

The Honorable Kymberly K. Evanson

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEVEN FLOYD, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC. and APPLE INC.,

Defendants.

Case No. 2:22-cv-01599-KKE

**PROTECTIVE ORDER**

PROTECTIVE ORDER

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential, proprietary, trade  
3 secret, commercially sensitive, or private information for which special protection may be  
4 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
5 following Stipulated Protective Order. The parties acknowledge that this agreement is consistent  
6 with LCR 26(c). It does not confer blanket protection on all disclosures or responses to  
7 discovery, the protection it affords from public disclosure and use extends only to the limited  
8 information or items that are entitled to confidential treatment under the applicable legal  
9 principles, and it does not presumptively entitle parties to file confidential information under  
10 seal. The availability of protection pursuant to this Stipulated Protective Order does not preclude  
11 a party from withholding information protected by any applicable privilege. Nothing in this  
12 Stipulated Protective Order shall restrict in any way the right of a Producing Party to disclose or  
13 make use of its own documents or Discovery Material. Under LCR 26(c)(2), the parties began  
14 with the District's Model Protective Order, and have identified departures from the model in a  
15 redlined copy, attached as Exhibit 1.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: A Party or Non-Party that challenges the designation of  
18 information or items under this Order.

19 2.2 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel  
20 (as well as their support staff) to whom it is reasonably necessary to disclose the information for  
21 this litigation.

22 2.3 Designating Party: A Party, Non-Party, person, or entity designating documents  
23 or information as Protected Information under this Order.

24 2.4 Discovery Material: All items or information, including from any non-party,  
25 regardless of the medium or manner in which it is generated, stored, or maintained (including,  
26 among other things, testimony, transcripts, and tangible things), that are produced or generated in  
27 disclosures or responses to discovery in this matter.

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1           2.5     Expert: A person with specialized knowledge or experience in an area pertinent  
2 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness  
3 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
4 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
5 or of a Party's competitor.

6           2.6     In-House Counsel: Attorneys (and their support staff, including legal secondees  
7 and economists) who are employees or contractors of a Party and whose responsibilities include  
8 overseeing, working on, or supporting this action. In-House Counsel does not include Outside  
9 Counsel of Record or any other outside counsel.

10          2.7     Non-Party: Any natural person, partnership, corporation, association, or other  
11 legal entity not named as a Party to this action.

12          2.8     Outside Counsel of Record: Attorneys who are not employees of a Party to this  
13 action but are retained to represent or advise a Party to this action and have appeared in this  
14 action or are affiliated with a law firm that has appeared on behalf of that Party in this action.

15          2.9     Party: Any Party to this action, including all its officers, directors, employees,  
16 consultants, vendors, retained Experts, and Outside Counsel of Record (and their support staff).

17          2.10    Producing Party: A Party or Non-Party that produces Discovery Material in this  
18 action.

19          2.11    Protected Material: Any Discovery Material that is designated as "Confidential"  
20 or "Highly Confidential – Attorneys' Eyes Only."

21          2.12    Receiving Party: A Party that receives Discovery Material from a Producing  
22 Party.

23 **3.     PROTECTED MATERIAL**

24          3.1     "CONFIDENTIAL" Material: Documents and tangible things that may be  
25 produced or otherwise exchanged that 1) the Designating Party reasonably believes contain,  
26 describe, or disclose sensitive, non-public, confidential information, such as (a) court records,  
27 whether in this District or other courts, currently maintained under seal; (b) information subject

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1 to a non-disclosure or confidentiality agreement; (c) employee personnel information; (d) a Non-  
2 Party's commercially sensitive information, trade secrets, or competitive or strategic initiatives  
3 that are not readily ascertainable and for which the Designating Party has taken reasonable steps  
4 to maintain confidentiality; and (e) personal identifying information subject to redaction under  
5 Local Rule 5.2, or 2) the Designating Party's own commercially sensitive information, such as  
6 (a) financial or accounting information; (b) commercially sensitive internal communications or  
7 information; and (c) business negotiations, transactions, and dealings with Non-Parties.

8 3.2 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Material:

9 Extremely sensitive materials that qualify as "CONFIDENTIAL" and that the Designating Party  
10 reasonably believes contain highly sensitive business or personal information, the disclosure of  
11 which to another Party or Non-Party would create a risk of competitive or commercial  
12 disadvantage to the Designating Party.

13 3.3 This Order does not envision the production of source code or object code.

14 Should the Parties agree to source code discovery, or be ordered to produce such discovery, they  
15 will enter a separate stipulated source code supplement to this Order.

16 4. SCOPE

17 The protections conferred by this agreement cover not only Protected Material (as  
18 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
19 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
20 conversations, or presentations by Parties or their Counsel, Non-Parties, and/or Experts that  
21 might reveal Protected Material.

22 However, the protections conferred by this agreement do not cover information that is in  
23 the public domain or becomes part of the public domain through trial or otherwise.

24 5. ACCESS TO AND USE OF PROTECTED MATERIAL

25 5.1 Basic Principles. A Receiving Party may use Discovery Material that is disclosed  
26 or produced by another Party or by a Non-Party in connection with this case only for  
27 prosecuting, defending, or attempting to settle this litigation. Apart from disclosures to the

PROTECTIVE ORDER

1 Producing Party and its current employees and agents, which nothing in this Protective Order  
2 prohibits, Protected Material may be disclosed only to the categories of persons and under the  
3 conditions described in this agreement. Protected Material must be stored and maintained by a  
4 Receiving Party at a location and in a secure manner that ensures that access is limited to the  
5 persons authorized under this agreement. For the avoidance of doubt, for purposes of this  
6 Section 5 of the Protective Order, Protected Material can be accessed from a physical location  
7 outside of the United States so long as the Protected Material is maintained on a server within the  
8 United States and in no way leaves the server within the United States (i.e., Protected Material  
9 must be accessed view-only, and cannot be downloaded, photographed, printed, or accessed in  
10 any other manner that would cause it to physically or electronically leave the United States  
11 server).

12 5.2 Disclosure of “CONFIDENTIAL” Material. A Producing Party may designate  
13 Discovery Material as “CONFIDENTIAL” if it contains or reflects confidential, proprietary,  
14 and/or commercially sensitive information. Unless otherwise ordered by the court or permitted in  
15 writing by the Designating Party, a Receiving Party may disclose any Confidential Material only  
16 to:

17 (a) the Receiving Party’s Outside Counsel of Record, as well as employees of  
18 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
19 this litigation;

20 (b) Experts and their staff to whom disclosure is reasonably necessary for this  
21 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
22 such expert or consultant is not a current officer, director, or employee of a Party or of a  
23 competitor of a Party, nor anticipated at the time of retention to become an officer, director or  
24 employee of a Party or of a competitor of a Party. Such expert or consultant accesses the  
25 materials in the United States only, and does not transport them to or access them from any  
26 foreign jurisdiction, except though the method described in 5.1;

27 (c) the court, court personnel, and court reporters and their staff;

PROTECTIVE ORDER

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