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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE GOOGLE INC. GMAIL LITIGATION

Case No. 5:13-md-002430 LHK (PSG)

STIPULATED PROTECTIVE ORDER

Courtroom: 8 – 4th Floor
Judge: ~~Hon. Lucy H. Koh~~
Hon. Paul S. Grewal

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 and General Order 62 set 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).

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

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

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

1 or responses to discovery in the *Dunbar* Matter.

2 2.6 Dunbar Matter: the litigation styled as *Dunbar v. Google Inc.*, No. 5:12-cv-03305
3 LHK (PSG), previously pending before this Court and now consolidated herein.

4 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
5 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
6 consultant in this action.

7 2.8 "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" Information or
8 Items: extremely sensitive "CONFIDENTIAL Information or Items," disclosure of which to
9 another Party or Non-Party would create a substantial risk of serious harm that could not be
10 avoided by less restrictive means, including but not limited to: (i) marketing, financial, sales, web
11 traffic, research and development, or technical, data or information; (ii) commercially sensitive
12 competitive information, including, without limitation, information obtained from a nonparty
13 pursuant to a current Nondisclosure Agreement ("NDA"); (iii) information or data relating to
14 future products not yet commercially released and/or strategic plans; (iv) trade secret, or other
15 confidential research and development information; and, (v) commercial agreements, settlement
16 agreements or settlement communications, the disclosure of which is likely to cause harm to the
17 competitive position of the producing party.

18 2.9 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 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.11 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 2.12 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 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this action.

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

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” , and all information copied or extracted therefrom or otherwise reflecting Protected Material, in any form.

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.17 Source Code: any confidential, proprietary and/or trade secret source code or computer instructions.

2.18 State Court Matters: collectively, the litigation styled as *Diamond v. Google, Inc.*, No. CIV-1202715 and now pending in the Superior Court for the State of California, Marin County, and the litigation styled as *Sheppard v. Google, Inc.*, No. CV 2012-11-2 and now pending in the Circuit Court of Little River County, Arkansas.

2.19 User Account Information: any non-public text or image in the body, subject line, or attachment of an email, or associated metadata, from a Party’s Google, Google Apps, or Gmail account.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the

1 public record through trial or otherwise; and (b) any information known to the Receiving Party
2 prior to disclosure in this action or the *Dunbar* Matter or obtained by the Receiving Party after the
3 disclosure from a source who obtained the information lawfully and under no obligation of
4 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed
5 by a separate agreement or order.

6 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
16 or Non-Party that designates information or items for protection under this Order must take care
17 to limit any such designation to specific material that qualifies under the appropriate standards.
18 The Designating Party must take reasonable measures to designate for protection only those parts
19 of material, documents, items, or oral or written communications that qualify – so that other
20 portions of the material, documents, items, or communications for which protection is not
21 warranted are not swept unjustifiably within the ambit of this Order.

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

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 4 designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents,
 7 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 8 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 9 EYES ONLY” to each page that contains protected material. If only a portion or portions of the
 10 material on a page qualifies for protection, the Producing Party also must clearly identify the
 11 protected portion(s) (e.g., by making appropriate markings in the margins).

12 A Party or Non-Party that makes original documents or materials available for inspection
 13 need not designate them for protection until after the inspecting Party has indicated which
 14 material it would like copied and produced. During the inspection and before the designation, all
 15 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
 16 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
 17 copied and produced, the Producing Party must determine which documents, or portions thereof,
 18 qualify for protection under this Order. Then, before producing the specified documents, the
 19 Producing Party must affix the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 20 ATTORNEYS’ EYES ONLY” legend, as appropriate, to each page that contains Protected
 21 Material. If only a portion or portions of the material on a page qualifies for protection, the
 22 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 23 markings in the margins).

24 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 25 that the Designating Party identify on the record, before the close of the deposition, hearing, or
 26 other proceeding, all protected testimony.

