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

CREE, INC., et al.,  
Plaintiff,  
v.  
FLYT E-COMMERCE SERVICES  
INC., et al.,  
Defendants.

CASE NO.: 2:16-CV-05208  
JAK(JCX)

**PROTECTIVE ORDER**

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that 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, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Further, as set forth in Section 12.3, below, this Protective Order does not entitle the parties to file confidential

1 information under seal. Rather, when the parties seek permission from the court to  
2 file material under seal, the parties must comply with Civil Local Rule 79-5 and  
3 with any pertinent orders of the assigned District Judge and Magistrate Judge.

4 B. GOOD CAUSE STATEMENT

5 In light of the nature of the claims and allegations in this case and the parties'  
6 representations that discovery in this case will involve the production of confidential  
7 records, and in order to expedite the flow of information, to facilitate the prompt  
8 resolution of disputes over confidentiality of discovery materials, to adequately  
9 protect information the parties are entitled to keep confidential, to ensure that the  
10 parties are permitted reasonable necessary uses of such material in connection with  
11 this action, to address their handling of such material at the end of the litigation, and  
12 to serve the ends of justice, a protective order for such information is justified in this  
13 matter. The parties shall not designate any information/documents as confidential  
14 without a good faith belief that such information/documents have been maintained  
15 in a confidential, non-public manner, and that there is good cause or a compelling  
16 reason why it should not be part of the public record of this case.

17 2. DEFINITIONS

18 2.1 Action: The instant action: *Cree, Inc. v. Flyt E-Commerce Services,*  
19 *Inc., et al.*, Case No.: 2:16-cv-05208 JAK (JCx).

20 2.2 Challenging Party: a Party or Non-Party that challenges the  
21 designation of information or items under this Order.

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

26 2.4 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”  
27 Information or Items: extremely sensitive “CONFIDENTIAL” Information or

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1 Items, the disclosure of which to another Party or Non-Party would create a  
2 substantial risk of serious harm that could not be avoided by less restrictive means.

3 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as  
4 their support staff).

5 2.6 Designating Party: a Party or Non-Party that designates information or  
6 items that it produces in disclosures or in responses to discovery as  
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES  
8 ONLY.”

9 2.7 Disclosure or Discovery Material: all items or information, regardless  
10 of the medium or manner in which it is generated, stored, or maintained (including,  
11 among other things, testimony, transcripts, and tangible things), that are produced or  
12 generated in disclosures or responses to discovery in this matter.

13 2.8 Expert: a person with specialized knowledge or experience in a matter  
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
15 an expert witness or as a consultant in this Action.

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

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

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

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

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1           2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
2 Discovery Material in this Action.

3           2.14 Professional Vendors: persons or entities that provide litigation  
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
6 and their employees and subcontractors.

7           2.15 Protected Material: any Disclosure or Discovery Material that is  
8 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --  
9 ATTORNEYS’ EYES ONLY.”

10          2.16 Receiving Party: a Party that receives Disclosure or Discovery  
11 Material from a Producing Party.

12           3.     SCOPE

13           The protections conferred by this Order cover not only Protected Material (as  
14 defined above), but also (1) any information copied or extracted from Protected  
15 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
16 and (3) any deposition testimony, conversations, or presentations by Parties or their  
17 Counsel that might reveal Protected Material, other than during a court hearing or at  
18 trial.

19           Any use of Protected Material during a court hearing or at trial shall be  
20 governed by the orders of the presiding judge. This Order does not govern the use  
21 of Protected Material during a court hearing or at trial.

22           4.     DURATION

23           Even after final disposition of this litigation, the confidentiality obligations  
24 imposed by this Order shall remain in effect until a Designating Party agrees  
25 otherwise in writing or a court order otherwise directs. Final disposition shall be  
26 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
27 or without prejudice; and (2) final judgment herein after the completion and  
28 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,

1 including the time limits for filing any motions or applications for extension of time  
2 pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection under  
6 this Order must take care to limit any such designation to specific material that  
7 qualifies under the appropriate standards. The Designating Party must designate for  
8 protection only those parts of material, documents, items, or oral or written  
9 communications that qualify so that other portions of the material, documents,  
10 items, or communications for which protection is not warranted are not swept  
11 unjustifiably within the ambit of this Order.

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

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

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

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic  
27 documents, but excluding transcripts of depositions), that the Producing Party affix  
28 at a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --

1 ATTORNEYS' EYES ONLY" to each page that contains protected material. If  
2 only a portion or portions of the material on a page qualifies for protection, the  
3 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
4 appropriate markings in the margins).

