-Party from seeking additional
16 protections.

17 10.2 In the event that a Party is required, by a valid discovery request, to produce
18 a Non-Party’s confidential information in its possession, and the Party is subject to an
19 agreement with the Non-Party not to produce the Non-Party’s confidential information,
20 then the Party shall:

21 (a) promptly notify in writing the Requesting Party and the Non-Party
22 that some or all of the information requested is subject to a confidentiality
23 agreement with a Non-Party;

24 (b) promptly provide the Non-Party with a copy of the Stipulated
25 Protective Order in this litigation, the relevant discovery request(s), and a
26 reasonably specific description of the information requested; and

27 (c) make the information requested available for inspection by the
28 Non-Party.

1 10.3 If the Non-Party fails to object or seek a protective order from this Court
2 within 14 days of receiving the notice and accompanying information, the Receiving
3 Party may produce the Non-Party’s confidential information responsive to the discovery
4 request. If the Non-Party timely objects or seeks a protective order, the Receiving Party
5 shall not produce any information in its possession or control that is subject to the
6 confidentiality agreement with the Non-Party before a determination by the Court.⁶
7 Absent a Court order to the contrary, the Non-Party shall bear the burden and expense of
8 seeking protection in this court of its Protected Material.

9 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
13 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
14 all unauthorized copies of the Protected Material, (c) inform the person or persons to
15 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
16 such person or persons to execute the “Acknowledgement and Agreement to Be Bound”
17 that is attached hereto as Exhibit A.

18 **12. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
19 **MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain produced
21 material is subject to a claim of privilege or other protection, the obligations of the
22 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
23 provision is not intended to modify whatever procedure may be established in an e-
24 discovery order that provides for production without prior privilege review. Pursuant to
25 Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document,
26 _____

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28 ⁶ 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.

1 whether inadvertent or otherwise, is not a waiver of privilege or protection from
2 discovery in this case or in any other federal or state proceeding. If the complaint is
3 amended to add parties, disclosures among parties' attorneys of work product or other
4 communications relating to issues of common interest shall not affect or be deemed a
5 waiver of any applicable privilege or protection from disclosure. For example, the mere
6 production of privileged or work-product-protected documents in this case as part of a
7 mass production is not itself a waiver in this case or in any other federal or state
8 proceeding. A Producing Party may assert privilege or protection over produced
9 documents at any time by notifying the Receiving Party in writing of the assertion of
10 privilege or protection. Within five (5) days of being notified of the inadvertent
11 disclosure, the Receiving Party, regardless of whether it intends to dispute the claim of
12 privilege or protection, must confirm to the Party making the claim that it has returned or
13 destroyed the specified information and any copies it has. The Receiving Party shall not
14 maintain the specified information or provide it to the Court in order to challenge the
15 claim of privilege. Within fourteen (14) days of the Producing Party's notice and request
16 for the return and/or destruction of privileged or protected material, the Producing Party
17 shall provide a privilege log with entries for the inadvertently produced document(s).
18 The privilege log shall provide, separately for each document, (1) all author(s), sender(s),
19 recipient(s), of the document; (2) the date the document was created or sent; (3) the
20 specific privilege or protection asserted; and (4) a description of the purportedly
21 privileged or protected material sufficient to assess whether the claimed privilege or
22 protection attaches. The return and/or destruction of inadvertently produced material
23 shall not preclude a Receiving Party from challenging the designation of the material. If
24 a dispute arises concerning the privileged nature of the document(s) demanded or
25 returned, the Parties shall meet and confer in good faith in an effort to resolve the dispute.
26 If the Parties are unable to resolve the dispute the Receiving Party may file a motion to
27 compel the production of such document(s). In the event of such a motion to compel, the
28

1 Producing Party shall have the burden to demonstrate the claimed privilege, work product
2 protection, or other privilege or immunity.

3
4 **13. MISCELLANEOUS**

5 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by agreement with other Parties or by applying to the
7 Court if such agreement cannot be reached. Furthermore, without application to the
8 Court, any party that is a beneficiary of the protections of this Order may enter a written
9 agreement releasing any other party hereto from one or more requirements of this Order
10 even if the conduct subject to the release would otherwise violate the terms herein.

11 13.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to disclosing
13 or producing any information or item on any ground not addressed in this Stipulated
14 Protective Order. Similarly, no Party waives any right to object on any ground to use in
15 evidence of any of the material covered by this Protective Order.

16 13.3 No Agreement Concerning Discoverability. The identification or agreed
17 upon treatment of certain types of Disclosure and Discovery Material does not reflect
18 agreement by the Parties that the disclosure of such categories of Disclosure and
19 Discovery Material is required or appropriate in this action. The Parties reserve the right
20 to argue that any particular category of Disclosure and Discovery Material should not be
21 produced.

22 13.4 Export Control. Disclosure of Protected Material shall be subject to all
23 applicable laws and regulations relating to the export of technical data contained in such
24 Protected Material, including the release of such technical data to foreign persons or
25 nationals in the United States or elsewhere. Each party receiving Protected Information
26 shall comply with all applicable export control statutes and regulations. *See, e.g.*, 15
27 CFR 734.2(b). No Protected Information may leave the territorial boundaries of the
28 United States of America or be made available to any foreign national who is not (i)

1 lawfully admitted for permanent residence in the United States or (ii) identified as a
2 protected individual under the Immigration and Naturalization Act (8 U.S.C.
3 1324b(a)(3)). Without limitation, this prohibition extends to Protected Information
4 (including copies) in physical and electronic form. The viewing of Protected Information
5 through electronic means outside the territorial limits of the United States of America is
6 similarly prohibited. Notwithstanding this prohibition, Protected Information, exclusive
7 of material designated RESTRICTED CONFIDENTIAL – SOURCE CODE, and to the
8 extent otherwise permitted by law, may be taken outside the territorial limits of the
9 United States if it is reasonably necessary for a deposition taken in a foreign
10 country. The restrictions contained within this paragraph may be amended through the
11 consent of the producing Party to the extent that such agreed to procedures conform with
12 applicable export control laws and regulations.

