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NOTE: CHANGES MADE BY THE COURT

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CREE, INC., a North Carolina Corporation Doing Business in California,

Plaintiff,

v.

GEARXS, INC., an Illinois Corporation Doing Business in California; REFAEL YITZHAKI, an Individual d/b/a GEARXS, INC.; WEST COAST IMPORTS, INC., a California Corporation; and DOES 1-10, Inclusive,

Defendants.

Case No.: 2:16-cv-04515-JFW-PLAx

PROTECTIVE ORDER FOR LITIGATION INVOLVING HIGHLY SENSITIVE CONFIDENTIAL INFORMATION AND/OR TRADE SECRETS

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1 The Court, pursuant to the Stipulated Protective Order For Litigation
2 Involving Highly Sensitive Confidential Information and/or Trade Secrets,
3 between CREE, INC. (collectively “Plaintiffs”), on the one hand, and Defendant
4 West Coast Imports, Inc. (“Defendant”), on the other, hereby ORDERS that a
5 Protective Order be issued in the above-referenced matter as follows:

6 1. A. PURPOSES AND LIMITATIONS

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

20 B. GOOD CAUSE FINDING

21 This action is likely to involve trade secrets, customer and pricing lists and
22 other valuable research, development, commercial, financial, technical and/or
23 proprietary information of which special protection from public disclosure and
24 from use for any purpose other than prosecution of this action is warranted. Such
25 confidential and proprietary materials and information consist of, among other
26 things, confidential business or financial information, information regarding
27 confidential business practices, or other confidential research, development, or
28 commercial information (including information implicating privacy rights of third

1 parties), information otherwise generally unavailable to the public, or which may
2 be privileged or otherwise protected from disclosure under state or federal
3 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
4 flow of information, to facilitate the prompt resolution of disputes over
5 confidentiality of discovery materials, to adequately protect information the
6 parties are entitled to keep confidential, to ensure the parties are permitted
7 reasonably necessary uses of such material in preparation for and in the conduct of
8 trial, to address their handling at the end of the litigation, and serve the ends of
9 justice, a protective order for such information is justified in this matter. It is the
10 intent of the parties that information will not be designated as confidential for
11 tactical reasons and that nothing be so designated without good faith belief that it
12 has been maintained in a confidential, non-public manner, and there is good cause
13 why it should not be part of the public record of this case.

14 2. DEFINITIONS

15 2.1 Action: Cree, Inc. v. GearXS, Inc., et al., Case No.: 2:16-cv-04515-
16 JFW-PLAx.

17 2.2 Challenging Party: a Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
20 how it is generated, stored or maintained) or tangible things that qualify for
21 protection under *Federal Rule of Civil Procedure* 26(c).

22 2.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
23 Information or Items: extremely sensitive “Confidential Information or Items,”
24 disclosure of which to another Party or Non-Party would create a substantial risk
25 of serious harm that could not be avoided by less restrictive means.

26 2.5 Counsel (without qualifier): Outside Counsel of Record and House
27 Counsel (as well as their support staff).

28

1 2.6 Designating Party: a Party or Non-Party that designates information
2 or items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY.”

5 2.7 Disclosure or Discovery Material: all items or information, regardless
6 of the medium or manner in which it is generated, stored, or maintained
7 (including, among other things, testimony, transcripts, and tangible things), that
8 are produced or generated in disclosures or responses to discovery in this matter.

9 2.8 Expert: a person with specialized knowledge or experience in a
10 matter pertinent to the litigation who (1) has been retained by a Party or its
11 counsel to serve as an expert witness or as a consultant in this Action, (2) is not a
12 past or current employee of a Party or of a Party’s competitor, and (3) at the time
13 of retention, is not anticipated to become an employee of a Party or of a Party’s
14 competitor.

15 2.9 House Counsel: attorneys who are employees of a party to this
16 Action. House Counsel does not include Outside Counsel of Record or any other
17 outside counsel.

