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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[PLAINTIFF’S NAME],
Plaintiff,
v.
[DEFENDANT’S NAME],
Defendant.

Case No.

**STANDING ORDER FOR PATENT
CASES**

These Standing Patent Rules are based on the Standing Patent Rules issued by Judge Andrew J. Guilford in September 2013, and subsequently adopted by Judge John A. Kronstadt, which were based largely on information obtained from over 100 patent practitioners and professors, a review of all the other local patent rules and a review of related literature. The rules were drafted to respond to the needs of this community and to reduce transaction costs and increase procedural predictability. Two central goals were that the rules be outcome neutral and as concise as possible.

Unless the court orders otherwise, the following rules shall apply.

A. GENERAL REQUIREMENTS

2 **1. Title.** These are the Standing Patent Rules for cases assigned to Judge
3 Wesley L. Hsu. They should be cited as “S.P.R. ____.”

4 **2. Effective date.** These Standing Patent Rules take effect as of the date of
5 this Order, and apply in cases filed on or after that date. The Court may order that
6 they also apply, with appropriate modification, to cases filed before that date.

7 **3. Scope and construction.** These rules apply to all cases involving a
8 claim of infringement, non-infringement, invalidity or unenforceability of a utility
9 patent. The Local Rules of this District shall also apply to such actions, except to the
10 extent that they are inconsistent with these Standing Patent Rules. The Court will
11 consider requests to opt out of these Standing Patent Rules, particularly when all
12 parties agree the case involves damages or other claims of less than \$2 million.

13 **4. Modification of these rules.** The Court may modify or suspend these
14 rules at any time. The Court will consider modifications to these rules suggested by
15 the parties based on the circumstances of any particular case. Such party-suggested
16 modifications shall, in most cases, be made at the scheduling conference, but may be
17 made at other times upon a showing of good cause.

18 **5. Confidentiality.** Absent a Court order, discovery cannot be withheld on
19 the basis of confidentiality. The Court’s Standing Protective Order shall govern
20 discovery unless the Court enters a different protective order, which may be entered
21 by the assigned Magistrate Judge without further order from the District Judge.

22 **6. Relationship to the Federal Rules of Civil Procedure.** Except as
23 provided in this paragraph or otherwise ordered, it shall not be a ground for objecting
24 to discovery requests (such as interrogatories, document requests, requests for
25 admission or deposition questions), or declining to provide information otherwise
26 required by Fed. R. Civ. P. 26(a)(1), that the discovery request or disclosure
27 requirement is premature due to, or otherwise conflicts with, these Standing Patent
28 Rules. But a party may object to the following categories of discovery requests (or

decline to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1))
on the ground of prematurity under these Standing Patent Rules: (1) requests seeking a
party's claim construction position; (2) requests seeking from the patent claimant a
comparison of the asserted claims and the accused apparatus, product, device, process,
method, act or other instrumentality (collectively "Accused Instrumentality"); (3)
requests seeking from an accused infringer a comparison of the asserted claims and
the prior art; (4) requests seeking from an accused infringer the identification of any
advice of counsel or related documents.

B. PATENT DISCLOSURES, EARLY MEETING OF THE PARTIES, AND SCHEDULING CONFERENCE

1. Disclosure of Asserted Claims and Infringement Contentions. No later than 14 days after the Court issues an order setting a scheduling conference, a party asserting patent infringement shall serve on all parties a Disclosure of Asserted Claims and Infringement Contentions. Separately for each opposing party, the Disclosure of Asserted Claims and Infringement Contentions shall contain the following information as described in S.P.R. B.1(a) through B.1(f).

(a) Each claim of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 271 asserted.

(b) Separately for each asserted claim, each Accused Instrumentality. This identification shall be as specific as reasonably possible.

(c) A chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality, including, for each limitation that such party contends is governed by 35 U.S.C. § 112(6)/(f), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function, and whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality.

2 (d) For any patent that claims priority to an earlier application, the
priority date allegedly applicable to each asserted claim.

3 (e) If a party claiming patent infringement wishes to preserve the right
4 to rely, for any purpose, on the assertion that its own apparatus, product, device,
5 process, method, act or other instrumentality practices the claimed invention, the party
6 shall identify, separately for each asserted claim, each such apparatus, product, device,
7 process, method, act or other instrumentality that incorporates or reflects that
8 particular claim.

