

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNILOC USA, INC., et al.,  
Plaintiffs,  
v.  
APPLE INC.,  
Defendant.

Case Nos. 3:18-cv-00360-WHA  
3:18-cv-00363-WHA  
3:18-cv-00365-WHA  
3:18-cv-00572-WHA

~~PROPOSED~~ PROTECTIVE ORDER  
REGARDING THE DISCLOSURE AND  
USE OF DISCOVERY MATERIALS

Plaintiffs, Uniloc USA Inc. and Uniloc Luxembourg, S.A., (collectively, “Plaintiffs”) and Defendant Apple Inc. (“Defendant”) anticipate that documents, testimony, or information containing or reflecting confidential, proprietary, trade secret, and/or commercially sensitive information are likely to be disclosed or produced during the course of discovery, initial disclosures, and supplemental disclosures in this case and request that the Court enter this Order setting forth the conditions for treating, obtaining, and using such information.

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause for the following Agreed Protective Order Regarding the Disclosure and Use of Discovery Materials (“Order” or “Protective Order”).

1           **1. PURPOSES AND LIMITATIONS**

2           (a) Protected Material designated under the terms of this Protective Order shall  
3 be used by a Receiving Party solely for this case or as permitted by the Cross-Use Provision herein,  
4 and shall not be used directly or indirectly for any other purpose whatsoever. Nothing in this Order  
5 shall be construed as authorizing Plaintiffs to share any Protected Material with any defendant not  
6 named to the above-captioned case as of the date of execution of this Order.

7           (b) The Parties acknowledge that this Order does not confer blanket protections  
8 on all disclosures during discovery, or in the course of making initial or supplemental disclosures  
9 under Rule 26(a). Designations under this Order shall be made with care and shall not be made  
10 absent a good faith belief that the designated material satisfies the criteria set forth below. If it  
11 comes to a Producing Party’s attention that designated material does not qualify for protection at  
12 all, or does not qualify for the level of protection initially asserted, the Producing Party must  
13 promptly notify all other Parties that it is withdrawing or changing the designation.

14           **2. DEFINITIONS**

15           (a) “Discovery Material” means all items or information, including from any  
16 non-party, regardless of the medium or manner generated, stored, or maintained (including, among  
17 other things, testimony, transcripts, or tangible things) that are produced, disclosed, or generated in  
18 connection with discovery or Rule 26(a) disclosures in this case.

19           (b) “Outside Counsel” means (i) outside counsel who appear on the pleadings as  
20 counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is reasonably  
21 necessary to disclose the information for this litigation.

22           (c) “In-house Counsel” means attorneys who are employees of a Party and are  
23 working on this litigation, and includes supporting personnel employed by those counsel, such as  
24 paralegals, but specifically excludes any inventor of a Patent-in-suit.

25           (d) “Patents-in-suit” means U.S. Patent No. 7,092,671, U.S. Patent No.  
26 6,622,018, U.S. Patent No. 6,161,134, U.S. Patent No. 6,446,127, and U.S. Patent No. 6,216,158.

1 (e) "Party" means any party to this case as of the date of execution of this Order,  
2 including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel  
3 and their support staff.

4 (f) "Producing Party" means any Party or non-party that discloses or produces  
5 any Discovery Material in this case.

6 (g) "Protected Material" means any Discovery Material that is designated as  
7 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," or "HIGHLY  
8 CONFIDENTIAL - SOURCE CODE," as provided for in this Order. Protected Material shall not  
9 include: (i) advertising materials that have been actually published or publicly disseminated; and  
10 (ii) materials that show on their face they have been disseminated to the public.

11 (h) "Receiving Party" means any Party who receives Discovery Material from a  
12 Producing Party.

13 (i) "Source Code" means computer code, scripts, assembly code, binaries, object  
14 code, source code listings and descriptions of source code, object code listings and descriptions of  
15 object code, netlists, Hardware Description Language (HDL) or Register Transfer Level (RTL) files  
16 that describe the hardware design of any ASIC or other chip, mask data design and fabrication  
17 computer files stored in a "GDS" or related file format, process-flow documents related to the  
18 fabrication of circuit boards, and other documents that provide the same definition or detailed  
19 description of the algorithms or structures of software or hardware designs.

20 **3. COMPUTATION OF TIME**

21 The computation of any period of time prescribed or allowed by this Order shall be  
22 governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

23 **4. SCOPE**

24 (a) The protections conferred by this Order cover not only Discovery Material  
25 governed by this Order as addressed herein, but also any information copied or extracted therefrom,  
26 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations,  
27 or presentations by Parties or their counsel in Court or in other settings that might reveal Protected  
28 Material.

1 (b) Nothing in this Protective Order shall prevent or restrict a Producing Party's  
2 own disclosure or use of its own Protected Material for any purpose, and nothing in this Order shall  
3 preclude any Producing Party from showing its Protected Material to an individual who prepared  
4 the Protected Material.

5 (c) Nothing in this Order shall be construed to prejudice any Party's right to use  
6 any Protected Material in Court or in any Court filing with the written consent of the Producing  
7 Party or by order of the Court.

8 (d) This Order is without prejudice to the right of any Party to seek further or  
9 additional protection of any Discovery Material or to modify this Order in any way, including,  
10 without limitation, an order that certain matter not be produced at all.

11 **5. DURATION**

12 Even after the termination of this case, the confidentiality obligations imposed by this Order  
13 shall remain in effect until a Producing Party agrees otherwise in writing or a Court order otherwise  
14 directs.

15 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 (a) Basic Principles. All Protected Material shall be used solely for this case or  
17 any related appellate proceeding, and not for any other purpose whatsoever, including without  
18 limitation any other litigation, patent prosecution or acquisition, patent reexamination, reissue, *inter*  
19 *partes* review, covered business method review, or other post-grant review proceedings, or any  
20 business or competitive purpose or function. Protected Material shall not be distributed, disclosed  
21 or made available to anyone except as expressly provided in this Order.