18 2.10 Non-Party: any natural person, partnership, corporation, association,
19 or other legal entity not named as a Party to this Action.

20 2.11 Outside Counsel of Record: attorneys who are not employees of a
21 party to this Action but are retained to represent or advise a party to this Action
22 and have appeared in this Action on behalf of that party or are affiliated with a law
23 firm which has appeared on behalf of that party, including support staff.

24 2.12 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and
26 their support staffs).

27 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

1 2.14 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 2.15 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits
5 or demonstrations, and organizing, storing, or retrieving data in any form or
6 medium) and their employees and subcontractors.

7 2.16 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY.”

10 3. SCOPE

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

16 However, the protections conferred by this Stipulation and Order do not
17 cover the following information: (a) any information that is in the public domain
18 at the time of disclosure to a Receiving Party or becomes part of the public
19 domain after its disclosure to a Receiving Party as a result of publication not
20 involving a violation of this Order, including becoming part of the public record
21 through trial or otherwise; and (b) any information known to the Receiving Party
22 prior to the disclosure or obtained by the Receiving Party after the disclosure from
23 a source who obtained the information lawfully and under no obligation of
24 confidentiality to the Designating Party.

25 Any use of Protected Material at trial shall be governed by a separate
26 agreement or order of the trial judge. This Order does not govern the use of
27 Protected Material at trial.

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1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
6 with or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of
9 time pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for
12 Protection. Each Party or Non-Party that designates information or items for
13 protection under this Order must take care to limit any such designation to specific
14 material that qualifies under the appropriate standards. To the extent it is practical
15 to do so, the Designating Party must designate for protection only those parts of
16 material, documents, items, or oral or written communications that qualify – so
17 that other portions of the material, documents, items, or communications for
18 which protection is not warranted are not swept unjustifiably within the ambit of
19 this Order.

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

25 If it comes to a Designating Party's attention that information or items that
26 it designated for protection do not qualify for protection at all or do not qualify for
27 the level of protection initially asserted, that Designating Party must promptly
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1 notify all other parties that it is withdrawing the mistaken or the inapplicable
2 designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided
4 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for
6 protection under this Order must be clearly so designated before the material is
7 disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic
10 documents, but excluding transcripts of depositions or other pretrial or trial
11 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
13 contains protected material. If only a portion or portions of the material on a page
14 qualifies for protection, the Producing Party also must clearly identify the
15 protected portion(s) (e.g., by making appropriate markings in the margins) and
16 must specify, for each portion, the level of protection being asserted.

17 A Party or Non-Party that makes original documents or materials available
18 for inspection need not designate them for protection until after the inspecting
19 Party has indicated which material it would like copied and produced. During the
20 inspection and before the designation, all of the material made available for
21 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY.” After the inspecting Party has identified the documents it wants copied
23 and produced, the Producing Party must determine which documents, or portions
24 thereof, qualify for protection under this Order. Then, before producing the
25 specified documents, the Producing Party must affix the appropriate legend
26 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY”) to each page that contains Protected Material. If only a portion or
28 portions of the material on a page qualifies for protection, the Producing Party

1 also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins) and must specify, for each portion, the level of
3 protection being asserted.

4 (b) for testimony given in deposition or in other pretrial or trial
5 proceedings, that the Designating Party identify on the record, before the close of
6 the deposition, hearing, or other proceeding, all protected testimony and specify
7 the level of protection being asserted. When it is impractical to identify separately
8 each portion of testimony that is entitled to protection and it appears that
9 substantial portions of the testimony may qualify for protection, the Designating
10 Party may invoke on the record (before the deposition, hearing, or other
11 proceeding is concluded) a right to have up to 21 days to identify the specific
12 portions of the testimony as to which protection is sought and to specify the level
13 of protection being asserted. Only those portions of the testimony that are
14 appropriately designated for protection within the 21 days shall be covered by the
15 provisions of this Stipulated Protective Order. Alternatively, a Designating Party
16 may specify, at the deposition or up to 21 days afterwards if that period is properly
17 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19 Parties shall give the other parties notice if they reasonably expect a
20 deposition, hearing or other proceeding to include Protected Material so that the
21 other parties can ensure that only authorized individuals who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
23 proceedings. The use of a document as an exhibit at a deposition shall not in any
24 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
25 – ATTORNEYS’ EYES ONLY.”

