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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE PLAID INC. PRIVACY LITIGATION

Case No. 4:20-cv-03056-DMR

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**~~[PROPOSED]~~ STIPULATED PROTECTIVE
ORDER BASED ON MODEL PROTECTIVE
ORDER FOR LITIGATION INVOLVING
PATENTS, HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION**

Hon. Judge Donna M. Ryu
Action Filed: May 4, 2020

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 14.3, 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).

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

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

2.5 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” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

2.6 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,

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 competitor,
6 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
7 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 less
11 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. It specifically does not include software development kits
18 provided to Non-Parties in the ordinary course of business.

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

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

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

26 2.13 Party: any Party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and Outside Counsel of Record (and their support staffs).
28

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

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

2.16 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to the provisions of this Stipulated Protective Order.

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

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

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order

otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

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

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

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

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced, subject to the provisions of section 5.3 below.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing

1 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 2 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains
 3 protected material. If only a portion or portions of the material on a page qualifies for protection
 4 and if practicable to do so, the Producing Party also must clearly identify the protected portion(s)
 5 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level
 6 of protection being asserted.

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

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

1 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
 2 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript
 3 shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 4 ONLY.”

5 Parties shall give the other Parties notice if they reasonably expect a deposition, hearing or
 6 other proceeding to include Protected Material so that the other Parties can ensure that only
 7 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 8 (Exhibit A) are present at those proceedings. Notwithstanding the foregoing sentence, this advance
 9 notice requirement shall be deemed satisfied as to particular Protected Material for purposes of a
 10 Court hearing or conference where such Protected Material has already been submitted as evidence
 11 or otherwise entered into the record for that hearing or conference, for example as an exhibit to the
 12 motion being heard. The use of a document as an exhibit at a deposition shall not in any way affect
 13 its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 14 ONLY.”

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

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

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

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating Party's
5 right to secure protection under this Order for such material. Upon timely correction of a
6 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
7 in accordance with the provisions of this Order, and shall return or destroy the improperly
8 designated material.

9 5.4 Information Regarding Named Plaintiffs. Defendant shall make a good faith
10 attempt to designate as "CONFIDENTIAL" all Discovery Material within its possession, custody,
11 or control that it believes contains sensitive, non-public information regarding the Named Plaintiffs.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
16 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
20 by providing written notice of each designation it is challenging and describing the basis for each
21 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
22 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
23 of the Protective Order. The Parties shall attempt to resolve each challenge in good faith and must
24 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
25 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
26 Party must explain the basis for its belief that the confidentiality designation was not proper and
27 must give the Designating Party an opportunity to review the designated material, to reconsider the
28 circumstances, and, if no change in designation is offered, to explain the basis for the chosen

1 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 2 has engaged in this meet and confer process first or establishes that the Designating Party is
 3 unwilling to participate in the meet and confer process in a timely manner.

4 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
 5 intervention, the Parties shall file a joint letter pursuant to procedure set forth in this Court's
 6 Standing Order Section 13. The burden of persuasion in any such challenge proceeding shall be on
 7 the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass
 8 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
 9 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 10 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 11 material in question the level of protection to which it is entitled under the Producing Party's
 12 designation until the court rules on the challenge.

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 15 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 17 the categories of persons and under the conditions described in this Order.¹ When the litigation has
 18 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
 19 DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location and in
 21 a secure manner² that ensures that access is limited to the persons authorized under this Order.
 22 Protected Material shall not be copied or otherwise reproduced by a Receiving Party, except for

23 _____
 24 ¹ In the event a Non-Party witness is authorized to receive Protected Material that is to be used
 25 during his/her deposition but is represented by an attorney not authorized under this Order to
 26 receive such Protected Material, the attorney must provide, prior to commencement of the
 27 deposition, an executed "Acknowledgment and Agreement to Be Bound" in the form attached
 28 hereto as Exhibit A. In the event such attorney declines to sign the "Acknowledgment and
 Agreement to Be Bound" prior to the examination, the deposition shall proceed, but the Parties,
 by their attorneys, shall jointly seek a protective order from the Court prohibiting the attorney
 from disclosing Protected Material, and shall make reasonable efforts to obtain such an order
 prior to the deposition..

² It may be appropriate under certain circumstances to require the Receiving Party to store any
 electronic Protected Material in password-protected form.

1 transmission to qualified recipients, without the written permission of the Producing Party or by
2 further order of the Court.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
4 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
5 information or item designated “CONFIDENTIAL” only to:

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

10 (b) the officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
12 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

16 (d) the Court and its personnel;

17 (e) Court reporters, videographers and their staff, professional jury or trial
18 consultants, mock jurors or focus-group participants,³ and Professional Vendors to whom
19 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
20 and Agreement to Be Bound” (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
25

26
27 ³ In no event may mock jurors or focus-group participants retain or possess any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any Protected Material (1)
after the mock trial or focus-group is completed, or (2) outside the facility where the mock trial or
focus-group is conducted.