22 (b) Patent Prosecution Bar. Absent the written consent of the Producing Party,  
23 any person employed by, related to, or representing Plaintiffs who is permitted to and in fact  
24 receives any of Defendant's materials designated "HIGHLY CONFIDENTIAL – ATTORNEY'S  
25 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" and directed to technical  
26 information relevant to the case, but excluding financial data or non-technical business information  
27 (collectively, "HIGHLY SENSITIVE TECHNICAL MATERIAL"), in accordance with this Order,  
28 shall not, on behalf of Plaintiffs or their acquirer, successor, predecessor, or other affiliate, prepare,

1 prosecute, or assist in the preparation or prosecution of any patent application relating to the subject  
2 matter of the asserted patent(s) and corresponding to the produced technical information, e.g.,  
3 (a) controlling the charging and discharging of a battery based on temperature; (b) wirelessly  
4 sending graphics primitives or graphics commands to a remote display; (c) using a portable device  
5 to control a telephone in dialing a phone number; (d) wirelessly discovering and controlling remote  
6 devices; (e) exchanging data relating to operational parameters and/or capabilities between a  
7 portable device and telephone; (f) registering a user or a portable device with a telephone and/or  
8 providing portability of a user's telephone number between data telephones; or (g) using a mobile  
9 computer to identify and access services provided on a network, before any foreign or domestic  
10 agency, including the United States Patent and Trademark Office. To ensure compliance with the  
11 purpose of this provision, each party shall create an "Ethical Wall" between those persons with  
12 access to HIGHLY SENSITIVE TECHNICAL MATERIAL in accordance with this Order, and any  
13 individuals who, on behalf of Plaintiffs or their acquirer, successor, predecessor, or other affiliate,  
14 prepare, supervise, or assist in the preparation or prosecution of any patent application relating to  
15 the accused functionalities as enumerated in clauses (a)-(g), above. These prohibitions shall not  
16 preclude Plaintiffs' litigation counsel from participating in any *inter partes* review proceedings.  
17 However, if and when claim amendments are considered in such an *inter partes* review, Plaintiffs'  
18 litigation counsel participating in that *inter partes* review must at that time either end their  
19 involvement in that *inter partes* proceeding or request leave of court to continue their participation  
20 in that proceeding. Litigation counsel who are the subject of such a request shall not provide input  
21 on any proposed claim amendments while the motion for leave is pending, and the Producing Party  
22 will agree to reasonable measures to expedite consideration of that motion (such as an expedited  
23 briefing schedule that allows for at least one week for the filing of an opposition). If leave of court  
24 is granted, then Plaintiffs' litigation counsel may continue to represent Plaintiffs in the litigation  
25 and the *inter partes* proceeding at issue, even though amendments are considered. If leave is  
26 denied, then those counsel with access to HIGHLY SENSITIVE TECHNICAL MATERIALS shall  
27 withdraw from representation in, and shall not provide any input concerning, that *inter partes*  
28 review. The prohibitions of this paragraph shall begin when the HIGHLY SENSITIVE

1 TECHNICAL MATERIALS are first received by the affected individual, and shall end one (1) year  
2 after the settlement and/or dismissal of the Producing Party Defendant from this action or the final  
3 non-appealable termination of this action.

4 (c) Patent Acquisition Bar. Absent the written consent of the Producing Party,  
5 any person employed by, related to, or representing Plaintiffs who is permitted to and in fact  
6 receives any of Defendant’s materials designated “HIGHLY CONFIDENTIAL – ATTORNEY’S  
7 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” and directed to technical  
8 information relevant to the case, but excluding financial data or non-technical business information  
9 (collectively, “HIGHLY SENSITIVE TECHNICAL MATERIAL”), in accordance with this Order,  
10 shall not advise, counsel, participate, or assist in the acquisition of any patents or patent applications  
11 that (1) relate to the subject matter of the asserted patent in this case; or (2) relate to the subject  
12 matter of the HIGHLY SENSITIVE TECHNICAL MATERIAL that such individual reviewed. For  
13 the avoidance of doubt, the “acquisition” of patents under this section includes any analysis or  
14 evaluation of patents for the purposes of evaluating whether, or for what price, to acquire them.  
15 These prohibitions shall begin when the HIGHLY SENSITIVE TECHNICAL MATERIALS are  
16 first received by the affected individual, and shall end one (1) year after the settlement or dismissal  
17 of the Producing Party Defendant from this action or the final non-appealable termination of this  
18 action.

19 (d) Secure Storage, No Export. Protected Material must be stored and  
20 maintained by a Receiving Party at a location in the United States and in a secure manner that  
21 ensures that access is limited to the persons authorized under this Order. Materials designated  
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL  
23 SOURCE CODE” produced by Defendant shall not be taken or reviewed outside the United States  
24 unless expressly agreed to in writing by the Producing Party. If a deposition of a Producing Party’s  
25 employee or 30(b)(6) designee occurs outside the United States, that Producing Party’s Protected  
26 Materials may be taken outside the United States solely for purposes of their use at that deposition.  
27 Any materials designated “HIGHLY CONFIDENTIAL – SOURCE CODE” are subject to the  
28 restrictions in paragraph 11(c)(ix).

1 (e) Legal Advice Based on Protected Material. Nothing in this Protective Order  
2 shall be construed to prevent counsel from advising their clients with respect to this case based in  
3 whole or in part upon Protected Materials, provided counsel does not disclose the Protected  
4 Material itself except as provided in this Order.

5 (f) Limitations. Nothing in this Order shall restrict in any way a Producing  
6 Party's use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any  
7 way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become  
8 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known  
9 to the Receiving Party independent of the Producing Party; (iii) previously produced, disclosed  
10 and/or provided by the Producing Party to the Receiving Party or a non-party without an obligation  
11 of confidentiality and not by inadvertence or mistake; (iv) with the consent of the Producing Party;  
12 or (v) pursuant to order of the Court. However, if the accuracy of information is confirmed only  
13 through the review of Protected Material, then the information shall not be considered to be  
14 publicly known. For example, unsubstantiated media speculations or rumors that are later  
15 confirmed to be accurate through access to Protected Material are not "publicly known"  
16 information. Such information is explicitly included in the definition of "Protected Material" set  
17 forth in Paragraph 2(g) above.

18 (g) Cross-Use Provision. Any Discovery Materials produced or generated by any  
19 Producing Party in this case (including deposition testimony) shall, subject to the provisions set  
20 forth below, be deemed to have been produced in each of the following cases currently pending in  
21 this District: 18-cv-00357, 18-cv-00360, 18-cv-00361, 18-cv-00362, 18-cv-00363, 18-cv-00364,  
22 18-cv-00365, and 18-cv-00572, and any other action between the Parties hereto whose Protective  
23 Order specifically includes a Cross-Use Provision referencing this provision herein (the "Cross-Use  
24 Cases"). Further, as to Apple only, any Discovery Materials produced or generated by Apple in the  
25 case filed in the Eastern District of Texas No. 2:16-cv-638 shall be deemed to have been produced  
26 in each of the following cases currently pending in this District: 18-cv-00357, 18-cv-00360, 18-cv-  
27 00361, 18-cv-00362, 18-cv-00363, 18-cv-00364, 18-cv-00365, and 18-cv-00572, and any other  
28

1 Cross-Use Cases between the Parties hereto. This Cross-Use Provision is subject to the following  
2 limitations:

- 3 (1) Any material subject to this provision shall retain the  
4 confidentiality designation provided by the Producing Party, and  
5 shall be subject to the protections set forth in this Order and any  
6 additional protections set forth in any Protective Order entered in  
7 the Cross-Use Case or Cases in which the document is sought to  
8 be used.
- 9 (2) Access to material under this provision is limited to outside  
10 counsel of record in the Cross-Use Case or Cases in which the  
11 document is sought to be used, together with individuals entitled  
12 to access documents bearing the relevant confidentiality  
13 designation under a Protective Order entered in such Cross-Use  
14 Case or Cases.
- 15 (3) The Cross-Use Provision shall not apply to Discovery Material  
16 labeled “HIGHLY CONFIDENTIAL – SOURCE CODE.”
- 17 (4) Nothing in this Cross-Use Provision shall be construed as  
18 authorizing Plaintiffs to share any Protected Material with any  
19 defendant not named in the above-captioned case as of the date of  
20 execution of this Order.