26 Transcripts containing Protected Material shall have an obvious legend on
27 the title page that the transcript contains Protected Material, and the title page
28 shall be followed by a list of all pages (including line numbers as appropriate) that

1 have been designated as Protected Material and the level of protection being
2 asserted by the Designating Party. The Designating Party shall inform the court
3 reporter of these requirements. Any transcript that is prepared before the
4 expiration of a 21-day period for designation shall be treated during that period as
5 if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” in its entirety unless otherwise agreed. After the expiration of that period,
7 the transcript shall be treated only as actually designated.

8 (c) for information produced in some form other than documentary
9 and for any other tangible items, that the Producing Party affix in a prominent
10 place on the exterior of the container or containers in which the information or
11 item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or
13 item warrant protection, the Producing Party, to the extent practicable, shall
14 identify the protected portion(s) and specify the level of protection being asserted.

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

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time **within the discovery time established**
24 **by the District Judge**. Unless a prompt challenge to a Designating Party’s
25 confidentiality designation is necessary to avoid foreseeable, substantial
26 unfairness, unnecessary economic burdens, or a significant disruption or delay of
27 the litigation, a Party does not waive its right to challenge a confidentiality
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1 designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process under Local Rule 37.1, et seq. Any discovery motion must
5 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

6 6.3 Judicial Intervention.

7 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Frivolous challenges and those made for an improper purpose
9 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
10 expose the Challenging Party to sanctions. Unless the Designating Party has
11 waived the confidentiality designation by failing to file a motion to retain
12 confidentiality as described above, all parties shall continue to afford the material
13 in question the level of protection to which it is entitled under the Producing
14 Party's designation until the court rules on the challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that
17 is disclosed or produced by another Party or by a Non-Party in connection with
18 this Action only for prosecuting, defending, or attempting to settle this litigation.
19 Such Protected Material may be disclosed only to the categories of persons and
20 under the conditions described in this Order. When the Action has been
21 terminated, a Receiving Party must comply with the provisions of Section 13
22 below (FINAL DISPOSITION).

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
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1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action,
4 as well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this Action, House Counsel and those
6 who have signed the “Acknowledgment and Agreement to Be Bound” that is
7 attached hereto as Exhibit A;

8 (b) the officers, directors, and employees of the Receiving Party to
9 whom disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (d) the court and its personnel;

15 (e) court reporters and their staff, professional jury or trial
16 consultants, and Professional Vendors to whom disclosure is reasonably necessary
17 for this litigation and who have signed the “Acknowledgment and Agreement to
18 Be Bound” (Exhibit A);

19 (f) the author or recipient of a document containing the information
20 or a custodian or other person who otherwise possessed or knew the information;

21 (g) during their depositions, witnesses in the Action to whom
22 disclosure is reasonably necessary and who have signed the “Acknowledgment
23 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
24 Designating Party or ordered by the court. Pages of transcribed deposition
25 testimony or exhibits to depositions that reveal Protected Material must be
26 separately bound by the court reporter and may not be disclosed to anyone except
27 as permitted under this Stipulated Protective Order; and
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1 (h) any mediator or settlement officer, and their supporting
2 personnel, mutually agreed upon by any of the parties engaged in settlement
3 discussions.

