

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICROSOFT CORPORATION,

Plaintiff,

vs.

CUSTOMER FOCUS SERVICES, LLC,
a California limited liability company,
d/b/a OMNITECH SUPPORT, FIXNOW
TECH, and TECHSUPPORT PRO;
MARC HABERMAN, an individual;
RACHEL EILAT HABERMAN, an
individual; C-CUBED SOLUTIONS
PRIVATE LIMITED, a private business
company formed under the laws of India;
ANYTIME TECHIES, LLC, a Florida
limited liability company, d/b/a V TECH
SUPPORTS, MY TECH SUPPORTS and
WINDOWS SET GET SOLUTION, and
DOES 1-10, inclusive,

Defendants.

Case No. **CV 14-09667 PA (AGR~~x~~)**

**STIPULATED PROTECTIVE
ORDER**

[Assigned to the Hon. Percy Anderson]

STIUPLATED PROTECTIVE ORDER

DWT 27577005v2 0025936-002195
DWT 27711250v1 0025936-002195

DAVIS WRIGHT TREMAINE LLP
865 S. FIGUEROA ST, SUITE 2400
LOS ANGELES, CALIFORNIA 90017-2566
(213) 633-6800
Fax: (213) 633-6899

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential or Attorney's Eyes Only treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of

1 discovery materials, to adequately protect information the parties are entitled to keep
2 confidential, to ensure that the parties are permitted reasonable necessary uses of
3 such material in preparation for and in the conduct of trial, to address their handling
4 at the end of the litigation, and serve the ends of justice, a protective order for such
5 information is justified in this matter. It is the intent of the parties that information
6 will not be designated as confidential or Attorney's Eyes Only for tactical reasons
7 and that nothing be so designated without a good faith belief that it has been
8 maintained in a confidential, non-public manner, and there is good cause why it
9 should not be part of the public record of this case.

10
11 2. DEFINITIONS

12 2.1 Action: this pending federal law suit.

13 2.2 "ATTORNEY'S EYES ONLY" Information or Items: information
14 (regardless of how it is generated stored or maintained) for which the disclosure to
15 another Party or non-party would create a substantial risk of serious injury that could
16 not be avoided by less restrictive means. "Attorney's Eyes Only" materials shall be
17 considered "Confidential."

18 2.2 Challenging Party: a Party or Non-Party that challenges the designation
19 of information or items under this Order.

20 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
21 how it is generated, stored or maintained) or tangible things that qualify for
22 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
23 Good Cause Statement.

24 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
25 their support staff).

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
6 from a Producing Party.

7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material.

13 Any use of Protected Material at trial shall be governed by the orders of the
14 trial judge. This Order does not govern the use of Protected Material at trial.

15 4. DURATION

16 Once a case proceeds to trial, all of the information that was designated as
17 confidential or maintained pursuant to this protective order becomes public and will
18 be presumptively available to all members of the public, including the press, unless
19 compelling reasons supported by specific factual findings to proceed otherwise are
20 made to the trial judge in advance of the trial. See Kamakana v. City and County of
21 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
22 showing for sealing documents produced in discovery from “compelling reasons”
23 standard when merits-related documents are part of court record). Accordingly, the
24 terms of this protective order do not extend beyond the commencement of the trial.

25 5. DESIGNATING PROTECTED MATERIAL
26
27

1 5.1 Exercise of Restraint and Care in Designating Material for Protection.
2 Each Party or Non-Party that designates information or items for protection under
3 this Order must take care to limit any such designation to specific material that
4 qualifies under the appropriate standards. The Designating Party must designate for
5 protection only those parts of material, documents, items, or oral or written
6 communications that qualify so that other portions of the material, documents, items,
7 or communications for which protection is not warranted are not swept unjustifiably
8 within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations
10 that are shown to be clearly unjustified or that have been made for an improper
11 purpose (e.g., to unnecessarily encumber the case development process or to impose
12 unnecessary expenses and burdens on other parties) may expose the Designating
13 Party to sanctions.

14 If it comes to a Designating Party’s attention that information or items that it
15 designated for protection do not qualify for protection, that Designating Party must
16 promptly notify all other Parties that it is withdrawing the inapplicable designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in
18 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
19 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
20 under this Order must be clearly so designated before the material is disclosed or
21 produced.