21 **7. DESIGNATING PROTECTED MATERIAL**

22 (a) Available Designations. Any Producing Party may designate Discovery  
23 Material with any of the following designations, provided that it meets the requirements for such  
24 designations as provided for herein: “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL -  
25 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL - SOURCE CODE.”

26 (b) Written Discovery and Documents and Tangible Things. Written discovery,  
27 documents (which include “electronically stored information,” as that phrase is used in Federal  
28 Rule of Civil Procedure 34), and tangible things that meet the requirements for the confidentiality



1 designations listed in Paragraph 7(a) may be so designated by placing the appropriate designation  
2 on every page of the written material prior to production. For digital files being produced, the  
3 Producing Party may mark each viewable page or image with the appropriate designation, and mark  
4 the medium, container, and/or communication in which the digital files were contained. In the event  
5 that original documents are produced for inspection, the original documents shall be presumed  
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” during the inspection and re-  
7 designated, as appropriate during the copying process.

8 (c) Native Files. Where electronic files and documents are produced in native  
9 electronic format, such electronic files and documents shall be designated for protection under this  
10 Order by appending to the file names or designators information indicating whether the file contains  
11 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” or “HIGHLY  
12 CONFIDENTIAL - SOURCE CODE,” material, or the Producing Party shall use any other  
13 reasonable method for so designating Protected Materials produced in electronic format. When  
14 electronic files or documents are printed for use at deposition, in a Court proceeding, or for  
15 provision in printed form to an expert or consultant pre-approved pursuant to Paragraph 12, the  
16 Party printing the electronic files or documents shall affix a legend to the printed document  
17 corresponding to the designation of the Designating Party and including the production number and  
18 designation associated with the native file. No one shall seek to use in this litigation a .tiff, .pdf, or  
19 other image format version of a document produced in native file format without first (1) providing  
20 a copy of the image format version to the Producing Party so that the Producing Party can review  
21 the image to ensure that no information has been altered, and (2) obtaining the consent of the  
22 Producing Party, which consent shall not be unreasonably withheld.

23 (d) Depositions and Testimony. Parties or testifying persons or entities may  
24 designate depositions and other testimony with the appropriate designation by indicating on the  
25 record at the time the testimony is given or by sending written notice of which portions of the  
26 transcript of the testimony are so designated within thirty (30) days of receipt of the transcript of the  
27 testimony. If no indication on the record is made, all information disclosed during a deposition shall  
28 be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time within

1 which it may be appropriately designated as provided for herein has passed. Any Party that wishes  
2 to disclose the transcript, or information contained therein, may provide written notice of its intent  
3 to treat the transcript as non-confidential, after which time, any Party that wants to maintain any  
4 portion of the transcript as confidential must designate the confidential portions within seventeen  
5 (17) days, absent written agreement by the parties for additional time, or else the transcript may be  
6 treated as non-confidential. Any Protected Material that is used in the taking of a deposition shall  
7 remain subject to the provisions of this Protective Order, along with the transcript pages of the  
8 deposition testimony dealing with such Protected Material. In such cases the court reporter shall be  
9 informed of this Protective Order and shall be required to operate in a manner consistent with this  
10 Protective Order. In the event the deposition is videotaped, the original and all copies of the  
11 videotape shall be marked by the video technician to indicate that the contents of the videotape are  
12 subject to this Protective Order, substantially along the lines of “This videotape contains  
13 confidential testimony used in this case and is not to be viewed or the contents thereof to be  
14 displayed or revealed except pursuant to the terms of the operative Protective Order in this matter or  
15 pursuant to written stipulation of the parties.” Counsel for any Producing Party shall have the right  
16 to exclude from oral depositions, other than the deponent, deponent’s counsel, and the reporter and  
17 videographer (if any), any person who is not authorized by this Protective Order to receive or access  
18 Protected Material based on the designation of such Protected Material. Such right of exclusion  
19 shall be applicable only during periods of examination or testimony regarding such Protected  
20 Material.

21 **8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

22 (a) A Producing Party may designate Discovery Material as “CONFIDENTIAL”  
23 if it contains or reflects confidential, proprietary, and/or commercially sensitive information.

24 (b) Unless otherwise ordered by the Court, Discovery Material designated as  
25 “CONFIDENTIAL” may be disclosed only to the following:

26 (i) The Receiving Party’s Outside Counsel, such counsel’s immediate  
27 paralegals and staff, and any copying or clerical litigation support services working at the direction  
28 of such counsel, paralegals, and staff;

1 (ii) Not more than three (3) representatives of the Receiving Party who  
2 are officers or employees of the Receiving Party, who may be, but need not be, In-house Counsel  
3 for the Receiving Party, as well as their immediate paralegals and staff, to whom disclosure is  
4 reasonably necessary for this case, provided that: (a) each such person has agreed to be bound by  
5 the provisions of the Protective Order by signing a copy of Exhibit A; and (b) no unresolved  
6 objections to such disclosure exist after proper notice has been given to all Parties as set forth in  
7 Paragraph 12 below;

8 (iii) Any outside expert or consultant retained by the Receiving Party to  
9 assist in this action, provided that disclosure is only to the extent necessary to perform such work;  
10 and provided that: (a) such expert or consultant has agreed to be bound by the provisions of the  
11 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current  
12 officer, director, board member, or employee of a Party or of a competitor of a Party, nor  
13 anticipated at the time of retention to become an officer, director, board member, or employee of a  
14 Party or of a competitor of a Party; (c) such expert or consultant accesses the materials in the United  
15 States only, and does not transport them to or access them from any foreign jurisdiction, except  
16 that, for example, an expert or consultant may transport Protected Material outside of the United  
17 States for the purpose of providing support to outside counsel of a party deposing employees of  
18 another party or a third party resident overseas; and (d) no unresolved objections to such disclosure  
19 exist after proper notice has been given to all Parties as set forth in Paragraph 12 below. If an  
20 unresolved objection to such disclosures exists, the Parties agree to promptly confer and use good  
21 faith to resolve any such objection;

