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PLAID INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE PLAID INC. PRIVACY LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

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

**DECLARATION OF KYLE C. WONG IN
SUPPORT OF PARTIES' STIPULATED
PROTECTIVE ORDER PURSUANT TO
SECTION 15 OF JUDGE RYU'S STANDING
ORDER**

I, Kyle C. Wong, hereby declare and state the following:

1. I am an attorney licensed to practice law in the State of California, and am special counsel at Cooley, LLP, counsel of record for defendant Plaid, LLC ("Plaid") in this matter. I make this declaration based on my personal knowledge and, if called as a witness, I could and would testify competently to the matters stated herein.

2. I submit this declaration pursuant to Judge Ryu's Standing Order Section 15, which requires the parties to submit a declaration and redline version comparing the parties' stipulated

1 protective order to the model protective order available on the Northern District of California's
2 website.

3 3. The parties to this action (the "Parties") have based their stipulated protective order on
4 the Northern District of California's model protective order for litigation involving patents, highly
5 sensitive confidential information and/or trade secrets (the "Model Order"), and have noted this fact
6 on the caption page of the stipulated protective order.

7 4. The Parties have added case-identifying information and eliminated and incorporated
8 changes denoted in the Model Order as optional. The Parties have also made non-substantive,
9 grammatical and typographical changes to the Model Order for consistency that are not noted here but
10 are shown in the attached redline.

11 5. In addition to those changes, the Parties have made the following modifications:

- 12 a) The Parties have modified the last sentence of Section 5.2 "Manner and Timing of
13 Designations" to include "subject to the provisions of section 5.3 below." The purpose
14 of this change is to ensure clarity for designating materials and handling inadvertent
15 failures to do.
- 16 b) The Parties have modified Section 5.2(a) "Manner and Timing of Designations for
17 information in documentary form" to include the limitation "if practicable to do so" to
18 provide flexibility for both Parties in designating documentary items as confidential
19 material.
- 20 c) The Parties have modified the last sentence of Section 5.3 "Inadvertent Failures to
21 Designate" to read: "Upon timely correction of a designation, the Receiving Party must
22 make reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order, and shall return or destroy the improperly designated
24 material." The modification reflects the Parties' negotiation to ensure confidentiality of
25 all sensitive material.
- 26 d) The Parties have modified Section 6.3 "Judicial Intervention" to reflect the procedures
27 in this Court's Standing Order Section 13 and minimize extensive motion practice.
- 28 e) The Parties have added Footnote 1 which reads: "In the event a Non-Party witness is

1 authorized to receive Protected Material that is to be used during his/her deposition but
 2 is represented by an attorney not authorized under this Order to receive such Protected
 3 Material, the attorney must provide, prior to commencement of the deposition, an
 4 executed ‘Acknowledgment and Agreement to Be Bound’ in the form attached hereto
 5 as Exhibit A. In the event such attorney declines to sign the ‘Acknowledgment and
 6 Agreement to Be Bound’ prior to the examination, the deposition shall proceed, but the
 7 Parties, by their attorneys, shall jointly seek a protective order from the Court
 8 prohibiting the attorney from disclosing Protected Material, and shall make reasonable
 9 efforts to obtain such an order prior to the deposition.” Because this lawsuit involves
 10 highly sensitive information, and may involve third party discovery, the parties
 11 negotiated this provision to better ensure the confidentiality of sensitive materials.

12 f) The Parties have modified Section 7.1 “Basic Principles” to include the sentence:
 13 “Protected Material shall not be copied or otherwise reproduced by a Receiving Party,
 14 except for transmission to qualified recipients, without the written permission of the
 15 Producing Party or by further order of the Court.” The purpose of this modification is
 16 to better protect the Parties’ sensitive, confidential material.

17 g) The Parties modified Section 7.2(g) governing disclosure of confidential materials to
 18 read: “the author or recipient of a document containing the information or a custodian
 19 or other person who otherwise possessed or personally knew or knows the
 20 information.” This modification clarifies the parameters and scope of this provision.

