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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Apple Inc. Securities Litigation

Case No. 4:19-cv-02033 (N.D. Cal.)

~~PROPOSED~~ STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

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

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of

Civil Procedure 26(c) or that are (i) prohibited from disclosure by statute; (ii) trade secrets; (iii)

United States District Court
Northern District of California

1 confidential research, development, proprietary, or commercial information, the disclosure of which
2 would cause competitive harm; or (iv) private individual identificatory information such as Social
3 Security numbers, home telephone numbers and addresses, tax returns (including attached schedules
4 and forms), W-2s, 1099s, and banking or credit information.

5 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
6 as their support staff).

7 2.4 Designating Party: a Party or Non-Party that designates information or items that it
8 produces in disclosures or in responses to discovery as “CONFIDENTIAL” Or “HIGHLY
9 CONFIDENTIAL”

10 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
11 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
12 transcripts, and tangible things), that are produced or generated in disclosures or responses to
13 discovery in this matter.

14 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
15 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
16 consultant in this action, (2) is not a current employee of a Party or of a Party’s competitor, (3) was
17 not a past employee of a Party within the 18 months preceding the Expert’s retention, and (4) at the
18 time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

19 2.7 “HIGHLY CONFIDENTIAL” Information or Items: extremely sensitive
20 “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create
21 a substantial risk of serious harm that could not be avoided by less restrictive means.

22 2.8 House Counsel: attorneys who are employees of a party to this action. House
23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
25 entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action
27 but are retained to represent or advise a party to this action and have appeared in this action on
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1 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2 2.11 Party: any party to this action, including all of its officers, directors, employees,
3 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this action.

6 2.13 Professional Vendors: persons or entities that provide litigation support services
7 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
8 storing, or retrieving data in any form or medium) and their employees and subcontractors.

9 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”

11 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
12 Producing Party.

13 3. SCOPE

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

26 4. DURATION

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

7 5. DESIGNATING PROTECTED MATERIAL

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

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

19 If it comes to a Designating Party's attention that information or items that it designated for
20 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
21 that it is withdrawing the mistaken designation.

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

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but
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1 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
2 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” to each page that contains
3 protected material. If only a portion or portions of the material on a page qualifies for protection, the
4 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
5 markings in the margins) and must specify, for each portion, the level of protection being asserted.
6 A Party or Non-Party that makes original documents or materials available for inspection need not
7 designate them for protection until after the inspecting Party has indicated which material it would
8 like copied and produced. During the inspection and before the designation, all of the material made
9 available for inspection shall be deemed “HIGHLY CONFIDENTIAL.” After the inspecting Party
10 has identified the documents it wants copied and produced, the Producing Party must determine
11 which documents, or portions thereof, qualify for protection under this Order. Then, before
12 producing the specified documents, the Producing Party must affix the appropriate legend
13 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”) to each page that contains Protected
14 Material. If only a portion or portions of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
16 markings in the margins) and must specify, for each portion, the level of protection being asserted.

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

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