1 separately bound by the Court reporter and may not be disclosed to anyone except as permitted
2 under this Stipulated Protective Order.

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or personally knew or knows the information.

5 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
6 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.

7 (a) Unless otherwise ordered by the Court or permitted in writing by the
8 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

14 (ii) Designated House Counsel of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation, and who has signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A),

17 (iii) Experts of the Receiving Party (1) to whom disclosure is reasonably
18 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to
19 Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a),
20 below, have been followed; if applicable

21 (iv) the Court and its personnel;

22 (v) Court reporters, videographers and their staff, professional jury or
23 trial consultants, mock jurors or focus-group participants, and Professional Vendors to
24 whom disclosure is reasonably necessary for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

26 (vi) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information.
28

1 (b) Unless otherwise ordered by the Court or permitted in writing by the
2 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
3 CONFIDENTIAL – SOURCE CODE” only to:

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

8 (ii) Up to four Experts of the Receiving Party (1) to whom disclosure is
9 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and
10 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
11 Paragraph 7.4(a), below, have been followed, acknowledging that the Receiving Party may
12 request in writing the ability to disclose “HIGHLY CONFIDENTIAL – SOURCE CODE”
13 information or items to additional Experts, but that such disclosure may be made only upon
14 prior written approval by the Designating Party, which shall not be unreasonably withheld
15 and shall be given or denied with seven days of any request. If a request is denied the Parties
16 shall meet and confer within two business days of any such denial and, if agreement cannot
17 be reached, shall file a joint letter pursuant to the Court’s Standing Order Section 13 within
18 two business days of the meet and confer;

19 (iii) the Court and its personnel;

20 (iv) stenographic reporters, videographers and their respective staff who
21 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) and are
22 transcribing or videotaping a deposition wherein “HIGHLY CONFIDENTIAL – SOURCE
23 CODE” information or items are being discussed, provided that such reporters and
24 videographers shall not retain or be given copies of any portions of the source code, which,
25 if used during a deposition, will not be attached as an exhibit to the transcript but instead
26 shall be identified only by its production.
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7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

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

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

⁴ If the Expert believes any of this information is subject to a confidentiality obligation to a third-Party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 to make the disclosure to the Expert may initiate the drafting of a joint letter to the Court pursuant
 2 to the Court’s Standing Order Section 13. The Party seeking to make the disclosure to the Expert
 3 must describe the circumstances with specificity, set forth in detail the reasons why the disclosure
 4 or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
 5 suggest any additional means that could be used to reduce that risk.

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

9 8. PROSECUTION BAR

10 Absent written consent from the Producing Party, any individual who receives access to
 11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
 12 SOURCE CODE” information shall not be involved in the prosecution of patents or patent
 13 applications relating to data aggregation, Plaid's Link flow, and/or any of Plaid's products, APIs,
 14 or research and development concepts , including without limitation the patents asserted in this
 15 action and any patent or application claiming priority to or otherwise related to the patents
 16 asserted in this action, before any foreign or domestic agency, including the United States Patent
 17 and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution”
 18 includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or
 19 maintenance of patent claims.⁵ To avoid any doubt, “prosecution” as used in this paragraph does
 20 not include representing a Party challenging a patent before a domestic or foreign agency
 21 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
 22 reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
 23 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information
 24 is first received by the affected individual and shall end two (2) years after final termination of
 25 this action.

26
 27
 28 ⁵ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 9. SOURCE CODE

2 (a) To the extent production of source code becomes necessary in this case, a Producing
3 Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it
4 comprises or includes confidential, proprietary or trade secret source code.

5 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
6 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be
8 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

10 (c) Any source code produced in discovery shall be made available for inspection in a
11 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
12 mutually agreeable times, at a location that is reasonably convenient for the Receiving Party and
13 any experts to whom the source code may be disclosed. The source code shall be made available
14 for inspection on a secured computer in a secured room without Internet access or network access
15 to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any
16 portion of the source code onto any recordable media or recordable device. The Producing Party
17 may visually monitor the activities of the Receiving Party’s representatives during any source code
18 review, but only to ensure that there is no unauthorized recording, copying, or transmission of the
19 source code.⁶

20 (d) The Receiving Party may request paper copies of limited portions of source code
21 that are reasonably necessary for the preparation of Court filings, pleadings, expert reports, or other
22 papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing
23 the source code other than electronically as set forth in paragraph (c) in the first instance. In no
24 event may the receiving Party print more than 25 consecutive pages, or an aggregate total of more
25 than 500 pages, of source code during the duration of the case without prior written approval by
26 the Producing Party, which shall not be unreasonably withheld. The Producing Party shall provide

27 _____
28 ⁶ The Receiving Party or its designated agent shall keep a paper log indicating the names of any
individuals inspecting the source code and dates and times of inspection, and the names of any
individuals to whom paper copies of portions of source code are provided.

all such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute resolution.