22 (iv) Court reporters, stenographers, and videographers retained to record  
23 testimony taken in this action;

24 (v) The Court, jury, and Court personnel;

25 (vi) Graphics, translation, design, and/or trial consulting personnel,  
26 having first agreed to be bound by the provisions of the Protective Order by signing a copy of  
27 Exhibit A;

28

1 (vii) Mock jurors retained by a trial consulting firm in connection with this  
2 litigation having first signed an undertaking or agreement agreeing not to publicly disclose  
3 Protected Material and to keep any information concerning Protected Material confidential to the  
4 same degree as required by this Protective Order;

5 (viii) Any mediator who is assigned to hear this matter and his or her staff,  
6 subject to their agreement to maintain confidentiality to the same degree as required by this  
7 Protective Order; and

8 (ix) Any other person with the prior written consent of the Producing  
9 Party.

10 **9. DISCOVERY MATERIAL DESIGNATED AS “HIGHLY**  
11 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

12 (a) A Producing Party may designate Discovery Material as “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is  
14 extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that  
15 the disclosure of such Discovery Material is likely to cause economic harm or significant  
16 competitive disadvantage to the Producing Party. The Parties agree that the following information,  
17 if non-public, shall be presumed to merit the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY” designation: trade secrets, pricing information, financial data, sales information, sales or  
19 marketing forecasts or plans, business plans, sales or marketing strategy, product development  
20 information, engineering documents, testing documents, employee information, and other non-  
21 public information of similar competitive and business sensitivity.

22 (b) Unless otherwise ordered by the Court, Discovery Material designated as  
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

24 (i) The Receiving Party’s Outside Counsel, provided that such Outside  
25 Counsel is not involved in competitive decision-making on behalf of a Party or a competitor of a  
26 Party, and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical  
27 litigation support services working at the direction of such counsel, paralegals, and staff; and  
28

1 (ii) The individuals listed in paragraphs 8(b)(iii-ix), provided that such  
2 individuals are not involved in competitive decision-making on behalf of a Party or a competitor of  
3 a Party.

4 **10. DISCOVERY MATERIAL DESIGNATED AS “HIGHLY**  
5 **CONFIDENTIAL – SOURCE CODE”**

6 (a) To the extent production of Source Code becomes necessary to the  
7 prosecution or defense of the case, a Producing Party may designate Source Code as “HIGHLY  
8 CONFIDENTIAL - SOURCE CODE” if it comprises or includes confidential, proprietary, and/or  
9 trade secret Source Code.

10 (b) Nothing in this Order shall be construed as a representation or admission that  
11 Source Code is properly discoverable in this action, or to obligate any Party to produce any Source  
12 Code.

13 (c) Unless otherwise ordered by the Court, Discovery Material designated as  
14 “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to the provisions set forth in  
15 Paragraph 11 below, and may be disclosed, subject to Paragraph 11 below, solely to:

16 (i) The Receiving Party’s Outside Counsel, provided that such Outside  
17 Counsel is not involved in competitive decision-making on behalf of a Party or a competitor of a  
18 Party, and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical  
19 litigation support services working at the direction of such counsel, paralegals, and staff; and

20 (ii) The individuals listed in paragraphs 8(b)(iii-vi and viii-ix), provided  
21 that such individuals are not involved in competitive decision-making on behalf of a Party or a  
22 competitor of a Party.

23 **11. DISCLOSURE AND REVIEW OF SOURCE CODE**

24 (a) Any Source Code that is produced by Plaintiff shall be made available for  
25 inspection in electronic format at the office of its Outside Counsel, or any other location mutually  
26 agreed by the Parties. Any Source Code that is produced by Defendant shall be made available for  
27 inspection in electronic format at the office of Defendant’s Outside Counsel, or any other location  
28 mutually agreed by the Parties. Source Code will be made available for inspection between the

1 hours of 8:00 a.m. and 7:30 p.m. on business days (i.e., weekdays that are not Federal holidays).  
2 The Parties will be reasonable in accommodating reasonable requests to alter these hours so long as  
3 reasonable advanced notice, and in no event less than three (3) business days' notice, of any such  
4 reasonable requests is provided.

5 (b) Prior to the first inspection of any requested Source Code, the parties agree to  
6 meet and confer regarding the review and production of Source Code if requested by either Party.  
7 Further, the Receiving Party shall provide ten (10) days' notice for its initial review of any Source  
8 Code that it wishes to inspect. The Receiving Party shall provide two (2) days' notice prior to any  
9 additional inspections.

10 (c) Source Code that is designated "HIGHLY CONFIDENTIAL – SOURCE  
11 CODE" shall be produced for inspection and review subject to the following provisions, unless  
12 otherwise agreed by the Producing Party:

13 (i) All Source Code shall be made available by the Producing Party to  
14 the Receiving Party's Outside Counsel and/or experts in a secure room on a secured computer  
15 without Internet access or network access to other computers and on which all access ports have  
16 been disabled, as necessary and appropriate to prevent and protect against any unauthorized  
17 copying, transmission, removal, or other transfer of any Source Code outside or away from the  
18 computer on which the Source Code is provided for inspection (the "Source Code Computer" in the  
19 "Source Code Review Room"). The Source Code Computer shall be password protected. The  
20 Producing Party shall produce Source Code in computer searchable format on the Source Code  
21 Computer and in the file format in which the Source Code is kept in the ordinary course of the  
22 Producing Party's business. The Producing Party shall provide the Receiving Party with  
23 information explaining how to start, log on to, and operate the stand-alone computer(s) in order to  
24 access the produced Source Code.

25 (ii) The Producing Party shall install tools that are sufficient for viewing  
26 and searching the code produced, on the platform produced, if such tools exist and are presently  
27 used in the ordinary course of the Producing Party's business. The Producing Party shall include  
28 the review tool "UNDERSTAND" on the secured computer. The Receiving Party's outside counsel

1 and/or experts may request that additional commercially available software tools for viewing and  
2 searching Source Code be installed on the secured computer, provided, however, that (a) the  
3 Receiving Party possesses an appropriate license to such software tools; (b) the Producing Party  
4 approves such software tools; and (c) such software tools can execute on the secured computer and  
5 are reasonably necessary for the Receiving Party to perform its review of the Source Code  
6 consistent with all of the protections herein. The Receiving Party must provide the Producing  
7 Party with a CD or DVD (or other appropriate medium) containing such licensed software tool(s) at  
8 least seven (7) days in advance of the date upon which the Receiving Party wishes to have the  
9 additional software tools available for use on the Source Code Computer.