4 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
6 in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action,
10 as well as employees of said Outside Counsel of Record to whom it is reasonably
11 necessary to disclose the information for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
13 A;

14 (b) Designated House Counsel of the Receiving Party¹ (1) who has
15 no involvement in competitive decision-making, (2) to whom disclosure is
16 reasonably necessary for this litigation, (3) who has signed the “Acknowledgment
17 and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set
18 forth in paragraph 7.4(a)(1), below, have been followed;²

19 (c) Experts of the Receiving Party (1) to whom disclosure is
20 reasonably necessary for this litigation, (2) who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom
22 the procedures set forth in paragraph 7.4, below, have been followed;

23 _____
24 ¹ It may be appropriate under certain circumstances to limit the number of Designated House
25 Counsel who may access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
information under this provision.

26 ² It may be appropriate under certain circumstances to limit how Designated House Counsel may
27 access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information. For example,
28 Designated House Counsel may be limited to viewing “HIGHLY CONFIDENTIAL –
ATTORNEYS’ EYES ONLY” information only if it is filed with the court under seal, or in the
presence of Outside Counsel of Record at their offices.

1 (d) the court and its personnel;

2 (e) court reporters and their staff, professional jury or trial
3 consultants, and Professional Vendors to whom disclosure is reasonably necessary
4 for this litigation and who have signed the “Acknowledgment and Agreement to
5 Be Bound” (Exhibit A); and

6 (f) the author or recipient of a document containing the information
7 or a custodian or other person who otherwise possessed or knew the information.

8 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
10 Experts.

11 (a) Unless otherwise ordered by the court or agreed to in writing by
12 the Designating Party, a Party that seeks to disclose to Designated House Counsel
13 any information or item that has been designated “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
15 written request to the Designating Party that (1) sets forth the full name of the
16 Designated House Counsel and the city and state of his or her residence, and (2)
17 describes the Designated House Counsel’s current and reasonably foreseeable
18 future primary job duties and responsibilities in sufficient detail to determine if
19 House Counsel is involved, or may become involved, in any competitive decision-
20 making.³

21 (b) Unless otherwise ordered by the court or agreed to in writing by
22 the Designating Party, a Party that seeks to disclose to an Expert (as defined in
23 this Order) any information or item that has been designated “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)

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26 ³ It may be appropriate in certain circumstances to require any Designated House Counsel who
27 receives “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to
28 this Order to disclose any relevant changes in job duties or responsibilities prior to final
disposition of the litigation to allow the Designating Party to evaluate any later-arising
competitive decision-making responsibilities.

1 first must make a written request to the Designating Party that (1) identifies the
2 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
3 ONLY” information that the Receiving Party seeks permission to disclose to the
4 Expert, (2) sets forth the full name of the Expert and the city and state of his or her
5 primary residence, (3) attaches a copy of the Expert’s current resume, (4)
6 identifies the Expert’s current employer(s),⁴ (5) identifies each person or entity
7 from whom the Expert has received compensation or funding for work in his or
8 her areas of expertise or to whom the expert has provided professional services,
9 including in connection with a litigation, at any time during the preceding five
10 years,⁵ and (6) identifies (by name and number of the case, filing date, and
11 location of court) any litigation in connection with which the Expert has offered
12 expert testimony, including through a declaration, report, or testimony at a
13 deposition or trial, during the preceding five years.

14 (b) A Party that makes a request and provides the information
15 specified in the preceding respective paragraphs may disclose the subject
16 Protected Material to the identified Expert unless, within 14 days of delivering the
17 request, the Party receives a written objection from the Designating Party. Any
18 such objection must set forth in detail the grounds on which it is based.

19 (c) A Party that receives a timely written objection must meet and
20 confer with the Designating Party (through direct voice to voice dialogue) to try to
21 resolve the matter by agreement within seven days of the written objection. If no
22 agreement is reached, the Party seeking to make the disclosure to the Expert may
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25 ⁴ The Expert shall be restricted from undertaking work prior to the termination of the litigation
26 that could foreseeably result in an improper use of the Designating Party’s “HIGHLY
CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

27 ⁵ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
28 party, then the Expert should provide whatever information the Expert believes can be disclosed
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 file a motion as provided in Civil Local Rule 37 (and in compliance with Civil
2 Local Rule 79-5, if applicable) seeking permission from the court to do so. Any
3 such motion must describe the circumstances with specificity, set forth in detail
4 the reasons why the disclosure to the Designated House Counsel or Expert is
5 reasonably necessary, assess the risk of harm that the disclosure would entail, and
6 suggest any additional means that could be used to reduce that risk. In addition,
7 any such motion must be accompanied by a competent declaration describing the
8 parties' efforts to resolve the matter by agreement (i.e., the extent and the content
9 of the meet and confer discussions) and setting forth the reasons advanced by the
10 Designating Party for its refusal to approve the disclosure.