9 (f) If a party claiming patent infringement alleges willful
10 infringement, the basis for such allegation.

11 **2. Document Production Accompanying Disclosure.** With the Disclosure
12 of Asserted Claims and Infringement Contentions, the party claiming patent
13 infringement shall produce the following items described as set forth in S.P.R. B.2(a)-
14 (c), identifying the documents corresponding to each category by production number.

15 (a) A copy of the file history for each patent in suit.

16 (b) All documents evidencing ownership of the patent rights by the
17 party asserting patent infringement.

18 (c) If a party identifies instrumentalities under S.P.R. B.1(e),
19 documents sufficient to show the operation of any aspects or elements of such
20 instrumentalities the patent claimant relies upon as embodying any asserted claims.

21 **3. Early Meeting of Counsel.** No later than fourteen (14) days after the
22 service of the materials required by S.P.R. B.1 and B.2, counsel for the parties shall
23 exchange Fed. R. Civ. P. 26(a)(1)(A) initial disclosures and meet in person or
24 telephonically to prepare for the scheduling conference and prepare the joint Fed. R.
25 Civ. P. 16(b)/26(f) report. Both sides have the duty to schedule the meeting and
26 comply with this paragraph, with plaintiff initiating the process. The parties should
27 consider, where applicable, consolidation of related cases, including for trial, and
28 transfer for pretrial purposes through the Judicial Panel on Multidistrict Litigation.

1 The parties should consider the Federal Circuit Advisory Committee's Model Order
2 Limiting Excess Patent Claims and Prior Art. The parties should discuss ADR timing,
3 recognizing that settlement decisions, like other business decisions, are often made
4 with incomplete information. Where necessary in multi-defendant cases and upon a
5 showing of good cause, counsel may apply for a reasonable extension of time to hold
6 the early meeting of counsel. The parties shall submit their joint Fed. R. Civ. P. Rule
7 16(b)/26(f) report no later than fourteen (14) days after the early meeting of counsel.
8 *See* Ex. A attached hereto. To the extent that this Order conflicts, if at all, with any of
9 the Court's other Standing Orders, this Order supersedes for all patent matters.

10 **4. Scheduling Conference.** A scheduling order will be issued by the Court.
11 The parties will be required to file a Joint Rule 16(b)/26(f) Report. Upon review of
12 the Report, the Court will either issue a scheduling order or set the matter for a
13 hearing. If a hearing is necessary, each side will have the opportunity to present
14 briefly any potentially dispositive issues it wishes to bring to the Court's attention and
15 to discuss its position on disputed scheduling issues. The presentations are intended
16 to allow the Court to make informed decisions on scheduling and potential
17 modifications of these rules. At the scheduling conference, the Court will issue a
18 scheduling order.

19 **5. Invalidity Contentions.** No later than fourteen (14) days after the
20 scheduling conference, each party opposing a claim of patent infringement shall serve
21 on all parties Invalidity Contentions containing the following information as described
22 in S.P.R. B.5(a) through B.5(d).

23 **(a)** The identity of each item of prior art that allegedly anticipates each
24 asserted claim or renders it obvious. Each prior art patent shall be identified by its
25 number, country of origin and date of issue. Each prior art publication shall be
26 identified by its title, date of publication, author and publisher. Prior art under 35
27 U.S.C. § 102(b)/(a) shall be identified by specifying the item offered for sale or
28 publicly used or known, the date the offer or use took place or the information became

known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f), or other claim of derivation, shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s).

(b) Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness.

(c) A chart identifying where specifically in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6)/(f), the identity of the structure(s), act(s) or material(s) in each item of prior art that performs the claimed function.

(d) Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(2)/(b), or enablement or written description under 35 U.S.C. § 112(1)/(a) of any of the asserted claims.

6. Document Production Accompanying Invalidity Contentions. With the Invalidity Contentions, the party opposing a claim of patent infringement shall produce the items described as follows in S.P.R. B.6(a) through B.6(b), identifying the documents corresponding to each category by production number.

(a) Source code, specifications, schematics, flow charts, artwork, formulas or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant's S.P.R. B.1(c) chart.

2 **(b)** A copy or sample of the prior art identified under S.P.R. B.5(a)
3 that does not appear in the file history of the patent(s) at issue. To the extent any such
4 item is not in English, an English translation of the portion relied upon shall be
5 produced.