5 A Party or Non-Party that makes original documents available for inspection  
6 need not designate them for protection until after the inspecting Party has indicated  
7 which documents it would like copied and produced. During the inspection and  
8 before the designation, all of the material made available for inspection shall be  
9 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
10 documents it wants copied and produced, the Producing Party must determine which  
11 documents, or portions thereof, qualify for protection under this Order. Then,  
12 before producing the specified documents, the Producing Party must affix the  
13 "CONFIDENTIAL", or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES  
14 ONLY" legend to each page that contains Protected Material. If only a portion or  
15 portions of the material on a page qualifies for protection, the Producing Party also  
16 must clearly identify the protected portion(s) (e.g., by making appropriate markings  
17 in the margins).

18 (b) for testimony given in depositions that the Designating Party identifies  
19 on the record, before the close of the deposition as protected testimony.

20 (c) for information produced in some form other than documentary and  
21 for any other tangible items, that the Producing Party affix in a prominent place on  
22 the exterior of the container or containers in which the information is stored the  
23 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- ATTORNEYS'  
24 EYES ONLY." If only a portion or portions of the information warrants protection,  
25 the Producing Party, to the extent practicable, shall identify the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
27 failure to designate qualified information or items does not, standing alone, waive  
28 the Designating Party's right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable  
2 efforts to assure that the material is treated in accordance with the provisions of this  
3 Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
6 designation of confidentiality at any time that is consistent with the Court's  
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
9 resolution process under Local Rule 37-1 et seq.

10 6.3 The burden of persuasion in any such challenge proceeding shall be on  
11 the Designating Party. Frivolous challenges, and those made for an improper  
12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
13 parties) may expose the Challenging Party to sanctions. Unless the Designating  
14 Party has waived or withdrawn the confidentiality designation, all parties shall  
15 continue to afford the material in question the level of protection to which it is  
16 entitled under the Producing Party's designation until the Court rules on the  
17 challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

5           (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
6 well as employees of said Outside Counsel of Record to whom it is reasonably  
7 necessary to disclose the information for this Action;

8           (b) the officers, directors, and employees (including House Counsel) of  
9 the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

13          (d) the court and its personnel;

14          (e) private court reporters and their staff to whom disclosure is reasonably  
15 necessary for this Action and who have signed the “Acknowledgment and  
16 Agreement to Be Bound” (Exhibit A);

17          (f) professional jury or trial consultants, mock jurors, and Professional  
18 Vendors to whom disclosure is reasonably necessary for this Action and who have  
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

22          (h) during their depositions, witnesses, and attorneys for witnesses, in the  
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
24 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”  
25 (Exhibit A); and (2) they will not be permitted to keep any confidential information  
26 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
27 unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
28 transcribed deposition testimony or exhibits to depositions that reveal Protected



1 Material may be separately bound by the court reporter and may not be disclosed to  
2 anyone except as permitted under this Protective Order; and

3 (i) any mediator or settlement officer, and their supporting personnel,  
4 mutually agreed upon by any of the parties engaged in settlement discussions.

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

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
10 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
11 to disclose the information for this Action;

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

15 (c) the court and its personnel;

16 (d) private court reporters and their staff to whom disclosure is reasonably  
17 necessary for this Action and who have signed the “Acknowledgment and  
18 Agreement to Be Bound” (Exhibit A);

19 (e) professional jury or trial consultants, mock jurors, and Professional  
20 Vendors to whom disclosure is reasonably necessary for this Action and who have  
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

24 (g) any mediator or settlement officer, and their supporting personnel,  
25 mutually agreed upon by any of the parties engaged in settlement discussions.

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1           8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED  
2                     PRODUCED IN OTHER LITIGATION

3           If a Party is served with a subpoena or a court order issued in other litigation  
4 that compels disclosure of any information or items designated in this Action as  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES  
6 ONLY,” that Party must:

7                     (a) promptly notify in writing the Designating Party. Such notification  
8 shall include a copy of the subpoena or court order unless prohibited by law;

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

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

15           If the Designating Party timely seeks a protective order, the Party served with  
16 the subpoena or court order shall not produce any information designated in this  
17 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’  
18 EYES ONLY” before a determination by the court from which the subpoena or  
19 order issued, unless the Party has obtained the Designating Party’s permission, or  
20 unless otherwise required by the law or court order. The Designating Party shall  
21 bear the burden and expense of seeking protection in that court of its confidential  
22 material and nothing in these provisions should be construed as authorizing or  
23 encouraging a Receiving Party in this Action to disobey a lawful directive from  
24 another court.

