

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

QUEST NETTECH CORPORATION,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Case No. 2:19-cv-00118-JRG

JURY TRIAL DEMANDED

PROTECTIVE ORDER

WHEREAS, Plaintiff, Quest Nettech Corp., and Defendant, Apple Inc., hereafter referred to as “the Parties,”¹ believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the

¹ “Party” means any party to this case, including all of its officers, directors, employees, and outside counsel and their support staffs. “Parties” shall also include any other parties that are added to this Action and served with process in accordance with the Federal Rules of Civil Procedure.

Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE.” The words “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE” shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought.

2. For digital files being produced, the producing Party may mark each viewable page or image with the appropriate designation, and mark the medium, container, and/or communication in which the digital files were contained. In the event that original documents are produced for inspection, the original documents shall be presumed “RESTRICTED – ATTORNEYS’ EYES ONLY” during the inspection and re- designated, as appropriate during the copying process. Where electronic files and documents are produced in native electronic format, such electronic files and documents shall be designated for protection under this Order by appending to the file names or designators information indicating whether the file contains “CONFIDENTIAL,” “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE,” material, or shall use any other reasonable method for so designating Protected Materials produced in electronic format. When electronic files or documents are printed for use at deposition, in a court proceeding, or for provision in printed form to an expert or consultant pre-approved pursuant to paragraph 13, the party printing the electronic files or documents shall affix a legend to the printed document corresponding to the designation of the Designating Party and including the production number and designation associated with the native file. No one shall seek to use in this litigation a .tiff, .pdf or other image format version of a document produced in native file format without first providing a copy

of the image format version to the producing Party so that the producing Party can review the image to ensure that no information has been altered.

3. For deposition and hearing transcripts, the word “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE” shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL”, “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE.” All Protected Material not reduced to documentary, tangible or physical form or which cannot be conveniently designated as set forth herein shall be designated by the producing Party by informing the receiving Party of the designation in writing. Any document (including physical objects) made available for inspection by counsel for the receiving Party prior to producing copies of selected items shall initially be considered, as a whole, to constitute Protected Material (unless otherwise designated at the time of inspection) and shall be subject to this Order. Thereafter, the producing Party shall have reasonable time to review and designate the appropriate documents or things as “CONFIDENTIAL” or “RESTRICTED -- ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE” prior to furnishing copies to the receiving Party. In the event a deposition is videotaped, the original and all copies of the videotape shall be marked by the video technician to indicate that the contents of the videotape are subject to this Protective Order, substantially along the lines of “This videotape contains confidential testimony used in this case and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to the terms of the operative Protective Order in this matter or pursuant to written

stipulation of the parties.” It shall be the responsibility of the Party that designates the deposition as confidential to inform the videographer of the requirements in this Paragraph.

4. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order with the designation “Confidential” or “Confidential - Outside Attorneys’ Eyes Only” shall receive the same treatment as if designated “RESTRICTED – ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is redesignated to have a different classification under this Order.

5. With respect to documents, information or material designated “CONFIDENTIAL, “RESTRICTED – ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” (“DESIGNATED MATERIAL”),² subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS, as well as testimony or presentations by Parties or their counsel in court that reveal Protected Material shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

6. A designation of Protected Material (i.e., “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE”) may

² The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE,” both individually and collectively.

be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.

7. The following information is not Protected Material: (a) any information that is or, after its disclosure to a receiving Party, becomes part of the public domain as a result of publication not involving a violation of this Order or other obligation to maintain the confidentiality of such information; (b) any information that the receiving Party can show was already publicly known prior to the disclosure; and (c) any information that the receiving Party can show by written records was received by it from a source who obtained the information lawfully and under no obligation of confidentiality to the producing Party.

8. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 16 herein:

- (a) outside counsel of record in this Action for the Parties;
- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
- (c) up to three (3) in-house counsel (“in-house counsel” includes attorneys or members of the legal staff or the intellectual property department of a party”) for the Parties who have responsibility for making decisions dealing directly

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