6 **7. Disclosure Requirement in Patent Cases for Declaratory Judgment**
7 **of Invalidity Where No Claim of Infringement Has Been Made.** In all cases where
8 a party files a complaint or other pleading seeking a declaratory judgment that a patent
9 is invalid, S.P.R. B.1 and B.2 shall not apply unless and until a claim for patent
10 infringement is made, and the party asserting patent infringement shall have twenty-
11 eight (28) days (instead of fourteen (14) days) after the order setting the scheduling
12 conference to make its disclosures pursuant to S.P.R. B.1 and B.2. If the defendant
13 does not assert a claim for patent infringement in its answer to the complaint, the party
14 seeking a declaratory judgment of invalidity shall serve upon each opposing party its
15 S.P.R. B.5 and B.6 disclosures no later than fourteen (14) days after the order setting
16 the scheduling conference.

17 **C. CLAIM CONSTRUCTION**

18 **1. Exchange of Proposed Terms for Construction.** No later than fourteen
19 (14) days after the S.P.R. B.5 and B.6 disclosures, each party shall serve on each
20 other party a list of claim terms the party contends should be construed by the Court,
21 and identify any claim term the party contends should be governed by 35 U.S.C. §
22 112(6)/(f). The parties shall then work to limit the terms in dispute by narrowing or
23 resolving differences, and to jointly identify the ten (10) terms likely to be most
24 significant to the case.

25 **2. Exchange of Claim Constructions and Extrinsic Evidence.** No later
26 than fourteen (14) days after the exchange of the S.P.R. C.1 lists, the parties shall
27 simultaneously exchange proposed constructions of each term identified by either
28 party for claim construction. Each such construction shall also, for each term that
any party contends is governed by 35 U.S.C. § 112(6)/(f), identify the structure(s),

act(s) or material(s) corresponding to that term's function. At the same time the parties exchange their constructions, each party shall also identify all references from the specification or prosecution history that support its proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. Extrinsic evidence shall be identified by production number and by producing a copy if not previously produced. For any supporting witness, percipient or expert, the identifying party shall also provide a declaration containing that witness' testimony regarding claim construction. The parties shall then meet and confer to narrow the issues and finalize preparation of a Joint Claim Construction and Prehearing Statement.

3. Completion of Claim Construction Discovery. No later than twenty eight (28) days after service of the material required by S.P.R. C.2, the parties shall complete all discovery desired for claim construction, including any depositions of fact and expert witnesses regarding claim construction.

4. Joint Claim Construction and Prehearing Statement. No later than seven (7) days after the completion of claim construction discovery, the parties shall complete and file a Joint Claim Construction and Prehearing Statement. The Joint Claim Construction and Prehearing Statement shall contain the information described as follows in S.P.R. C.4(a) through C.4(e).

(a) The parties' agreed constructions.

(b) A chart showing each party's proposed construction of each disputed term, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence supporting its proposed construction or undermining any other party's proposed construction, including, but not limited to, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses.

2 (c) An identification of up to (ten) 10 terms whose construction will
3 be most significant to the case. If the parties cannot agree on the ten (10) most
4 significant terms, the parties shall identify the ones they agree are most significant
5 and then they may evenly divide the remainder. While the Court may in its
6 discretion construe more than ten (10) terms, the total terms identified by all parties
7 as most significant cannot exceed ten (10). For example, in a case involving two
8 parties, if the parties agree upon the identification of five (5) terms as most
9 significant, each may only identify two (2) additional terms as most significant. A
10 failure to make a good faith effort to narrow the instances of disputed terms or
11 otherwise participate in the meet and confer process of any of the provisions in
12 S.P.R. C. may expose counsel to sanctions, including under 28 U.S.C. § 1927.

13 (d) Whether the party believes it will need more than forty-five (45)
14 minutes total for all its presentation at the claim construction hearing, and if so, how
15 much time, and why more time is necessary.

16 (e) Whether any party proposes to call one or more witnesses at the
17 claim construction hearing, the identity of each such witness, and for each witness, a
18 summary of the testimony including, for any expert, each opinion to be offered on
19 claim construction.