10 (iii) No recordable media or recordable devices, including without  
11 limitation sound recorders, personal digital assistants (PDAs), cellular telephones, peripheral  
12 equipment, cameras, voice recorders, Dictaphones, telephone jacks, CDs, DVDs, or drives of any  
13 kind (e.g., USB memory sticks and portable hard drives), shall be permitted into the Source Code  
14 Review Room. No non-electronic devices capable of similar functionality shall be permitted in the  
15 Source Code Review Room.

16 (iv) Non-Networked Computer for Note-Taking Purposes Only:

17 The Receiving Party's Outside Counsel and/or experts shall be entitled to  
18 take notes relating to the Source Code but may not copy or transcribe the Source Code or any  
19 portion thereof into the notes. The Receiving Party's expert(s) and/or consultant may use a single  
20 Notetaking Computer in the review room for the sole purpose of taking and reviewing his or her  
21 notes. The Notetaking Computer shall be provided to the Receiving Party by the Producing Party at  
22 the beginning of the first inspection, and shall have commercially reasonable processing power and  
23 storage facilities. The Receiving Party may maintain the Notetaking Computer in its possession  
24 until ninety (90) days following final termination of this matter, after which it must destroy the  
25 Notetaking Computer or return it to the Producing Party. The Receiving Party shall treat the  
26 Notetaking Computer, and any notes on it, with the same precautions as are required for printed  
27 copies of source code. The Producing Party shall install on the Notetaking Computer reasonable  
28 word-processing software as requested by the Receiving Party. The WiFi, Bluetooth, and camera

1 functionalities on the Notetaking Computer will be permanently disabled. The taking of  
2 photographs or video shall not be permitted in the Source Code Review Room. The Producing  
3 Party may inspect the Receiving Party's Notetaking Computer to be used in the Source Code  
4 Review Room, but solely to ensure that it is the same Notetaking Computer previously provided.  
5 Such inspection shall be conducted in the Receiving Party's presence and should not count against  
6 Receiving Party's review time. The Producing Party may not look at any notes or files on the  
7 Notetaking Computer at any time. The Receiving Party shall not install or insert any added  
8 functionality whatsoever as to the Notetaking computer, and shall not attempt to connect the  
9 Notetaking Computer to any network.

10 (v) The Producing Party may visually monitor the activities of the  
11 Receiving Party's representatives during any Source Code review, but only to ensure that no  
12 unauthorized electronic records of the Source Code and no information concerning the Source Code  
13 are being created or transmitted in any way. Any observer used by the Producing Party may  
14 monitor the Receiving Party's representatives during the Source Code review through a glass  
15 partition and so as to refrain from overhearing a conversation (in order that the Receiving Party's  
16 representatives can discuss the Source Code in the course of their review). During the Receiving  
17 Party's review of the Source Code, the Producing Party shall not otherwise interfere with the  
18 Receiving Party's review of the Source Code and shall not be permitted access to the Receiving  
19 Party's notes, work product, or discussions inside the review room or following each day's  
20 inspection of the Source Code. During the Source Code review, the Producing Party agrees to  
21 provide a "break-out" room for the Receiving Party's Source Code reviewer(s) to make phone calls  
22 and work. To the extent such a break-out room is not reasonably available, the Producing Party  
23 agrees to so notify the Receiving Party at least three (3) business days in advance of any day on  
24 which the Receiving Party's Source Code reviewers are expected to inspect the Source Code. No  
25 copies of all or any portion of the Source Code may leave the Source Code Review Room except as  
26 otherwise provided herein. Further, no other written or electronic record of the Source Code is  
27 permitted except as otherwise provided herein. The Receiving Party may request a reasonable  
28 number of pages of Source Code to be printed by the Producing Party, but no more than 50



1 consecutive pages, or an aggregate total of more than 1500 pages and only when reasonably  
2 necessary to prepare court filings or pleadings or other papers (including a testifying expert's expert  
3 report) and only to the extent necessary for use in this action. To the extent Receiving Party requires  
4 an aggregate total of more than 1500 pages of source code, the Receiving Party shall make such  
5 request in writing, including the basis of such a request, and the Parties shall meet and confer to  
6 determine whether good cause exists to produce a limited number of additional pages. The  
7 Receiving Party shall not request printing of Source Code in order to review blocks of Source Code  
8 elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code electronically on  
9 the Source Code Computer, as the Parties acknowledge and agree that the purpose of the  
10 protections herein would be frustrated by printing portions of code for review and analysis  
11 elsewhere, and printing is permitted only when necessary to prepare Court filings or pleadings or  
12 other papers (including a testifying expert's expert report). The Producing Party shall Bates  
13 number, copy, and label "HIGHLY CONFIDENTIAL – SOURCE CODE" any pages requested by  
14 the Receiving Party. Within three (3) business days, the Producing Party shall either (i) provide one  
15 copy set of such pages to the Receiving Party, or (ii) inform the Requesting Party that it objects that  
16 the printed portions are excessive and/or not done for a permitted purpose. If, after meeting and  
17 conferring within one (1) business day of any objections, the Producing Party and the Receiving  
18 Party cannot resolve the objection, the Producing Party shall within seven (7) days of the meet and  
19 confer move the Court for a Protective Order and shall agree to expedited briefing of the motion,  
20 failing any of which, the Producing Party shall provide one copy set of the requested pages to the  
21 Receiving Party within two (2) days.<sup>1</sup> The printed pages shall constitute part of the Source Code  
22 produced by the Producing Party in this action. Access to the Source Code Computer shall be  
23 limited to seven (7) Outside Counsel representing the Reviewing Party and seven (7) outside  
24 consultants or experts retained by the Reviewing Party. All persons viewing Source Code shall sign

25 <sup>1</sup> Both Parties agree that the briefing period and page-limits for such motions for a protective order  
26 shall be as follows: (1) Producing Party shall file the motion by 5 PM EST no later than seven (7)  
27 days after the meet and confer with an agreed motion for expedited briefing as set forth herein; (2)  
28 Receiving Party's Response shall fall due within seven (7) days. Both the Producing and Receiving  
Party further agree that briefing for such motions shall be limited to no more than five (5) pages for  
the motion and five (5) pages for the response to the motion. The parties further agree that neither  
reply nor sur-reply briefs shall be filed in connection with such motions.

1 on each day they view Source Code a log that will include the names of persons who enter the  
2 Source Code Review Room to view the Source Code and when they enter and depart. The  
3 Producing Party shall be entitled to a copy of the log upon seven (7) days' advance notice to the  
4 Receiving Party.