22 Designation in conformity with this Order requires:
23 (a) for information in documentary form (e.g., paper or electronic
24 documents, but excluding transcripts of depositions or other pretrial or trial
25 proceedings), that the Producing Party affix at a minimum, the legend
26 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”) or “ATTORNEY’S
27 EYES ONLY”, to each page that contains protected material. If only a portion or
28

1 portions of the material on a page qualifies for protection, the Producing Party also
2 must clearly identify the protected portion(s) (e.g., by making appropriate markings
3 in the margins).

4 (b) for testimony given in depositions that the Designating Party
5 identify the Disclosure or Discovery Material on the record, before the close of the
6 deposition all protected testimony.

7 (c) for information produced in some form other than documentary
8 and for any other tangible items, that the Producing Party affix in a prominent place
9 on the exterior of the container or containers in which the information is stored the
10 legend “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY.” If only a portion or
11 portions of the information warrants protection, the Producing Party, to the extent
12 practicable, shall identify the protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive the
15 Designating Party’s right to secure protection under this Order for such material.
16 Upon timely correction of a designation, the Receiving Party must make reasonable
17 efforts to assure that the material is treated in accordance with the provisions of this
18 Order.

19
20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court’s
23 Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process under Local Rule 37.1 et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be on
27 the Designating Party. Frivolous challenges, and those made for an improper

1 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
2 parties) may expose the Challenging Party to sanctions. Unless the Designating
3 Party has waived or withdrawn the confidentiality designation, all parties shall
4 continue to afford the material in question the level of protection to which it is
5 entitled under the Producing Party's designation until the Court rules on the
6 challenge.

7
8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending, or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under the
13 conditions described in this Order. When the Action has been terminated, a
14 Receiving Party must comply with the provisions of section 13 below (FINAL
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action,
24 as well as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action, including, but not limited to,
26 contract review attorneys, law clerks, paralegals, legal secretaries, and graphics or
27 design services professionals or firms retained by counsel;

1 (b) the officers, directors, and employees (including House Counsel)
2 of the Receiving Party to whom disclosure is reasonably necessary for this Action;
3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
6 (d) the court and its personnel;
7 (e) court reporters and their staff;
8 (f) professional jury or trial consultants, mock jurors, and
9 Professional Vendors to whom disclosure is reasonably necessary for this Action and
10 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
11 (g) copy, document management, or electronic discovery or imaging
12 services retained by counsel to assist in the management and duplication of
13 confidential material, provided that counsel for the party retaining the copy or
14 imaging service instructs the service not to disclose any confidential material to third
15 parties and to immediately return all originals and copies of any confidential
16 material; upon completion of the service;
17 (h) the author or recipient of a document containing the information
18 or a custodian or other person who otherwise possessed or knew the information;
19 (i) during their depositions, witnesses, and attorneys for witnesses in
20 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
21 party requests that the witness sign the form attached as Exhibit 1 hereto; and
22 (2) they will not be permitted to keep any confidential information unless they sign
23 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
24 agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material may be
26 separately bound by the court reporter and may not be disclosed to anyone except as
27 permitted under this Stipulated Protective Order; and

1 (j) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement discussions.

3 7.3 Disclosure of “ATTORNEY’S EYES ONLY” Information or Items.

4 Unless otherwise ordered by the court or permitted in writing by the designating
5 party, a receiving party may disclose Attorney’s Eyes Only material only to those
6 persons identified in Section 7.2(a, c-h) and House Counsel, except that House
7 Counsel for any business unit of Microsoft responsible for providing technical
8 support to Microsoft customers shall not be entitled to receive information or items
9 designated as Attorneys’ Eyes Only. The receiving party shall also require that its
10 authorized House Counsel sign the “Acknowledgment and Agreement to Be Bound”
11 (Exhibit A) and provide an executed copy of Exhibit A to the Outside Counsel of
12 Record for all Parties prior to the disclosure of Attorney’s Eyes Only Information or
13 Items to its authorized House Counsel.