20 **5. Claim Construction Briefs.** No later than seven (7) days after they file
21 the Joint Claim Construction and Prehearing Statement, the parties shall file
22 simultaneous opening claim construction briefs of not more than 7,000 words. These
23 page counts include headings, footnotes, and quotations but exclude the caption, the
24 table of contents, the table of authorities, the signature block, the certification required
25 by Local Rule 11-6.2, and any indices and exhibits. Not later than fourteen (14) days
26 after the opening briefs, the parties shall file simultaneous responsive briefs of not
27 more than ten (10) pages. With its responsive brief, each party shall submit any
28 presentation material (such as demonstrative exhibits, including PowerPoint or other
slide presentations) it wishes to use at the claim construction hearing, and may submit

1 a technology tutorial of no more than twenty (20) minutes in length on CD-ROM,
2 DVD, or USB thumb drive. Any presentation materials shall be served on all parties
3 as of the time that they are filed. At the claim construction hearing, the Court will not
4 accept, and will not permit the parties to use, any presentation material that was not
5 submitted with the briefing. If a party wishes to use a physical exhibit at the claim
6 construction hearing, it shall file with its responsive brief photographs of the physical
7 exhibit along with a statement that it intends to use the physical exhibit at the hearing.
8 Concurrently with the filing of the responsive briefs, the parties shall jointly lodge
9 with the Court the material described as follows in S.P.R. C.5(a) through C.5(c).

10 (a) A chart in Word or WordPerfect format providing the parties'
11 proposed constructions of each disputed term, with a column for the Court's
12 construction.

13 (b) An annotated copy of the certified file history for each asserted
14 patent. Each file history shall be printed double-sided, indexed, tabbed, and compiled
15 in a three-ring binder. Each office action, response, filing or other communication
16 shall be given a separate tab, with the date of each clearly designated. Portions of the
17 file history relied upon by the patentee for claim construction shall be highlighted in
18 yellow. Portions of the file history relied upon by the accused infringer(s) shall be
19 highlighted in blue. Portions of the file history relied upon by both sides shall be
20 highlighted in green.

21 (c) An electronic copy of each file history on a CD-ROM, DVD, or
22 USB thumb drive. Each file history shall be a single PDF file with bookmarks
23 corresponding to the tabs on the paper copy, and containing the highlighting present
24 on the paper copy.

25 **6. Claim Construction Hearing.** Subject to the Court's calendar,
26 approximately one hundred nineteen (119) days (seventeen (17) weeks) after the
27 scheduling conference, the Court will conduct a claim construction hearing. Each
28 side shall have forty-five (45) minutes for its presentation, subject to enlargement at

the Court’s discretion. The Court encourages parties to split up arguments amongst multiple attorneys if it provides an opportunity for lawyers of five or fewer years out of law school to participate in the hearing. Again, parties may not use at the hearing any presentation material they did not previously serve on opposing counsel and submit to the Court in accordance with S.P.R. C.5.

D. FINAL CONTENTIONS, EXPERT REPORTS, DISCLOSURE OF ADVICE OF COUNSEL, AND DISPOSITIVE MOTION DEADLINE

1. Final Infringement Contentions and Expert Reports. No later than twenty-eight (28) days after the Court construes the claims, the party claiming patent infringement shall serve the information described as follows in S.P.R. D.1(a) and D.1(b). The deadlines provided in this rule do not excuse the requirement to supplement disclosures and discovery responses promptly. If a party receiving Final Infringement Contentions believes that amendments were made without good cause, it may move the Court to strike them.

(a) All Rule 26 expert reports on issues where the party claiming patent infringement bears the burden of proof.

(b) A statement that its S.P.R. B.1 contentions are its Final Infringement Contentions, or in the alternative, Final Infringement Contentions that amend its S.P.R. B.1 contentions. A party serving Final Infringement Contentions that amend its prior contentions shall also provide a redline against its prior contentions and a statement of reasons for each amendment. Amendments are subject to a good cause standard but do not require prior Court approval where they are made due to a claim construction by the Court different from that proposed by the party seeking amendment, or recent discovery of nonpublic information about the Accused Instrumentality that was not discovered, despite diligent efforts, before the service of the Infringement Contentions.

2. Final Invalidity Contentions and Expert Reports. No later than twenty-eight (28) days after service of the Final Infringement Contentions, the party

opposing a claim of patent infringement shall serve the information described as follows in S.P.R. D.2(a) and D.2(b). The deadlines provided in this rule do not excuse the requirement to supplement disclosures and discovery responses promptly. If a party receiving Final Invalidity Contentions believes that amendments were made without good cause, it may move the Court to strike them.