27 When it is impractical to identify separately each portion of testimony that is entitled to
 28 protection and it appears that substantial portions of the testimony may qualify for protection, the

1 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
2 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
3 which protection is sought and to specify the level of protection being asserted. Only those
4 portions of the testimony that are appropriately designated for protection within the 21 days shall
5 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
6 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked,
7 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
8 – ATTORNEYS’ EYES ONLY.”

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

18 (c) for information produced in some form other than documentary and for any
19 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
20 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
21 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of
22 the information or item warrant protection, the Producing Party, to the extent practicable, shall
23 identify the protected portion(s).

24 5.3 Source Code. If a Party seeks production of Source Code, and such Source Code
25 is properly within the scope of discovery, that Source Code shall be made available for
26 inspection, but need not be produced, except as agreed by the Parties. If an agreement cannot be
27 reached, the Party seeking production may move the Court for an order to compel. If any
28 Receiving Party determines that the inspection of Source Code of a Producing Party is reasonably

1 necessary to the Receiving Party's claims or defenses, the Parties agree to negotiate in good faith
2 to reach accommodation on how the Source Code may reasonably be inspected and used in this
3 action. Where Source Code is contained in a document that contains other information
4 responsive to a Receiving Party's discovery requests, the Producing Party may redact such Source
5 Code prior to production of the document, and the Parties shall meet and confer further on the
6 potential inspection of the redacted Source Code, as set forth above.

7 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 appropriately designate qualified information or items does not waive the Designating Party's
9 right to secure protection under this Order for such material. Within a reasonable time after
10 discovering an inadvertent failure to appropriately designate qualified information or items, the
11 Designating Party shall provide written notice to the Receiving Party, and shall furnish the
12 Receiving Party with replacement pages with the appropriate designation(s). Upon timely
13 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
14 material is treated in accordance with the provisions of this Order, and shall return or destroy the
15 improperly designated material.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
18 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
20 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
21 challenge a confidentiality designation by electing not to mount a challenge promptly after the
22 original designation is disclosed. Notwithstanding the foregoing, a Challenging Party must take
23 reasonable measures to ensure it challenges only those parts of designated material, documents, items, or
24 oral or written communications that do not qualify for protection. Indiscriminate challenges are
25 prohibited. Challenges that are clearly unjustified or that have been made for an improper purpose (e.g., to
26 impose unnecessary expenses and burdens on other parties) are prohibited.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
28 process by providing written notice of each designation it is challenging and describing the basis

1 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
2 notice must recite that the challenge to confidentiality is being made in accordance with this
3 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
4 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
5 forms of communication are not sufficient) within 14 days of the date of service of notice. In
6 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
7 designation was not proper and must give the Designating Party an opportunity to review the
8 designated material, to reconsider the circumstances, and, if no change in designation is offered,
9 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
10 stage of the challenge process only if it has engaged in this meet and confer process first or
11 establishes that the Designating Party is unwilling to participate in the meet and confer process in
12 a timely manner.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
14 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
15 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if
16 applicable) within 28 days of the initial notice of challenge or within 21 days of the parties
17 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier and
18 which time may be extended by agreement of the Parties. Each such motion must be
19 accompanied by a competent declaration affirming that the movant has complied with the meet
20 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
21 make such a motion including the required declaration within 28 days (or 21 days, if applicable)
22 shall automatically waive the confidentiality designation for each challenged designation, unless
23 the Parties agree to extend the time for meeting and conferring. In addition, the Challenging Party
24 may file a motion challenging a confidentiality designation at any time if there is good cause for
25 doing so, including a challenge to the designation of a deposition transcript or any portions
26 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
27 declaration affirming that the movant has complied with the meet and confer requirements
28 imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass, delay or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Notwithstanding the foregoing, counsel for the Parties are negotiating and contemplate entering into a separate agreement allowing for the use of Disclosure or Discovery Material in connection with the State Court Matters, and the Parties intend to amend this Order accordingly once the Parties have reached agreement. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party, or to the Receiving Party where the Receiving Party is an individual, to the

1 extent disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

6 (d) the court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants, mock
8 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
9 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
13 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
14 separately bound by the court reporter and may not be disclosed to anyone except as permitted
15 under this Stipulated Protective Order.