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

27                     (a) The terms of this Order are applicable to information produced by a  
28 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL -- ATTORNEYS' EYES ONLY." Such information produced by  
2 Non-Parties in connection with this litigation is protected by the remedies and relief  
3 provided by this Order. Nothing in these provisions should be construed as  
4 prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to  
6 produce a Non-Party's confidential information in its possession, and the Party is  
7 subject to an agreement with the Non-Party not to produce the Non-Party's  
8 confidential information, then the Party shall:

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

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

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

17 (c) If a Non-Party represented by counsel fails to commence the process  
18 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the  
19 notice and accompanying information or fails contemporaneously to notify the  
20 Receiving Party that it has done so, the Receiving Party may produce the Non-  
21 Party's confidential information responsive to the discovery request. If an  
22 unrepresented Non-Party fails to seek a protective order from this court within 14  
23 days of receiving the notice and accompanying information, the Receiving Party  
24 may produce the Non-Party's confidential information responsive to the discovery  
25 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
26 not produce any information in its possession or control that is subject to the  
27 confidentiality agreement with the Non-Party before a determination by the court  
28 unless otherwise required by the law or court order. Absent a court order to the

1 contrary, the Non-Party shall bear the burden and expense of seeking protection in  
2 this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
5 Protected Material to any person or in any circumstance not authorized under this  
6 Protective Order, the Receiving Party must immediately (a) notify in writing the  
7 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
8 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
9 whom unauthorized disclosures were made of all the terms of this Order, and  
10 (d) request such person or persons to execute the “Acknowledgment and Agreement  
11 to Be Bound” (Exhibit A).

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR  
13 OTHERWISE PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain  
15 inadvertently produced material is subject to a claim of privilege or other protection,  
16 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever  
18 procedure may be established in an e-discovery order that provides for production  
19 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and  
20 (e), insofar as the parties reach an agreement on the effect of disclosure of a  
21 communication or information covered by the attorney-client privilege or work  
22 product protection, the parties may incorporate their agreement into this Protective  
23 Order.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. No Party waives any right it  
28 otherwise would have to object to disclosing or producing any information or item

1 on any ground not addressed in this Protective Order. Similarly, no Party waives  
2 any right to object on any ground to use in evidence of any of the material covered  
3 by this Protective Order.

4       12.3 Filing Protected Material. A Party that seeks to file under seal any  
5 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent  
6 orders of the assigned District Judge and Magistrate Judge. Protected Material may  
7 only be filed under seal pursuant to a court order authorizing the sealing of the  
8 specific Protected Material at issue. If a Party’s request to file Protected Material  
9 under seal is denied by the court, then the Receiving Party may file the information  
10 in the public record unless otherwise instructed by the court.

11       13. FINAL DISPOSITION

12       After the final disposition of this Action, as defined in Section 4, within 60  
13 days of a written request by the Designating Party, each Receiving Party must return  
14 all Protected Material to the Producing Party or destroy such material. As used in  
15 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
16 summaries, and any other format reproducing or capturing any of the Protected  
17 Material. Whether the Protected Material is returned or destroyed, the Receiving  
18 Party must submit a written certification to the Producing Party (and, if not the same  
19 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
20 (by category, where appropriate) all the Protected Material that was returned or  
21 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
22 abstracts, compilations, summaries or any other format reproducing or capturing any  
23 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
24 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
25 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
26 reports, attorney work product, and consultant and expert work product, even if such  
27 materials contain Protected Material. Any such archival copies that contain or

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1 constitute Protected Material remain subject to this Protective Order as set forth in  
2 Section 4.

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

6 IT IS SO ORDERED.

7 DATED: October 20, 2016

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/s/  
Honorable Jacqueline Chooljian  
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
6 that I have read in its entirety and understand the Protective Order that was issued  
7 by the United States District Court for the Central District of California on October  
8 20, 2016 in the case of *Cree, Inc. v. Flyt E-Commerce Services, Inc., et al.*, Case  
9 No.: 2:16-cv-05208 JAK (JCx). I agree to comply with and to be bound by all the  
10 terms of this 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 Protective Order to any person or entity except in strict compliance  
14 with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court  
16 for the Central District of California for the purpose of enforcing the terms of this  
17 Protective Order, even if such enforcement proceedings occur after termination of  
18 this action. I hereby appoint \_\_\_\_\_ [print or type full  
19 name] of \_\_\_\_\_ [print or type full address  
20 and telephone number] as my California agent for service of process in connection  
21 with this action or any proceedings related to enforcement of this Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24  
25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_

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