(a) All Rule 26 expert reports on issues where the party opposing a claim of patent infringement bears the burden of proof.

(b) A statement that its S.P.R. B.5 contentions are its Final Invalidity Contentions, or in the alternative, Final Invalidity Contentions that amend its S.P.R. B.5 contentions. A party serving Final Invalidity Contentions that amend its prior contentions shall also provide a redline against its prior contentions and a statement of reasons for each amendment. Amendments are subject to a good cause standard but do not require prior Court approval where they are made due to a claim construction by the Court different from that proposed by the party seeking amendment, or recent discovery of material prior art that was not discovered, despite diligent efforts, before the service of the Invalidity Contentions.

3. Rebuttal Expert Reports and Close of Discovery. Rebuttal expert reports are due no later than twenty-eight (28) days after service of the respective S.P.R. D.1 and D.2 reports. Discovery closes twenty-eight (28) days after service of the latest set of rebuttal reports. This will typically be approximately one hundred nineteen (119) days (seventeen (17) weeks) after the claim construction hearing. Amendments to or supplementation of expert reports after Standing Patent Rules deadlines are presumptively prejudicial and shall not be allowed absent prior leave of court upon a showing of good cause that the amendment or supplementation could not reasonably have been made earlier and that the opposing party is not unfairly prejudiced.

4. Advice of Counsel. No later than twenty-eight (28) days after service by the Court of its claim construction ruling, each party relying upon advice of counsel as

part of a patent-related claim or defense for any reason shall produce the information described as follows in S.P.R. D.4(a) through D.4(c). A party not complying with this rule shall not be permitted to rely on advice of counsel for any purpose absent a stipulation of all parties or order of the Court.

(a) Any written advice and related documents for which the attorney-client and work-product protection have been waived.

(b) A written summary of any oral advice and related documents for which the attorney-client and work-product protection have been waived.

(c) A privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the advice that the party is withholding on the grounds of attorney-client privilege or work-product protection.

5. Final Day for Filing Dispositive Motions. All dispositive motions shall be filed no later than twenty-eight (28) days after the close of discovery.

E. TRIAL

1. Standard Trial Procedures. Generally, trial procedure is governed by this Court's Order on Civil Trials and the Central District of California's Local Rules.

2. Other Possible Trial Procedures. The Court is open to creative trial procedures, such as imposing time limits, allowing short statements introducing each witness's testimony before examination, allowing questions from the jury and giving the jury a full set of instructions before the presentation of evidence.

IT IS SO ORDERED.

Dated: May 25, 2023

HON. WESLEY L. HSU
UNITED STATES DISTRICT JUDGE

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EXHIBIT A
STANDING PROTECTIVE ORDER FOR PATENT CASES
ASSIGNED TO JUDGE WESLEY L. HSU

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[PLAINTIFF’S NAME],
Plaintiff,
v.
[DEFENDANT’S NAME],
Defendant.

Case No.

**STANDING PROTECTIVE ORDER
FOR PATENT CASES ASSIGNED
TO JUDGE WESLEY L. HSU**

NOTE: SUBMISSION OF A DOCUMENT APPEARING TO BE THIS FORM SHALL BE A CERTIFICATION THAT IT IS THIS FORM UNLESS CLEARLY NOTED OTHERWISE IN THE TITLE ABOVE WITH THE WORD “(MODIFIED).” COUNSEL SHALL ADHERE TO THE ASSIGNED MAGISTRATE JUDGE’S REQUIREMENTS WITH RESPONSE TO THE PREPARATION OF PROTECTIVE ORDERS FOR ALL NON-PATENT CASES.

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A. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with Local Rule 79-5.1 and this Order if they seek to file anything under seal. This Order does not govern the use at trial of material designated under this Order.

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B. DESIGNATING PROTECTED MATERIAL

(a) Over-Designation Prohibited. Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns that information or items that it designated for

2 protection do not qualify for protection at all or do not qualify for the level of
3 protection initially asserted, that designator must promptly notify all parties that it is
4 withdrawing the mistaken designation.