14
15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
16 OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this Action as
19 “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY,” that Party must:

20 (a) promptly notify in writing the Designating Party. Such
21 notification shall include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or
23 order to issue in the other litigation that some or all of the material covered by the
24 subpoena or order is subject to this Protective Order. Such notification shall include
25 a copy of this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be
27 pursued by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served with
2 the subpoena or court order shall not produce any information designated in this
3 action as “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY” before a
4 determination by the court from which the subpoena or order issued, unless the Party
5 has obtained the Designating Party’s permission. The Designating Party shall bear
6 the burden and expense of seeking protection in that court of its confidential material
7 and nothing in these provisions should be construed as authorizing or encouraging a
8 Receiving Party in this Action to disobey a lawful directive from another court.

9
10 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
11 PRODUCED IN THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced by
13 a Non-Party in this Action and designated as “CONFIDENTIAL” or
14 “ATTORNEY’S EYES ONLY.” Such information produced by Non-Parties in
15 connection with this litigation is protected by the remedies and relief provided by this
16 Order. Nothing in these provisions should be construed as prohibiting a Non-Party
17 from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request,
19 to produce a Non-Party’s confidential information in its possession, and the Party is
20 subject to an agreement with the Non-Party not to produce the Non-Party’s
21 confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the
23 Non-Party that some or all of the information requested is subject to a confidentiality
24 agreement with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the
26 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
27 reasonably specific description of the information requested; and

1 (3) make the information requested available for inspection by
2 the Non-Party, if requested.

3 (c) If the Non-Party fails to seek a protective order from this court
4 within 14 days of receiving the notice and accompanying information, the Receiving
5 Party may produce the Non-Party's confidential information responsive to the
6 discovery request. If the Non-Party timely seeks a protective order, the Receiving
7 Party shall not produce any information in its possession or control that is subject to
8 the confidentiality agreement with the Non-Party before a determination by the court.
9 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
10 of seeking protection in this court of its Protected Material.

11
12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
14 Protected Material to any person or in any circumstance not authorized under this
15 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
16 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
17 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
18 persons to whom unauthorized disclosures were made of all the terms of this Order,
19 and (d) request such person or persons to execute the "Acknowledgment and
20 Agreement to Be Bound" that is attached hereto as Exhibit A.

21
22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
23 PROTECTED MATERIAL

24 When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other protection,
26 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
27 Procedure 26(b)(5). This provision is not intended to modify whatever procedure
28

1 may be established in an e-discovery order that provides for production without prior
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
3 parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement in the stipulated protective order submitted
6 to the court.

7
8 **12. MISCELLANEOUS**

9 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 **12.3 Filing Protected Material.** A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22
23 **13. FINAL DISPOSITION**

24 After the final disposition of this Action, as defined in paragraph 4, within 60
25 days of a written request by the Designating Party, each Receiving Party must return
26 all Protected Material to the Producing Party or destroy such material. As used in
27 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected
2 Material. Whether the Protected Material is returned or destroyed, the Receiving
3 Party must, upon request by another Party, submit a written certification to the
4 Producing Party (and, if not the same person or entity, to the Designating Party) by
5 the 60 day deadline that (1) identifies (by category, where appropriate) all the
6 Protected Material that was returned or destroyed and (2) affirms that the Receiving
7 Party has not retained any copies, abstracts, compilations, summaries or any other
8 format reproducing or capturing any of the Protected Material. Notwithstanding this
9 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
10 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
11 deposition and trial exhibits, expert reports, attorney work product, and consultant
12 and expert work product, even if such materials contain Protected Material. Any such
13 archival copies that contain or constitute Protected Material remain subject to this
14 Protective Order as set forth in Section 4 (DURATION).

15
16 14. Any violation of this Order may be punished by any and all appropriate
17 measures including, without limitation, contempt proceedings and/or monetary
18 sanctions.

19
20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21
22 DATED: September 09, 2015

23
24 

25 _____
26 Alicia G. Rosenberg
27 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on _____ [date] in the case of
8 *Microsoft Corporation v. Customer Focus Services, LLC et al.*, Case No. CV 14-
9 09667 PA (AGRx). I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that
13 is subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order. I further agree to submit to the
15 jurisdiction of the United States District Court for the Central District of California
16 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
17 such enforcement proceedings occur after termination of this action. I hereby appoint
18 _____ [print or type full name] of
19 _____ [print or type full address and telephone
20 number] as my California agent for service of process in connection with this action
21 or any proceedings related to enforcement of this Stipulated Protective Order.

22 Date: _____
23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____