



sufficient information to accept the representation(s) made by the party or parties producing Protected Material as to the confidential, proprietary, and/or trade secret nature of such Protected Material; and

(4) To protect the respective interests of the parties and to facilitate the progress of disclosure and discovery in this case, the following Order should issue:

**IT IS THEREFORE ORDERED THAT:**

1. **Application of Protective Order** – This Protective Order shall govern all “Covered Matter,” defined as information, testimony, things, and documents filed with the Court or produced or given (either by a party or by a non-party) as part of discovery in this action, including documents and things, portions of documents, answers to interrogatories, responses to requests for admissions of fact, depositions, transcripts of depositions, exhibits to depositions and hearings, portions of briefs, memoranda and writings filed with or otherwise supplied to the Court, and technical and commercial information derived therefrom deemed by any entity producing that information to be confidential information. This Protective Order permits the parties to designate certain Covered Matter as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE” (hereafter collectively referred to as “Protected Material”).

The provisions of this Protective Order with respect to Protected Material shall not apply to information that (a) was, is, or becomes public knowledge without fault of the receiving party and not in violation of this Protective Order; (b) is lawfully acquired in good faith from a third

independently by the receiving party by means that do not constitute a violation of this Protective Order; or (e) was submitted to any governmental entity without request for confidential treatment.

(a) **CONFIDENTIAL - ATTORNEYS' EYES ONLY designation** - A Designating Party may designate as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that portion of any Covered Matter that the Designating Party believes in good faith in accordance with Fed. R. Civ. Proc. 26(c) contains confidential information that, if disclosed to a competitor, may cause competitive harm, including but not limited to confidential research and/or development materials (including current research and development materials for products not yet commercially released), financial, technical, marketing, product planning, personal information, commercial information, information obtained from a non-party pursuant to a current Nondisclosure Agreement (“NDA”), patent prosecution (including non-public patent prosecution information) and patent licensing information, information regarding intellectual property protection strategies and steps, industry analyses, settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the producing party.

(b) **HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE designation** - The parties recognize that, in certain instances, software can be highly valuable and must be maintained in confidence. Such software and in particular readable software in the

“HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE” prior to producing the copies to the opposing party. “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material may also be designated with alternative legends, including “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or any other similar designation sufficient to provide notice of the confidential nature of such material, which shall have the same effect as designating such material as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If a document has more than one designation, the higher or more restrictive confidential designation applies. To the extent the parties produce documents that were first produced in other litigations and labeled “Confidential” or “Highly Confidential” or designated with any other confidentiality restrictions, such documents will be treated as if they had been designated as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” under the terms of this Protective Order, unless and until the parties reach a different agreement regarding such documents and/or the Court rules otherwise. This Protective Order shall not in any other way change a party’s obligations under any other agreement or protective order.

(a) **Hard Copy Documents:** Hard copy documents may be designated by placing one of the following legends, or an equivalent thereof, on any such document:

“CONFIDENTIAL”

“CONFIDENTIAL - ATTORNEYS’ EYES ONLY”

“HIGHLY CONFIDENTIAL”

“HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE”

reduced to hard copy, tangible, or physical form or that cannot be conveniently designated as set forth in Paragraph 2(a) shall be designated by informing the receiving party of the designation in writing, and/or in the load file or other similar database, table or chart accompanying said production. To the extent the receiving party subsequently generates any permitted copies of this information, whether electronic or hard copy, it shall ensure that all such copies are clearly designated with the appropriate confidentiality designations. When documents are produced in electronic form, the producing party shall include a confidentiality designation on the medium containing the documents. If the medium contains documents in native electronic format, the medium shall include an electronic database record for each native format file that includes on the face of the electronic database record the applicable confidentiality designation (if any) and a document identification or Bates number for the associated document. When a receiving party prints a native format file from such medium, the receiving party shall also print the corresponding electronic database record and attach it to the native format file so that the native file's confidentiality designation will be readily apparent to one viewing the file. In the event that a receiving party prints a native format file from a medium that has been marked with a confidentiality designation, but the native file is not accompanied by an electronic database record or the electronic database record could not be printed, the receiving party shall mark each page of such native file with a "CONFIDENTIAL - ATTORNEYS' EYES ONLY" designation until the native file's electronic database record may be located or printed.

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