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
20 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
24 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
25 Bound” that is attached hereto as Exhibit A;

26 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
27 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
28 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have

1 been followed;

2 (d) the court and its personnel;

3 (e) court reporters and their staff, professional jury or trial consultants, and
4 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
5 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

6 (f) the author or recipient of a document containing the information or a
7 custodian or other person who otherwise possessed or knew the information.

8 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

10 (a) Unless otherwise ordered by the court or agreed to in writing by the
11 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
12 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating
14 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY”, (2) sets forth the full name of the Expert and the city and state of his or her
16 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s
17 current employer(s), (5) identifies each person or entity from whom the Expert has received
18 compensation or funding for work in his or her areas of expertise or to whom the expert has
19 provided professional services, including in connection with a litigation, at any time during the
20 preceding five years, and (6) identifies (by name and number of the case, filing date, and location
21 of court) any litigation in connection with which the Expert has offered expert testimony,
22 including through a declaration, report, or testimony at a deposition or trial, during the preceding
23 five years.

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

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

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

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order or moves to quash or modify the subpoena, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s written permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

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

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

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

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

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

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court

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

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
9 Material to any person or in any circumstance not authorized under this Stipulated Protective
10 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
11 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
12 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
13 made of all the terms of this Order, and (d) request such person or persons to execute the
14 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.
15 Notwithstanding the foregoing, nothing in this paragraph shall be construed as to limit a
16 Designating Party's rights or remedies relating to the unauthorized disclosure of its Protected
17 Material, or any injury resulting therefrom.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
19 **MATERIAL; NO WAIVER OF PRIVILEGE**

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently
21 produced material is subject to a claim of privilege or other protection, including attorney-client
22 privilege, the work product immunity, the common interest doctrine, or other privilege doctrine,
23 right or immunity (collectively "Privilege"), the obligations of the Receiving Parties are those set
24 forth in Federal Rule of Civil Procedure 26(b)(5)(B). Neither inadvertent production of material
25 subject to a claim of Privilege nor any failure to promptly notify the Receiving Party of such
26 claim shall be construed as a waiver thereof. This provision is not intended to modify whatever
27 procedure may be established in an e-discovery order that provides for production without prior
28 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach

1 an agreement on the effect of disclosure of a communication or information covered by the
2 attorney-client privilege or work product protection, the parties may incorporate their agreement
3 in the stipulated protective order submitted to the court.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
6 seek its modification by the court in the future, to enforce the terms hereof, or to seek such other
7 relief as necessary to protect its legal rights or interests.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
9 Order no Party waives any right it otherwise would have to object to disclosing or producing any
10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
11 Party waives any right to object on any ground to use in evidence of any of the material covered
12 by this Protective Order.

13 12.3 Filing Protected Material. Without written permission from the Designating Party
14 or a court order secured after appropriate notice to all interested persons, a Party may not file in
15 the public record in this action any Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
17 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
19 sealing order will issue only upon a request establishing that the Protected Material at issue is
20 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
21 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
22 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the
23 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
24 by the court. A Receiving Party seeking to use Protected Material at a public hearing shall give
25 the Producing Party at least two (2) days notice prior to the hearing to allow the Receiving Party
26 to request that the courtroom be sealed during the presentation of Protected Material or to take
27 other steps to address the confidentiality of Protected Materials.