21 h) The Parties modified Section 7.3 governing the disclosure of confidential materials to
 22 include heightened protections for source code. The Parties modified Section 7.3(b)(ii)
 23 “Disclosure of “HIGHLY CONFIDENTIAL-Source Code” to limit the number of
 24 experts to whom the Receiving Party may disclose material designated “Highly
 25 Confidential- Source Code” to four. The section also includes the following procedure
 26 to negotiate this provision: “If a request is denied the Parties shall meet and confer
 27 within two business days of any such denial and, if agreement cannot be reached, shall
 28 file a joint letter pursuant to the Court’s Standing Order Section 13 within two business

1 days of the meet and confer...” The modification is a result of careful and robust
2 negotiation to balance the Parties’ needs for confidentiality and access to information.
3 The section as a whole is reorganized to accommodate this change.

4 i) The Parties modified section 7.4(c) to conform to the procedures listed in this Court’s
5 Standing Order Section 13.

6 j) The Parties modified Section 9(c) regarding source code to include the following
7 sentence: “In no event may the receiving Party print more than 25 consecutive pages,
8 or an aggregate total of more than 500 pages, of source code during the duration of the
9 case without prior written approval by the Producing Party, which shall not be
10 unreasonably withheld.” Due to the sensitive nature of this case and source code in
11 particular, the Parties added this after negotiation to better ensure confidentiality of
12 source code in this case.

13 k) The Parties modified the second and third sentence of 9(e) regarding source code to
14 read: “The Receiving Party shall maintain all paper copies of any printed portions of
15 the source code in a secured, locked area and/or permit such paper copies to be viewed
16 only at (i) the offices of outside counsel for the Receiving Party; (ii) the offices of
17 outside experts or consultants who have been approved to access source code; (iii) the
18 site where any deposition is taken; (iv) the Court; or (v) any intermediate location
19 necessary to transport the information to a hearing, trial or deposition. Any such paper
20 copies shall be maintained at all times in a secure location under the direct control of
21 counsel responsible for maintaining the security and confidentiality of the designated
22 materials.” The Parties agreed to this addition after negotiations due to the highly
23 sensitive nature of source code in this case and to balance the need for confidentiality
24 and access to information.

25 l) The Parties modified Section 13 “Production of Privileged or Otherwise Protected
26 Materials” to read, in part: “A Producing Party may assert privilege or protection over
27 produced documents at any time by notifying the Receiving Party in writing of the
28 assertion of privilege or protection. After being notified, a Party must promptly return

1 or destroy the specified information and any copies it has and may not sequester, use
 2 or disclose the information until the claim is resolved. This includes a restriction against
 3 presenting the information to the Court for a determination of the claim. In addition,
 4 the Receiving Party shall immediately notify the Producing Party of information that
 5 contains privileged matter or attorney work product if such information appears on its
 6 face to have been inadvertently produced. Such information shall be immediately
 7 returned to the Producing Party. Pursuant to Federal Rule of Evidence 502(d) and (e),
 8 the production of a privileged or work-product-protected document is not a waiver of
 9 privilege or work product protection from discovery in this case or in any other federal
 10 or state proceeding. For example, the mere production of privileged or work-product-
 11 protected documents in this case as part of a mass production is not itself a waiver in
 12 this case or any other federal or state proceeding.” The Parties included the Model
 13 Order alternative language and additional protections pursuant to their negotiations to
 14 clarify the privileges and protections during discovery.

15 m) The Parties added Section 14.5 “Agreement Upon Execution” which reads “Each of
 16 the Parties agrees to be bound by the terms of this Stipulated Protective Order as of the
 17 date counsel for such Party executes this Stipulated Protective Order, even if prior to
 18 entry of this Order by the Court.” The Parties included this provision to ensure complete
 19 clarity regarding the duties under this stipulated order.

20 Dated: October 30, 2020

COOLEY LLP

23 /s/ Kyle C. Wong

24 Kyle C. Wong

25 Attorneys for Defendant
 26 PLAID INC.