5 (vi) Unless otherwise agreed in advance by the Parties in writing,  
6 following each day on which inspection is done under this Order, the Receiving Party's Outside  
7 Counsel and/or experts shall remove all notes, documents, and all other materials from the Source  
8 Code Review Room and shall maintain any such notes in a manner that prevents duplication of or  
9 unauthorized access to the Source Code. Any such notes must be marked on each page with the  
10 designation – "HIGHLY CONFIDENTIAL — SOURCE CODE." The Producing Party shall not be  
11 responsible for any items left in the Source Code Review Room, including but not limited to  
12 preserving the confidentiality of any such items, following each inspection session. Proper  
13 identification of all authorized persons shall be provided prior to any access to the Source Code  
14 Review Room or the Source Code Computer. Proper identification requires showing, at a minimum,  
15 a photo identification card sanctioned by the government of any State of the United States, by the  
16 government of the United States, or by the nation state of the authorized person's current  
17 citizenship. Access to the Source Code Review Room or the Source Code Computer may be denied,  
18 at the discretion of the supplier, to any individual who fails to provide proper identification.

19 (vii) Other than as provided above, the Receiving Party will not copy,  
20 remove, or otherwise transfer any Source Code from the Source Code Computer including, without  
21 limitation, copying, removing, or transferring the Source Code onto any recordable media or  
22 recordable device. The Receiving Party will not transmit any Source Code in any way from the  
23 Producing Party's facilities or the offices of its Outside Counsel.

24 (viii) The Receiving Party's Outside Counsel may make no more than four  
25 (4) additional paper copies of any portions of the Source Code received from a Producing Party  
26 pursuant to Paragraph 11 not including copies attached to Court filings or for use at depositions (as  
27 indicated in Paragraph 11(c)(ix) below), and shall maintain a log of all paper copies of the Source  
28 Code. The Receiving Party's Outside Counsel and any person receiving a copy of any Source Code

1 shall maintain and store any paper copies of the Source Code at their offices in a manner that  
2 prevents duplication of or unauthorized access to the Source Code, including, without limitation,  
3 storing the Source Code in a locked room or cabinet at all times when it is not in use. No more than  
4 a total of fourteen (14) individuals identified by the Receiving Party shall have access to the printed  
5 portions of Source Code (except insofar as such code appears in any Court filing or expert report).  
6 Copies of Source Code that are marked as deposition exhibits shall not be provided to the Court  
7 Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit  
8 by its production numbers. The Receiving Party may bring copies of the printed Source Code to the  
9 deposition unless the Producing Party notifies Receiving Party in advance of the deposition that the  
10 Producing Party will provide a Source Code computer at the deposition containing all source code,  
11 in computer-searchable format, previously produced by the Producing Party.<sup>2</sup> Further, the  
12 Receiving Party may bring to the deposition copies of any expert reports or pleadings containing  
13 source code, including any annotated copies of such documents containing source code.

14 (ix) Except as provided in this sub-paragraph, absent express written  
15 permission from the Producing Party, the Receiving Party may not create electronic images, or any  
16 other images, or make electronic copies of the Source Code from any paper copy of Source Code  
17 for use in any manner (including by way of example only, the Receiving Party may not scan the  
18 Source Code to a PDF or photograph the code) except in preparation for or in connection with: (i)  
19 filing (under seal) and service of papers, motions, and pleadings; (ii) expert reports; and (iii) a  
20 hearing or trial in this matter. Any such electronic copies shall be password protected and  
21 encrypted. Any such electronic copies shall be included in the log generated pursuant to this  
22 subsection. Access to such electronic copies of source code printouts, but not expert reports, will be  
23 limited to seven (7) individuals, and such electronic copies are to be made strictly for the purposes  
24 of filings or hearings. Images or copies of Source Code shall not be included in correspondence  
25 between the Parties (references to production numbers shall be used instead), and shall be omitted  
26 from pleadings and other papers whenever possible. If a Party reasonably believes that it needs to  
27 submit a portion of Source Code as part of a filing with the Court, the Parties shall meet and confer

28 <sup>2</sup> Such Source Code computer(s) for use during depositions must, at a minimum, meet the specifications of Paragraph (ii-v) above.

1 as to how to make such a filing while protecting the confidentiality of the Source Code and such  
2 Source Code will not be filed absent agreement from the Producing Party that the confidentiality  
3 protections will be adequate. If a Producing Party agrees to produce an electronic copy of all or any  
4 portion of its Source Code or provide written permission to the Receiving Party that an electronic or  
5 any other copy needs to be made for a Court filing, access to the Receiving Party's submission,  
6 communication, and/or disclosure of electronic files or other materials containing any portion of  
7 Source Code (paper or electronic) shall at all times be limited solely to individuals who are  
8 expressly authorized to view Source Code under the provisions of this Order. Where the Producing  
9 Party has provided the express written permission required under this provision for a Receiving  
10 Party to create electronic copies of Source Code, the Receiving Party shall maintain a log of all  
11 such electronic copies of any portion of Source Code in its possession or in the possession of its  
12 retained consultants, including the names of the reviewers and/or recipients of any such electronic  
13 copies, and the locations and manner in which the electronic copies are stored. Additionally, any  
14 such electronic copies must be labeled "HIGHLY CONFIDENTIAL - SOURCE CODE" as  
15 provided for in this Order.

16 (x) Apple will have two source code review platforms available for  
17 Uniloc to access; both containing an identical set of code. One platform will be located at Goldman  
18 Ismail in Chicago and the other will be located at Hogan Lovells in Denver.

19 **12. NOTICE OF DISCLOSURE**

20 (a) Prior to disclosing any Protected Material to any person described in  
21 Paragraphs 8(b)(iii) (referenced below as "Person"), the Party seeking to disclose such information  
22 shall provide the Producing Party with written notice that includes:

- 23 (i) the name of the Person;
- 24 (ii) an up-to-date curriculum vitae of the Person;
- 25 (iii) the present employer and title of the Person;
- 26 (iv) an identification of all of the Person's past and current employment  
27 and consulting relationships, including direct relationships and  
28 relationships through entities owned or controlled by the Person;

- 1 (v) a list of the cases in which the Person has testified at deposition or trial  
2 within the last five (5) years; and  
3 (vi) an identification of all pending patent applications on which the Person  
4 is named as an inventor, or in which the Person has any ownership  
5 interest.

6 Further, the Party seeking to disclose Protected Material shall provide such other information  
7 regarding the Person's professional activities reasonably requested by the Producing Party for it to  
8 evaluate whether good cause exists to object to the disclosure of Protected Material to the outside  
9 expert or consultant. Any Party seeking to disclose Protected Material to more than a total of seven  
10 (7) persons described in Paragraph 8(b)(iii) shall provide a written explanation alongside the Notice  
11 of Disclosure detailing the good faith basis for requesting disclosure to such additional person(s).