5 **(b) Manner and Timing of Designation.** Designation under this Order
6 requires the designator to affix the applicable legend (“CONFIDENTIAL,”
7 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
8 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected material.
9 For testimony given in deposition or other proceeding, the designator shall specify all
10 protected testimony and the level of protection being asserted. It may make that
11 designation during the deposition or proceeding, or may invoke, on the record or by
12 written notice to all parties on or before the next business day, a right to have up to
13 twenty-one (21) days from the deposition or proceeding to make its designation.

14 **i.** A party or non-party that makes original documents or materials
15 available for inspection need not designate them for protection until after the
16 inspecting party has identified which material it would like copied and produced.
17 During the inspection and before the designation, all material shall be treated as
18 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting party
19 has identified the documents it wants copied and produced, the producing party must
20 designate the documents, or portions thereof, that qualify for protection under this
21 Order.

22 **ii.** Parties shall give advance notice if they expect a deposition or
23 other proceeding to include designated material so that the other parties can ensure
24 that only authorized individuals are present at those proceedings when such material
25 is disclosed or used. The use of a document as an exhibit at a deposition shall not in
26 any way affect its designation. Transcripts containing designated material shall have
27 a legend on the title page noting the presence of designated material, and the title
28 page shall be followed by a list of all pages (including line numbers as appropriate)

2 that have been designated, and the level of protection being asserted. The designator
3 shall inform the court reporter of these requirements. Any transcript that is prepared
4 before the expiration of the twenty-one (21) day period for designation shall be
5 treated during that period as if it had been designated HIGHLY CONFIDENTIAL –
6 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of the
7 twenty-one (21) day period, the transcript shall be treated only as actually designated.

8 (c) **Inadvertent Failures to Designate.** An inadvertent failure to designate
9 does not, standing alone, waive protection under this Order. Upon timely assertion or
10 correction of a designation, all recipients must make reasonable efforts to ensure that
11 the material is treated according to this Order.

12 **C. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 All challenges to confidentiality designations shall proceed under Local Rule
14 37-1 through Local Rule 37-4.

15 **D. ACCESS TO DESIGNATED MATERIALS**

16 (a) **Basic Principles.** A receiving party may use designated material only
17 for this litigation. Designated material may be disclosed only to the categories of
18 persons and under the conditions described in this Order.

19 (b) **Disclosure of CONFIDENTIAL Material Without Further**
20 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
21 designator, a receiving party may disclose any material designated CONFIDENTIAL
22 only to:

- 23 i. The receiving party's outside counsel of record in this action and
24 employees of outside counsel of record to whom disclosure is reasonably necessary;
25 ii. The officers, directors, and employees of the receiving party to
26 whom disclosure is reasonably necessary, and who have signed the Agreement to Be
27 Bound. (*See* Ex. A-1).
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2 iii. Experts retained by the receiving party's outside counsel of record
3 to whom disclosure is reasonably necessary, and who have signed the Agreement to
4 Be Bound. (*See* Ex. A-1).

5 iv. The Court and its personnel.

6 v. Outside court reporters and their staff, professional jury or trial
7 consultants, and professional vendors to whom disclosure is reasonably necessary,
8 and who have signed the Agreement to Be Bound. (*See* Ex. A-1); and

9 vi. The author or recipient of a document containing the material, or a
10 custodian or other person who otherwise possessed or knew the information.

11 **(c) Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
12 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**
13 **Further Approval.** Unless permitted in writing by the designator, a receiving party
14 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES
15 ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further approval
16 only to:

17 i. The receiving party's outside counsel of record in this action and
18 employees of outside counsel of record to whom it is reasonably necessary to
19 disclose the information;

20 ii. The Court and its personnel;

21 iii. Outside court reporters and their staff, professional jury or trial
22 consultants, and professional vendors to whom disclosure is reasonably necessary,
23 and who have signed the Agreement to Be Bound (Exhibit A-1); and

24 iv. The author or recipient of a document containing the material, or a
25 custodian or other person who otherwise possessed or knew the information.
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2 **(d) Procedures for Approving or Objecting to Disclosure of HIGHLY**
3 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL**
4 **– SOURCE CODE Material to In-House Counsel or Experts.** Unless agreed to in
5 writing by the designator:

6 i. A party seeking to disclose to in-house counsel any material
7 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
8 make a written request to the designator providing the full name of the in-house
9 counsel, the city and state of such counsel’s residence, and such counsel’s current and
10 reasonably foreseeable future primary job duties and responsibilities in sufficient
11 detail to determine present or potential involvement in any competitive decision-
12 making. In-house counsel are not authorized to receive material designated HIGHLY
13 CONFIDENTIAL – SOURCE CODE.

