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14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 ZACK WARD and THOMAS)
18 BUCCHAR, on behalf of themselves)
19 and all others similarly situated,)
20 Plaintiffs,)

CASE NO. 4:12-cv-05404-YGR

STIPULATED PROTECTIVE ORDER

21 v.)

22)
23 APPLE INC.,)
24 Defendant.)

DEPT: Courtroom 1, 4th Floor
JUDGE: Hon. Yvonne Gonzalez Rogers

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1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4,
10 below, that this Stipulated Protective Order does not entitle them to file confidential information
11 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
12 that will be applied when a party seeks permission from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
18 of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
20 well as their support staff).

21 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

23 2.5 Designating Party: a Party or Non-Party that designates information or items that it
24 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
26 CODE”.

27 2.6 Disclosure or Discovery Material: all items or information, regardless of the
28 medium or manner in which it is generated, stored, or maintained (including, among other things,

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1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
5 a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
6 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
7 of a Party's competitor.

8 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
9 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
10 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
11 less restrictive means.

12 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
13 sensitive "Confidential Information or Items" representing computer code and associated
14 comments and revision histories, formulas, engineering specifications, or schematics that define or
15 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure
16 of which to another Party or Non-Party would create a substantial risk of serious harm that could
17 not be avoided by less restrictive means.

18 2.10 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
23 action but are retained to represent or advise a party to this action and have appeared in this action
24 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

25 2.13 Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this action.

1 2.15 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL,” as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
7 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

8 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 **3. SCOPE**

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

23 **4. DURATION**

24 Even after final disposition of this litigation, the confidentiality obligations imposed by this
25 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
26 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
27 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
28 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,

1 including the time limits for filing any motions or applications for extension of time pursuant to
2 applicable law.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
5 or Non-Party that designates information or items for protection under this Order must take care to
6 limit any such designation to specific material that qualifies under the appropriate standards. To
7 the extent it is practical to do so, the Designating Party must designate for protection only those
8 parts of material, documents, items, or oral or written communications that qualify – so that other
9 portions of the material, documents, items, or communications for which protection is not
10 warranted are not swept unjustifiably within the ambit of this Order.

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

15 If it comes to a Designating Party's attention that information or items that it designated
16 for protection do not qualify for protection at all or do not qualify for the level of protection
17 initially asserted, that Designating Party must promptly notify all other parties that it is
18 withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
20 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
21 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
22 designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents, but
25 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
26 affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
27 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected
28 material. If only a portion or portions of the material on a page qualifies for protection, the

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