12 (b) Within ten (10) days of receipt of the disclosure of the Person, the Producing  
13 Party or Parties may object in writing to the Person for good cause. In the absence of an objection at  
14 the end of the ten (10) day period, the Person shall be deemed approved under this Protective Order.  
15 There shall be no disclosure of Protected Material to the Person prior to expiration of this ten (10)  
16 day period. If the Producing Party objects to disclosure to the Person within such ten (10) day  
17 period, the Parties shall meet and confer via telephone or in person within seven (7) days following  
18 the objection and attempt in good faith to resolve the dispute on an informal basis. If the dispute is  
19 not resolved, the Party objecting to the disclosure will have seven (7) days from the date of the meet  
20 and confer to seek relief from the Court. If relief is not sought from the Court within that time, the  
21 objection shall be deemed withdrawn. If relief is sought, designated materials shall not be disclosed  
22 to the Person in question until the Court resolves the objection.

23 (c) For purposes of this section, "good cause" shall include an objectively  
24 reasonable concern that the Person will use or disclose Discovery Materials in a way or ways that  
25 would violate one or more provisions contained in this Order, whether intentionally or  
26 inadvertently.

27  
28

1 (d) Prior to receiving any Protected Material under this Order, the Person must  
2 execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit A hereto) and serve it  
3 on all Parties.

4 (e) An initial failure to object to a Person under this Paragraph 12 shall not  
5 preclude the non-objecting Party from later objecting to continued access by that Person for good  
6 cause. If an objection is made, the Parties shall meet and confer via telephone or in person within  
7 three (3) days following the objection and attempt in good faith to resolve the dispute informally. If  
8 the dispute is not resolved, the Party objecting to the disclosure will have three (3) days from the  
9 date of the meet and confer to seek relief from the Court. The designated Person may continue to  
10 have access to information that was provided to such Person prior to the date of the objection. If a  
11 later objection is made, no further Protected Material shall be disclosed to the Person until the Court  
12 resolves the matter or the Producing Party withdraws its objection. Notwithstanding the foregoing,  
13 if the Producing Party fails to move for a protective order within three (3) days after the meet and  
14 confer, further Protected Material may thereafter be provided to the Person.

15 **13. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

16 (a) A Party shall not be obligated to challenge the propriety of any designation  
17 of Discovery Material under this Order at the time the designation is made, and a failure to do so  
18 shall not preclude a subsequent challenge thereto.

19 (b) Any challenge to a designation of Discovery Material under this Order shall  
20 be written, shall be served on Outside Counsel for the Producing Party, shall particularly identify  
21 the documents or information that the Receiving Party contends should be differently designated,  
22 and shall state the grounds for the objection. Thereafter, further protection of such material shall be  
23 resolved in accordance with the following procedures:

24 (i) The objecting Party shall have the burden of conferring either in  
25 person, in writing, or by telephone with the Producing Party claiming protection (as well as any  
26 other interested party) in a good faith effort to resolve the dispute. The Producing Party shall have  
27 the burden of justifying the disputed designation;

1 (ii) Failing agreement, the Receiving Party may bring a motion to the  
2 Court for a ruling that the Discovery Material in question is not entitled to the status and protection  
3 of the Producing Party's designation. The Parties' entry into this Order shall not preclude or  
4 prejudice either Party from arguing for or against any designation, establish any presumption that a  
5 particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute  
6 over discovery or disclosure of information;

7 (iii) Notwithstanding any challenge to a designation, the Discovery  
8 Material in question shall continue to be treated as designated under this Order until one of the  
9 following occurs: (a) the Party who designated the Discovery Material in question withdraws such  
10 designation in writing; or (b) the Court rules that the Discovery Material in question is not entitled  
11 to the designation.

12 **14. SUBPOENAS OR COURT ORDERS**

13 If at any time documents containing Protected Information are requested or subpoenaed by  
14 any court, arbitral, administrative or legislative body, or are otherwise requested in discovery, the  
15 party receiving the request shall immediately give written notice thereof to every party whose  
16 Protected Information has been requested and to its counsel and shall copy Outside Counsel for the  
17 Parties on any such communication and shall provide each such Party with an opportunity to object  
18 to the production of such documents. If a Producing Party does not take steps to prevent disclosure  
19 of such documents within ten (10) business days of the date written notice is given, the party to  
20 whom the referenced subpoena or request is directed may produce such documents only after  
21 written permission is granted, the Court has so Ordered, or the ten day period has lapsed, but shall  
22 take all reasonable measures to have such documents treated in accordance with terms of this  
23 Protective Order.

24  
25  
26  
27  
28

1           **15.    FILING PROTECTED MATERIAL**

2           (a)    Absent written permission from the Producing Party or a Court Order  
3 secured after appropriate notice to all interested persons, a Receiving Party may not file or disclose  
4 in the public record any Protected Material.

5           (b)    Any Party is authorized under N.D. Cal. Civil L.R. 79-5 to file under seal  
6 with the Court any brief, document, or materials that qualify as and are designated as Protected  
7 Material under this Order. However, nothing in this section shall in any way limit or detract from  
8 this Order’s requirements as to Source Code. If only a portion of a brief qualifies as Protected  
9 Material and upon written request, any party who contends that its Protected Material is contained  
10 within the brief shall provide a redacted version of the brief to the requesting party within 2  
11 business days of the initial filing. Such redacted brief will designate all portions of the original  
12 brief that the party alleges to be HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY or  
13 HIGHLY CONFIDENTIAL – SOURCE CODE and all portions alleged to be CONFIDENTIAL.  
14 The parties shall cooperate in good faith in resolving disputes relating to these redactions. Nothing  
15 in this paragraph shall limit or restrict the right of any party to oppose a motion to seal on the  
16 ground that all or some of the material sought to be sealed does not, in fact, warrant sealing.

17           **16.    INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

18           (a)    The inadvertent production by a Party of Discovery Material subject to the  
19 attorney-client privilege, work-product protection, or any other applicable privilege or protection,  
20 despite the Producing Party’s reasonable efforts to prescreen such Discovery Material prior to  
21 production, will not waive the applicable privilege and/or protection if a request for return of such  
22 inadvertently produced Discovery Material is made promptly after the Producing Party learns of its  
23 inadvertent production.

24           (b)    Upon a request from any Producing Party who has inadvertently produced  
25 Discovery Material that it believes is privileged and/or protected, each Receiving Party shall  
26 immediately return such Protected Material or Discovery Material and all copies to the Producing  
27 Party, except for any pages containing privileged markings by the Receiving Party which shall  
28 instead be destroyed and certified as such by the Receiving Party to the Producing Party.