11 In any such proceeding, the Party opposing disclosure to the Designated
12 House Counsel or Expert shall bear the burden of proving that the risk of harm
13 that the disclosure would entail (under the safeguards proposed) outweighs the
14 Receiving Party's need to disclose the Protected Material to its Designated House
15 Counsel or Expert.

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

18 8.1 Notice of Civil Subpoena or Court Order. If a Party is served with a
19 civil subpoena or a court order issued in other litigation that compels disclosure of
20 any information or items designated in this Action as "CONFIDENTIAL" or
21 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

28 (c) cooperate with respect to all reasonable procedures sought to be

1 pursued by the Designating Party whose Protected Material may be affected.⁶

2 8.2 Compliance with Civil Subpoena or Court Order. If the Designating
3 Party timely seeks a protective order, the Party served with the civil subpoena or
4 court order shall not produce any information designated in this Action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” before a determination by the court from which the subpoena or order
7 issued, unless the Party has obtained the Designating Party’s permission. The
8 Designating Party shall bear the burden and expense of seeking protection in that
9 court of its confidential material – and nothing in these provisions should be
10 construed as authorizing or encouraging a Receiving Party in this Action to
11 disobey a lawful directive from another court.

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

14 9.1 Application. The terms of this Order are applicable to information
15 produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information
17 produced by Non-Parties in connection with this litigation is protected by the
18 remedies and relief provided by this Order. Nothing in these provisions should be
19 construed as prohibiting a Non-Party from seeking additional protections.

20 9.2 Production of Non-Party Confidential Information. In the event that a
21 Party is required, by a valid discovery request, to produce a Non-Party’s
22 confidential information in its possession, and the Party is subject to an agreement
23 with the Non-Party not to produce the Non-Party’s confidential information, then
24 the Party shall:

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28 ⁶ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

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

4 (b) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this litigation, the relevant discovery request(s), and a
6 reasonably specific description of the information requested; and

7 (c) make the information requested available for inspection by the
8 Non-Party.

9 9.3 Failure to Object. If the Non-Party fails to object or seek a protective
10 order from this court within 14 days of receiving the notice and accompanying
11 information, the Receiving Party may produce the Non-Party's confidential
12 information responsive to the discovery request. If the Non-Party timely seeks a
13 protective order, the Receiving Party shall not produce any information in its
14 possession or control that is subject to the confidentiality agreement with the Non-
15 Party before a determination by the court.⁷ Absent a court order to the contrary,
16 the Non-Party shall bear the burden and expense of seeking protection in this
17 court of its Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has
20 disclosed Protected Material to any person or in any circumstance not authorized
21 under this Stipulated Protective Order, the Receiving Party must immediately (a)
22 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
23 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
24 inform the person or persons to whom unauthorized disclosures were made of all
25 the terms of this Order, and (d) request such person or persons to execute the

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28 ⁷ The purpose of this provision is to alert the interested parties to the existence of confidentiality
rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
2 A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the Receiving Parties are those set forth in *Federal*
8 *Rule of Civil Procedure* 26(b)(5)(B). This provision is not intended to modify
9 whatever procedure may be established in an e-discovery order that provides for
10 production without prior privilege review. Pursuant to *Federal Rule of Evidence*
11 502(d) and (e), insofar as the parties reach an agreement on the effect of
12 disclosure of a communication or information covered by the attorney-client
13 privilege or work product protection, the parties may incorporate their agreement
14 in the stipulated protective order submitted to the court.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of
17 any person to seek its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in
21 this Stipulated Protective Order. Similarly, no Party waives any right to object on
22 any ground to use in evidence of any of the material covered by this Stipulated
23 Protective Order.

