IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

JAWBONE INNOVATIONS, LLC,	§	Case No. 6:21-cv-00984-ADA
Plaintiff,	§	**JURY TRIAL DEMANDED**
v.	§	
APPLE, INC.,	§	
Defendant.	§	

JAWBONE INNOVATIONS, LLC'S REPLY IN FURTHER SUPPORT OF ITS OPPOSED MOTION FOR ENTRY OF DISPUTED PROTECTIVE ORDER (DKT. 40)

Plaintiff Jawbone Innovations, LLC ("Jawbone" or "Plaintiff"), by and through its undersigned counsel, respectfully submits this Reply in Further Support of its Opposed Motion for Entry of Disputed Protective Order (Dkt. 40) ("Motion").

The Court's default protective order reflects carefully considered compromises between the need for efficient and workable discovery and the parties' security concerns, and effectively balances those concerns. Recognizing those compromises, and the work that the Court put into the default protective order, Jawbone's proposal closely tracks the Court's default protective order. Jawbone's proposal should be adopted because it reflects the same considerations.

Jawbone proposes only one disputed modification[1] of the Court's default protective order: to require that the source code computer include "a full-size keyboard, mouse, and two monitors." It is reasonable to require these peripherals, and their presence will help both parties by accelerating review. Moreover, Apple's source code computers are typically laptops bound inside a briefcase that prevents comfortable use of the keyboard. While Apple has offered to unlock the USB ports of the laptop, it is impracticable and unreasonable for code reviewers to travel with their own monitors and other peripherals, and it remains unclear whether unlocking USB ports would even allow connection of monitors. This proposal follows the spirit of the Court's default protective order and is necessary in view of Apple's positions.

On the other hand, Apple's proposal completely rewrites the Court's default protective order, more than doubling its length and adding a slew of unworkable restrictions, without identifying any legitimate interest served by these modifications. Apple's proposals regarding

[1] Jawbone withdrew its original proposal for a provision governing installation of review software based on Apple's assurance that SciTools Understand and Beyond Compare are already installed on the review computer, and that Apple would not object to installing BBEdit and Atom for viewing of source code.

prosecution and acquisition bars, and post-suit monitoring requirements for experts are both unworkable, and so burdensome that they appear designed to deter experts and consultants from taking work against Apple. Apple's proposed source code restrictions would also make code review practically impossible while drastically increasing the burden on the receiving party. Apple also fails to show why the source code at issue is any more sensitive than the source code already contemplated in the Court's default protective order – it cannot. Apple's other modifications serve only to complicate the protective order and add needless burden. Apple fails to identify any legitimate concerns advanced by these over-restrictive provisions which are not already squarely addressed by the Court's default protective order, instead suggesting that it is automatically entitled to additional protections because it is Apple. Apple's proposal should be rejected.

Apple also wrongly suggests that the parties were not at a true impasse. Apple disregards the absolutely clear record that, after extensive correspondence and a lengthy meet and confer teleconference with lead counsel, it refused to agree to virtually every substantive provision of Jawbone's proposal mirroring the Court's default protective order. Given its argument, Apple apparently failed to treat that proposal as legitimate at all.

Finally, Apple's only update to its proposal in view of the Court's guidance that "the Court likes to track its default protective order as closely as possible" was to depart ***further*** from the Court's default protective order by deleting section 5(d). Apple fails to justify this departure.

Jawbone therefore respectfully requests that the Court enter its proposed protective order.

Dated: May 23, 2022

Respectfully submitted,

/s/*Peter Lambrianakos*

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing via electronic mail to all counsel of record. Any other counsel of record will be served by first class U.S. mail.

/s/Peter Lambrianakos
Peter Lambrianakos