1 (c) Nothing herein shall prevent the Receiving Party from preparing a record for  
2 its own use containing the date, author, addresses, and topic of the inadvertently produced  
3 Discovery Material and such other information as is reasonably necessary to identify the Discovery  
4 Material and describe its nature to the Court in any motion to compel production of the Discovery  
5 Material.

6 **17. INADVERTENT FAILURE TO DESIGNATE PROPERLY**

7 (a) The inadvertent failure by a Producing Party to designate Discovery Material  
8 as Protected Material with one of the designations provided for under this Order shall not waive any  
9 such designation provided that the Producing Party notifies all Receiving Parties that such  
10 Discovery Material is protected under one of the categories of this Order within fourteen (14) days  
11 of the Producing Party learning of the inadvertent failure to designate. The Producing Party shall  
12 reproduce the Protected Material with the correct confidentiality designation within seven (7) days  
13 upon its notification to the Receiving Parties. Upon receiving the Protected Material with the  
14 correct confidentiality designation, the Receiving Parties shall return or securely destroy, at the  
15 Producing Party's option, all Discovery Material that was not designated properly.

16 (b) A Receiving Party shall not be in breach of this Order for any use of such  
17 Discovery Material before the Receiving Party receives such notice that such Discovery Material is  
18 protected under one of the categories of this Order. Once a Receiving Party has received  
19 notification of the correct confidentiality designation for the Protected Material with the correct  
20 confidentiality designation, the Receiving Party shall treat such Discovery Material (subject to the  
21 exception in Paragraph 17(c) below) at the appropriately designated level pursuant to the terms of  
22 this Order.

23 (c) Notwithstanding the above, a subsequent designation of "CONFIDENTIAL,"  
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –  
25 SOURCE CODE" shall apply on a going forward basis and shall not disqualify anyone who  
26 reviewed "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or  
27 "HIGHLY CONFIDENTIAL – SOURCE CODE" materials while the materials were not marked  
28

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
2 SOURCE CODE” from engaging in the activities set forth in Paragraph 6(b).

3 **18. INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

4 (a) In the event of a disclosure of any Discovery Material pursuant to this Order  
5 to any person or persons not authorized to receive such disclosure under this Protective Order, the  
6 Party responsible for having made such disclosure, and each Party with knowledge thereof, shall  
7 immediately notify counsel for the Producing Party whose Discovery Material has been disclosed  
8 and provide to such counsel all known relevant information concerning the nature and  
9 circumstances of the disclosure. The responsible disclosing Party shall also promptly take all  
10 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that no  
11 further or greater unauthorized disclosure and/or use thereof is made

12 (b) Unauthorized or inadvertent disclosure does not change the status of  
13 Discovery Material or waive the right to hold the disclosed document or information as Protected.

14 **19. FINAL DISPOSITION**

15 (a) Not later than ninety (90) days after the Final Disposition of this case, each  
16 Party shall return all Discovery Material of a Producing Party to the respective Outside Counsel of  
17 the Producing Party or destroy such Material, at the option of the Producing Party. For purposes of  
18 this Order, “Final Disposition” occurs after an order, mandate, or dismissal finally terminating all  
19 claims asserted against all Parties in each of these related cases with prejudice, including all  
20 appeals.

21 (b) All Parties that have received any such Discovery Material shall certify in  
22 writing that all such materials have been returned to the respective Outside Counsel of the  
23 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,  
24 Outside Counsel may retain one set of pleadings, correspondence, and attorney and consultant work  
25 product (but not document productions) for archival purposes, but must return any pleadings,  
26 correspondence, and consultant work product that contain Source Code.

1           **20.    DISCOVERY FROM EXPERTS OR CONSULTANTS**

2           (a)    Drafts of reports of testifying experts, and reports and other written materials,  
3 including drafts, of consulting experts, shall not be discoverable.

4           (b)    Reports and materials exempt from discovery under the foregoing Paragraph  
5 shall be treated as attorney work product for the purposes of this case and Protective Order.

6           **21.    MISCELLANEOUS**

7           (a)    Non-Party Use of this Order. The parties shall disclose this Protective Order  
8 to all non-parties producing information or material pursuant to a subpoena or Court order in these  
9 related cases. A non-party producing information or material voluntarily or pursuant to a subpoena  
10 or a court order may designate such material or information under this Protective Order, and shall  
11 be considered a Producing Party under this Protective Order. A non-party's use of this Protective  
12 Order to protect its confidential information does not entitle that non-party access to Protected  
13 Material produced by any Party.

14           (b)    Right to Further Relief. Nothing in this Order abridges the right of any  
15 person to seek its modification by the Court in the future. By stipulating to this Order, the Parties do  
16 not waive the right to argue that certain material may require additional or different confidentiality  
17 protections than those set forth herein.

18           (c)    Termination of Matter and Retention of Jurisdiction. The Parties agree that  
19 the terms of this Protective Order shall survive and remain in effect after the Final Determination in  
20 this matter. The Court shall retain jurisdiction for 90 days after the termination of the matter to hear  
21 and resolve any disputes arising out of this Protective Order.

22           (d)    Successors. This Order shall be binding upon the Parties hereto, their  
23 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal  
24 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts,  
25 and any persons or organizations over which they have direct control.


26           (e)    Right to Assert Other Objections. By stipulating to the entry of this  
27 Protective Order, no Party waives any right it otherwise would have to object to disclosing or  
28 producing any information or item. Similarly, no Party waives any right to object on any ground to

1 use in evidence of any of the material covered by this Protective Order. This Order shall not  
2 constitute a waiver of the right of any Party to claim in these related actions or otherwise that any  
3 Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not  
4 admissible in evidence in these related actions or any other proceeding.

5 (f) Burdens of Proof. Notwithstanding anything to the contrary above, nothing in  
6 this Protective Order shall be construed to change the burdens of proof or legal standards applicable  
7 in disputes regarding whether particular Discovery Material is confidential, which level of  
8 confidentiality is appropriate, whether disclosure should be restricted, and if so, what restrictions  
9 should apply.

10 (g) Modification by Court. This Order is subject to further Court order based  
11 upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the  
12 interests of justice. The United States District Court for the Northern District of California is  
13 responsible for the interpretation and enforcement of this Order. All disputes concerning Protected  
14 Material, however designated, produced under the protection of this Order shall be resolved by the  
15 United States District Court for the Northern District of California.

16  
17 **So ORDERED and SIGNED this 14th day of July, 2018.**

18  
19  
20   
21 HON. WILLIAM ALSUP  
22 UNITED STATES DISTRICT JUDGE  
23  
24  
25  
26  
27  
28