14 ii. A party seeking to disclose to an expert retained by outside
15 counsel of record any information or item that has been designated HIGHLY
16 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
17 SOURCE CODE must first make a written request to the designator that (1) identifies
18 the general categories of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
19 or HIGHLY CONFIDENTIAL – SOURCE CODE information that the receiving
20 party seeks permission to disclose to the expert, (2) sets forth the full name of the
21 expert and the city and state of his or her primary residence, (3) attaches a copy of the
22 expert’s current resume, (4) identifies the expert’s current employer(s), (5) identifies
23 each person or entity from whom the expert has received compensation or funding
24 for work in his or her areas of expertise (including in connection with litigation) in
25 the past five years, and (6) identifies (by name and number of the case, filing date,
26 and location of court) any litigation where the expert has offered expert testimony,
27 including by declaration, report or testimony at deposition or trial, in the past five
28 years. If the expert believes any of this information at (4) - (6) is subject to a

2 confidentiality obligation to a third party, then the expert should provide whatever
3 information the expert believes can be disclosed without violating any confidentiality
4 agreements, and the party seeking to disclose the information to the expert shall be
5 available to meet and confer with the designator regarding any such confidentiality
6 obligations.

7 **iii.** A party that makes a request and provides the information
8 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the
9 identified in-house counsel or expert unless, within seven days of delivering the
10 request, the party receives a written objection from the designator providing detailed
11 grounds for the objection.

12 **iv.** All challenges to objections from the designator shall proceed
13 under Local Rule 37-1 through Local Rule 37-4.

14 **E. SOURCE CODE**

15 **(a) Designation of Source Code.** If production of source code is necessary,
16 a party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is, or
17 includes, confidential, proprietary, or trade secret source code.

18 **(b) Location and Supervision of Inspection.** Any HIGHLY
19 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made available
20 for inspection, in a format allowing it to be reasonably reviewed and searched, during
21 normal business hours or at other mutually agreeable times, at an office of the
22 designating party’s counsel or another mutually agreeable location. The source code
23 shall be made available for inspection on a secured computer in a secured room, and
24 the inspecting party shall not copy, remove or otherwise transfer any portion of the
25 source code onto any recordable media or recordable device. The designator may
26 visually monitor the activities of the inspecting party’s representatives during any
27 source code review, but only to ensure that there is no unauthorized recording,
28 copying or transmission of the source code.

2 (c) **Paper Copies of Source Code Excerpts.** The inspecting party may
3 request paper copies of limited portions of source code that are reasonably necessary
4 for the preparation of court filings, pleadings, expert reports, other papers or for
5 deposition or trial. The designator shall provide all such source code in paper form,
6 including Bates numbers and the label “HIGHLY CONFIDENTIAL – SOURCE
7 CODE.”

8 (d) **Access Record.** The inspecting party shall maintain a record of any
9 individual who has inspected any portion of the source code in electronic or paper
10 form, and shall maintain all paper copies of any printed portions of the source code in
11 a secured, locked area. The inspecting party shall not convert any of the information
12 contained in the paper copies into any electronic format other than for the preparation
13 of a pleading, exhibit, expert report, discovery document, deposition transcript, or
14 other Court document. Any paper copies used during a deposition shall be retrieved at
15 the end of each day and must not be left with a court reporter or any other
16 unauthorized individual.

17 **F. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
18 **PRODUCED IN OTHER LITIGATION**

19 (a) **Subpoenas and Court Orders.** This Order in no way excuses
20 noncompliance with a lawful subpoena or court order. The purpose of the duties
21 described in this section is to alert the interested parties to the existence of this Order
22 and to give the designator an opportunity to protect its confidentiality interests in the
23 court where the subpoena or order issued.

24 (b) **Notification Requirement.** If a party is served with a subpoena or a
25 court order issued in other litigation that compels disclosure of any information or
26 items received by that party in this action and designated in this action as
27 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, or
28 HIGHLY CONFIDENTIAL – SOURCE CODE, that party must do the following:

2 i. Promptly notify the designator in writing. Such notification shall
include a copy of the subpoena or court order.