24 12.3 Filing Protected Material. Without written permission from the
25 Designating Party or a court order secured after appropriate notice to all interested
26 persons, a Party may not file in the public record in this Action any Protected
27 Material. A Party that seeks to file under seal any Protected Material must
28 comply with Civil Local Rule 79-5. Protected Material may only be filed under

1 seal pursuant to a court order authorizing the sealing of the specific Protected
2 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
3 only upon a request establishing that the Protected Material at issue is privileged,
4 protectable as a trade secret, or otherwise entitled to protection under the law. If a
5 Receiving Party's request to file Protected Material under seal pursuant to Civil
6 Local Rule 79-5(e) is denied by the Court, then the Receiving Party may file the
7 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
8 unless otherwise instructed by the Court.

9 **13. FINAL DISPOSITION**

10 **13.1 Return or Destruction of Protected Material.** Within 60 days after the
11 final disposition of this Action, as defined in Section 4, each Receiving Party must
12 return all Protected Material to the Producing Party or destroy such material. As
13 used in this subdivision, "all Protected Material" includes all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any of
15 the Protected Material. Whether the Protected Material is returned or destroyed,
16 the Receiving Party must submit a written certification to the Producing Party
17 (and, if not the same person or entity, to the Designating Party) by the 60-day
18 deadline that (1) identifies (by category, where appropriate) all the Protected
19 Material that was returned or destroyed and (2) affirms that the Receiving Party
20 has not retained any copies, abstracts, compilations, summaries or any other
21 format reproducing or capturing any of the Protected Material.

22 **13.2 Exception for Archival Copies.** Notwithstanding Section 13.1,
23 Counsel are entitled to retain an archival copy of all pleadings, motion papers,
24 trial, deposition, and hearing transcripts, legal memoranda, correspondence,
25 deposition and trial exhibits, expert reports, attorney work product, and consultant
26 and expert work product, even if such materials contain Protected Material. Any
27 such archival copies that contain or constitute Protected Material remain subject to
28 this Protective Order as set forth in Section 4 (DURATION).

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14. VIOLATION

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

PURSUANT TO STIPULATION, IT IS SO ORDERED.



DATED: March 1, 2017

Hon. Magistrate PAUL L. ABRAMS
United States Magistrate Judge
Central District of California

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of

5 _____
6 _____
7 [print or type full address], declare under penalty of perjury that I have read in its
8 entirety and understand the Stipulated Protective Order that was issued by the
9 United States District Court for the Central District of California on
10 _____ [date] in the case of *Cree, Inc., et al. v. GearXS, Inc., et al.,*

11 *CACD Case No. 2:16-cv-04515-JFW-PLA.* I agree to comply with and to be
12 bound by all the terms of this Stipulated Protective Order, and I understand and
13 acknowledge that failure to so comply could expose me to sanctions and
14 punishment in the nature of contempt. I solemnly promise that I will not disclose
15 in any manner any information or item that is subject to this Stipulated Protective
16 Order to any person or entity except in strict compliance with the provisions of
17 this Order.

18 I further agree to submit to the jurisdiction of the United States District
19 Court for the Central District of California for the purpose of enforcing the terms
20 of this Stipulated Protective Order, even if such enforcement proceedings occur
21 after termination of this Action.

22
23 [CONTINUED ON NEXT PAGE]

24 Initials: _____

25
26 ///

27 ///

28 ///

1 I hereby appoint _____ [print or type full
2 name] _____ of

3 _____
4 _____

5 [print or type full address and telephone number] as my California agent for
6 service of process in connection with this Action or any proceedings related to
7 enforcement of this Stipulated Protective Order.

8
9 Date: _____

10 City and State where sworn and signed: _____

11
12 Printed name: _____

13 Signature: _____

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