13 13.5 Filing documents under Seal. Without written permission from the
14 Designating Party or a Court order, a Party may not file in the public record in this action
15 any Protected Material. No document shall be filed under seal unless counsel secures a
16 court order allowing the filing of a document under seal. An application to file a
17 document under seal shall be served on opposing counsel, and on the person or entity that
18 has custody and control of the document, if different from opposing counsel. If opposing
19 counsel, or the person or entity who has custody and control of the document, wishes to
20 oppose the application, he/she must contact the chambers of the judge who will rule on
21 the application, to notify the judge's staff that an opposition to the application will be
22 filed.

23 If an application to file a document under seal is granted by Judge Skomal, a
24 redacted version of the document shall be e-filed. A courtesy copy of the unredacted
25 document shall be delivered to to Judge Skomal's chambers, as set forth in Rule VI(A)(4)
26 of the Chambers' Rules for the Honorable Bernard G. Skomal.

27 13.6 Use of Protected Material at Hearing or Trial. A Party shall provide a
28 minimum of two business day's notice to the Producing Party in the event that a Party

1 intends to use any Protected Information during trial. Subject to any challenges under
2 Section 5, the Parties will not oppose any reasonable request by the Producing Party that
3 the courtroom be sealed, if allowed by the Court, during the presentation of any
4 testimony, evidence, or argument relating to or involving the use of any Protected
5 Material.

6 13.7 No Limitation on Legal Representation. Nothing in this Order shall preclude
7 or impede Outside Counsel of Record’s ability to communicate with or advise their client
8 in connection with this litigation based on such counsel’s review and evaluation of
9 Protected Material, provided however that such communications or advice shall not
10 disclose or reveal the substance or content of any Protected Material other than as
11 permitted under this Order.

12 13.8 Violations. If any Party violates the limitations on the use of Protected
13 Material as described above, the Party violating this Order may be subject to sanctions, or
14 any other remedies as appropriate, as ordered by the Court. The Parties understand that
15 inadvertent violations may occur, and agree to make best efforts to promptly correct any
16 such violations should they arise.

17 13.9 Agreement Upon Execution. Each of the Parties agrees to be bound by the
18 terms of this Stipulated Protective Order as of the date counsel for such party executes
19 this Stipulated Protective Order, even if prior to entry of this Order by the Court.

20 13.10 Modification of the Protective Order by the Court. The Court may modify
21 the terms and conditions of this Order for good cause, or in the interest of justice, or on
22 its own order at any time in these proceedings, as set forth in Rule VI(A)(2) of the
23 Chambers’ Rules for the Honorable Bernard G. Skomal.

24 13.11 Relation to any court or local rules. This Order and the parties’ stipulation
25 does not change, amend, or circumvent any court rule or local rule unless otherwise
26 ordered by the Court, as set forth in Rule VI(A)(3) of the Chambers’ Rules for the
27 Honorable Bernard G. Skomal.
28

1 **14. FINAL DISPOSITION**

2 Within 60 days after the final disposition of this action, as defined in paragraph 4,
3 each Receiving Party must return all Protected Material to the Producing Party or destroy
4 such material. As used in this subdivision, “all Protected Material” includes all copies,
5 abstracts, compilations, summaries, and any other format reproducing or capturing any of
6 the Protected Material. Whether the Protected Material is returned or destroyed, the
7 Receiving Party must submit a written certification to the Producing Party (and, if not the
8 same person or entity, to the Designating Party) by the 60-day deadline that (1) confirms
9 all the Protected Material that was returned or destroyed and (2) affirms that the
10 Receiving Party has not retained any copies, abstracts, compilations, summaries or any
11 other format reproducing or capturing any of the Protected Material. Notwithstanding this
12 provision, Counsel are entitled to retain an archival copy of all pleadings, motions and
13 trial briefs (including all supporting and opposing papers and exhibits thereto), written
14 discovery requests and responses (and exhibits thereto), deposition transcripts (and
15 exhibits thereto), trial transcripts, and exhibits offered or introduced into evidence at any
16 hearing or trial, and their attorney work product which refers or is related to any
17 CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information for
18 archival purposes only. Any such archival copies that contain or constitute Protected
19 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

20 14.1 What the Court shall do with confidential or sealed documents after the case
21 is closed. Within 60 days after the final disposition of this action, as defined in paragraph
22 4, the parties shall submit an ex parte motion for an order authorizing return and/or
23 destruction of their respective protected material submitted to the Court confidentially or
24 under seal, as set forth in Rule VI(A)(1) of the Chambers’ Rules for the Honorable
25 Bernard G. Skomal.

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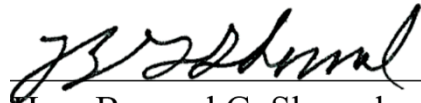
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1 **15. INTERPRETATION, ENFORCEMENT, AND CONTINUING**
2 **JURISDICTION**

3 The United States District Court for the Southern District of California is
4 responsible for the interpretation and enforcement of this Order. After final disposition of
5 this litigation, the provisions of this Order shall continue to be binding except with
6 respect to that Disclosure or Discovery Material that become a matter of public record.

7 **IT IS SO ORDERED.**

8 Dated: May 26, 2020

9 
10 Hon. Bernard G. Skomal
United States Magistrate Judge

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