3 ii. Promptly notify in writing the party who caused the subpoena or
4 order to issue in the other litigation that some or all of the material covered by the
5 subpoena or order is subject to this Order. Such notification shall include a copy of
6 this Order.

7 iii. Cooperate with all reasonable procedures sought by the designator
8 whose material may be affected.

9 (c) **Wait For Resolution of Protective Order.** If the designator promptly
10 seeks a protective order, the party served with the subpoena or court order shall not
11 produce any information designated in this action as CONFIDENTIAL, HIGHLY
12 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
13 SOURCE CODE before a determination by the court where the subpoena or order
14 issued, unless the party has obtained the designator’s permission. The designator shall
15 bear the burden and expense of seeking protection of its confidential material in that
16 court.

17 **G. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

18 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
19 designated material to any person or in any circumstance not authorized under this
20 Order, it must immediately (1) notify in writing the designator of the unauthorized
21 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
22 designated material, (3) inform the person or persons to whom unauthorized
23 disclosures were made of all the terms of this Order, and (4) use reasonable efforts to
24 have such person or persons execute the Agreement to Be Bound. (Exhibit A-1).
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H. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Fed. R. Civ. P. 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 pursuant to Fed. R. Evid. 502(d) and (e).

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I. FILING UNDER SEAL

Without written permission from the designator or a Court order, a party may not file in the public record in this action any designated material. A party seeking to file under seal any designated material must comply with Local Rule 79-5. Filings may be made under seal only pursuant to a court order authorizing the sealing of the specific material at issue. The fact that a document has been designated under this Order is insufficient to justify filing under seal. Instead, parties must explain the basis for confidentiality of each document sought to be filed under seal. Because a party other than the designator will often be seeking to file designated material, cooperation between the parties in preparing, and in reducing the number and extent of, requests for under seal filing is essential. Accordingly, counsel are ordered to meet and confer in person or by telephone at least seven (7) calendar days prior to the filing of an application wherein the basis for the sealing is that it has been deemed confidential by the other party. Not later than two (2) calendar days after the meet and confer process, the opposing party shall confirm whether such information shall be designated as confidential or whether it can be made available to the public. Such an application shall contain the dates and method by which the parties met and conferred otherwise it will be denied without prejudice to an amended application being filed after counsel have completed this process. If a receiving party's request

2 to file designated material under seal pursuant to Local Rule 79-5.1 is denied by the
3 Court, then the receiving party may file the material in the public record unless (1)
4 the designator seeks reconsideration within four (4) days of the denial, or (2) as
5 otherwise instructed by the Court. *See supra* 11., p. 18.

6 **J. FINAL DISPOSITION**

7 Within 60 days after the final disposition of this action, each party shall return
8 all designated material to the designator or destroy such material, including all
9 copies, abstracts, compilations, summaries and any other format reproducing or
10 capturing any designated material. The receiving party must submit a written
11 certification to the designator by the 60-day deadline that (1) identifies (by category,
12 where appropriate) all the designated material that was returned or destroyed, and (2)
13 affirms that the receiving party has not retained any copies, abstracts, compilations,
14 summaries or any other format reproducing or capturing any of the designated
15 material. This provision shall not prevent counsel from retaining an archival copy of
16 all pleadings, motion papers, trial, deposition and hearing transcripts, legal
17 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
18 work product, and consultant and expert work product, even if such materials contain
19 designated material. Any such archival copies remain subject to this Order.

20 **IT IS SO ORDERED.**

21 Dated: May 31, 2023

22 _____
23 HON. WESLEY L. HSU
24 UNITED STATES DISTRICT JUDGE

2 **EXHIBIT A-1**

3 **AGREEMENT TO BE BOUND**

4
5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare under penalty of perjury that
7 I have read in its entirety and understand the Protective Order that was issued by the
8 United States District Court for the Central District of California on _____ [date]
9 in the case of _____ [insert formal name of the case and the number and
10 initials assigned to it by the court]. I agree to comply with and to be bound by all the
11 terms of this Protective Order, and I understand and acknowledge that failure to so
12 comply could expose me to sanctions and punishment for contempt. I solemnly
13 promise that I will not disclose in any manner any information or item that is subject
14 to this Protective Order to any person or entity except in strict compliance with this
15 Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Central District of California for the purpose of enforcing this Order, even if
18 such enforcement proceedings occur after termination of this action.

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

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 [printed name]

27 Signature: _____

28 [signature]