28 12.5 Disclosure or Discovery Material Produced in the *Dunbar* Matter. While this

Protective Order supersedes any prior protective order in *Dunbar*, except as otherwise provided in section 12.6, below, Disclosure or Discovery Material produced in the *Dunbar* Matter and designated “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall remain so designated, shall be protected pursuant to this Protective Order as if produced pursuant to this Protective Order, and in connection therewith may be shared and used by and among all counsel of record for the Parties, subject to the terms of this Stipulated Protective Order. For the avoidance of doubt, Disclosure or Discovery Material designated “CONFIDENTIAL” in connection with the *Dunbar* Matter shall be treated as “CONFIDENTIAL” Information as defined in this Stipulated Protective Order. Likewise, Disclosure or Discovery Material designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in connection with the *Dunbar* Matter shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information as defined in this Stipulated Protective Order.

12.6 Information Relating to Named Plaintiffs’ Accounts. Google may be restricted by statute and/or contract from sharing User Account Information without the user’s express consent. Accordingly, any named plaintiff who, in connection with this action, seeks production of his or her User Account Information shall first provide written consent to Google for the production of his or her User Account Information. Such consent must be made via email sent from each account for which the Named Plaintiff seeks User Account Information to an email address to be designated by defense counsel (“Email Consent”). The User Account Information will then be produced to the Named Plaintiff’s Counsel from the originally filed case to allow that Plaintiff’s Counsel an opportunity to redact any matters of privacy or privilege. Google’s House Counsel and Outside Counsel of Record are not authorized to view User Account Information in their unredacted form, and all steps will be taken by Google to restrict the number of employees, if any, who view or need to view the information requested from the Named Plaintiff’s User Account Information, and any viewing of the User Account Information will be treated as an inadvertent production of privileged or otherwise protected material with no waiver of privilege or privacy. Within 21 days following production to the Named Plaintiff’s Counsel, Plaintiff’s Counsel will then produce to Google’s Counsel and the other Plaintiff’s Counsel the User

1 Account Information or a privacy/privilege log for any matters withheld, at which time Google's
2 inside and outside counsel shall be authorized to view the redacted User Account Information and
3 to use them in the course of this litigation. Nothing in section 12.6 limits Google's rights under
4 the Google Terms of Service or Google Privacy Policy, including any right to access user
5 information as provided in those documents.

6 To the extent Plaintiff Dunbar seeks to make his User Account Information that was
7 previously produced in connection with the *Dunbar* Matter available for use by the other named
8 plaintiffs and their counsel of record, he must first provide Google with Email Consent thereto.
9 Once Email Consent has been provided as described above, Dunbar's Counsel will then produce
10 to Google's Counsel and the other Plaintiff's Counsel the redacted documents or a
11 privacy/privilege log for any matters withheld in accordance with procedure identified above.

12 13. FINAL DISPOSITION

13 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
14 Receiving Party must return all Protected Material to the Producing Party or destroy such
15 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
16 compilations, summaries, and any other format reproducing or capturing any of the Protected
17 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
18 submit a written certification to the Producing Party (and, if not the same person or entity, to the
19 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
20 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
21 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
22 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
24 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
25 product, and consultant and expert work product, even if such materials contain Protected
26 Material. Any such archival copies that contain or constitute Protected Material remain subject to
27 this Protective Order as set forth in Section 4 (DURATION).

28 ///

IT IS SO STIPULATED, THROUGH COUNSEL.

DATED: May 3, 2013

/s/ F. Jerome Tapley

F. Jerome Tapley
Plaintiffs' Co-Lead Counsel

DATED: May 3, 2013

/s/ Sean F. Rommel

Sean F. Rommel
Plaintiffs' Co-Lead Counsel

DATED: May 3, 2013

/s/ Whitty Somvichian

Whitty Somvichian
Attorney for Defendant Google Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 17, 2013

Paul S. Grewal

~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

Paul S. Grewal
United States Magistrate Judge

Filer's Attestation: Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, Whitty Somvichian hereby attests that concurrence in the filing of this document has been obtained.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *In re Google Inc. Gmail Litigation*, No. 5:13-md-002430 LHK (PSG). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]