(e) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured, locked area and/or permit such paper copies to be viewed only at (i) the offices of outside counsel for the Receiving Party; (ii) the offices of outside experts or consultants who have been approved to access source code; (iii) the site where any deposition is taken; (iv) the Court; or (v) any intermediate location necessary to transport the information to a hearing, trial or deposition. Any such paper copies shall be maintained at all times in a secure location under the direct control of counsel responsible for maintaining the security and confidentiality of the designated materials. The Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare Court filings, pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a Court reporter or any other unauthorized individual.⁷

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena issued by a Court, arbitral, administrative, or legislative body, or with or a Court order issued in other litigation that compels disclosure of any information

⁷ The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For 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 or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 2 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party
 3 must:

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

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

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

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

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

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

27
 28

(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:

(i) 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;

(ii) 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

(iii) 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 within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court.⁸ Absent a Court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

⁸ 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.

13. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. A Producing Party may assert privilege or protection over produced documents at any time by notifying the Receiving Party in writing of the assertion of privilege or protection. After being notified, a Party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the Court for a determination of the claim. In addition, the Receiving Party shall immediately notify the Producing Party of information that contains privileged matter or attorney work product if such information appears on its face to have been inadvertently produced. Such information shall be immediately returned to the Producing Party. Pursuant to Federal Rule of Evidence 502(d) and (e), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or any other federal or state proceeding.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by agreement with other Parties or by the Court in the future. Furthermore, without application to the Court, any Party or Non-Party that is a beneficiary of the protections of this Order may enter a written agreement releasing any other Party or Non-Party hereto from one or more requirements of this Order even if the conduct subject to the release would otherwise violate the terms herein.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
2 Party waives any right to object on any ground to use in evidence of any of the material covered by
3 this Protective Order.

4 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
5 laws and regulations relating to the export of technical data contained in such Protected Material,
6 including the release of such technical data to foreign persons or nationals in the United States or
7 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
8 data, and the Receiving Party shall take measures necessary to ensure compliance.

9 14.4 Filing Protected Material. Without written permission from the Designating Party
10 or a Court order secured after appropriate notice to all interested persons, a Party may not file in
11 the public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
13 under seal pursuant to a Court order authorizing the sealing of the specific Protected Material at
14 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
15 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
16 to protection under the law. If a Receiving Party's request to file Protected Material under seal
17 pursuant to Civil Local Rule 79-5(e) is denied by the Court, then the Receiving Party may file the
18 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
19 instructed by the Court.

20 14.5 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms of
21 this Stipulated Protective Order as of the date counsel for such Party executes this Stipulated
22 Protective Order, even if prior to entry of this Order by the Court.

23 15. FINAL DISPOSITION

24 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
25 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
26 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
28 the Protected Material is returned or destroyed, the Receiving Party must submit a written

certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: October 30, 2020

COOLEY LLP

By: /s/ Kyle C. Wong
Kyle C. Wong

Attorneys for Defendant
Plaid Inc.

Dated: October 30, 2020

HERRERA PURDY LLP

By: /s/ Shawn M. Kennedy
Shawn M. Kennedy

Attorneys for *Interim Co-Lead Class Counsel*

Dated: October 30, 2020

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP

By: /s/ Michael W. Sobo
Michael W. Sobo

Attorneys for *Interim Co-Lead Class Counsel*

1 October 30, 2020

BURNS CHAREST LLP

2
3
4 By: /s/ Warren T. Burns
Warren T. Burns

5 Attorneys for *Interim Co-Lead Class Counsel*

6
7 **ATTESTATION OF CONCURRENCE IN FILING**

8 In accordance with N.D. Cal. LR 5-1(i)(3), I hereby attest that I have obtained the
9 concurrence of all other signatories in the filing of this document.

10
11 Dated: October 30, 2020

COOLEY LLP

12
13
14 By: /s/ Kyle C. Wong
Kyle C. Wong

15 Attorneys for Defendant
16 Plaid Inc.

PROPOSED ORDER

Pursuant to Stipulation, it is so ordered.

Dated: Nov. 9, 2020

Honorable Donna M. Ryu
United States District Court Judge

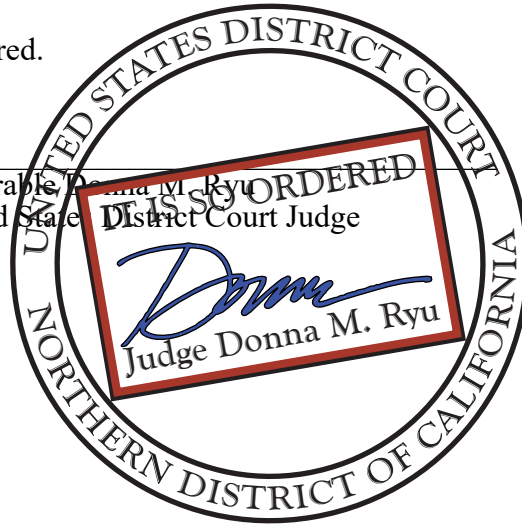


EXHIBIT A

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 Plaid Inc. Privacy Litigation*, No. 4:20-CV-03056-DMR. 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 California 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]

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