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

13 CASEY THORNTON and CARL
 14 JONES, individually and on behalf of
 all others similarly situated,

15 Plaintiffs,

16 v.

17 MSI COMPUTER CORP.; and DOES
 18 1-10,

19 Defendants.

CASE NO. 17-cv-03231-CAS (AFM)

CLASS ACTION

STIPULATED PROTECTIVE ORDER¹

20 1. A. **PURPOSES AND LIMITATIONS**

21 Discovery in this action is likely to involve production of confidential,
 22 proprietary or private information for which special protection from public
 23 disclosure and from use for any purpose other than prosecuting this litigation may
 24 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 25 enter the following Stipulated Protective Order. The parties acknowledge that this
 26 Order does not confer blanket protections on all disclosures or responses to
 27 _____

28 ¹ This Stipulated Protective Order is based substantially on the model protective
 order provided under Magistrate Judge Alexander F. MacKinnon's Procedures.

1 discovery and that the protection it affords from public disclosure and use extends
2 only to the limited information or items that are entitled to confidential treatment
3 under the applicable legal principles.

4 B. GOOD CAUSE STATEMENT

5 This action is likely to involve trade secrets, customer and pricing lists and
6 other valuable research, development, commercial, financial, technical and/or
7 proprietary information for which special protection from public disclosure and
8 from use for any purpose other than prosecution of this action is warranted. Such
9 confidential and proprietary materials and information consist of, among
10 other things, confidential business or financial information, information regarding
11 confidential business practices, or other confidential research, development,
12 or commercial information (including information implicating privacy rights of
13 third parties), information otherwise generally unavailable to the public, or which
14 may be privileged or otherwise protected from disclosure under state or federal
15 statutes, court rules, case decisions, or common law. Accordingly, to expedite
16 the flow of information, to facilitate the prompt resolution of disputes over
17 confidentiality of discovery materials, to adequately protect information the parties
18 are entitled to keep confidential, to ensure that the parties are permitted
19 reasonable necessary uses of such material in preparation for and in the conduct
20 of trial, to address their handling at the end of the litigation, and serve the ends of
21 justice, a protective order for such information is justified in this matter. It is the
22 intent of the parties that information will not be designated as confidential for
23 tactical reasons and that nothing be so designated without a good faith belief
24 that it has been maintained in a confidential, non-public manner, and there is good
25 cause why it should not be part of the public record of this case.

26 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
27 SEAL

28 The parties further acknowledge, as set forth in Section 12.3, below, that

1 this Stipulated Protective Order does not entitle them to file confidential
2 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
3 be followed and the standards that will be applied when a party seeks permission
4 from the court to file material under seal.

5 There is a strong presumption that the public has a right of access to
6 judicial proceedings and records in civil cases. In connection with non-dispositive
7 motions, good cause must be shown to support a filing under seal. *See Kamakana*
8 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
9 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
10 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
11 protective orders require good cause showing), and a specific showing of good
12 cause or compelling reasons with proper evidentiary support and legal
13 justification, must be made with respect to Protected Material that a party seeks to
14 file under seal. The parties' mere designation of Disclosure or Discovery
15 Material as CONFIDENTIAL does not—without the submission of competent
16 evidence by declaration, establishing that the material sought to be filed under
17 seal qualifies as confidential, privileged, or otherwise protectable—constitute
18 good cause.

19 Further, if a party requests sealing related to a dispositive motion or trial,
20 then compelling reasons, not only good cause, for the sealing must be shown,
21 and the relief sought shall be narrowly tailored to serve the specific interest to be
22 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
23 2010). For each item or type of information, document, or thing sought to be filed
24 or introduced under seal in connection with a dispositive motion or trial, the
25 party seeking protection must articulate compelling reasons, supported by specific
26 facts and legal justification, for the requested sealing order. Again, competent
27 evidence supporting the application to file documents under seal must be provided
28 by declaration.

1 Any document that is not confidential, privileged, or otherwise protectable
2 in its entirety will not be filed under seal if the confidential portions can be
3 redacted. If documents can be redacted, then a redacted version for public
4 viewing, omitting only the confidential, privileged, or otherwise protectable
5 portions of the document, shall be filed. Any application that seeks to file
6 documents under seal in their entirety should include an explanation of why
7 redaction is not feasible.

8 2. DEFINITIONS

9 2.1 Action: this pending federal lawsuit.

10 2.2 Challenging Party: a Party or Non-Party that challenges the
11 designation of information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless
13 of how it is generated, stored or maintained) or tangible things that qualify
14 for protection under Federal Rule of Civil Procedure 26(c), and as specified
15 above in the Good Cause Statement.

16 2.4 Counsel: Outside Counsel of Record and House Counsel (as well
17 as their support staff).

18 2.5 Designating Party: a Party or Non-Party that designates information
19 or items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL.”

21 2.6 Disclosure or Discovery Material: all items or information,
22 regardless of the medium or manner in which it is generated, stored, or maintained
23 (including, among other things, testimony, transcripts, and tangible things), that are
24 produced or generated in disclosures or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a
26 matter pertinent to the litigation who has been retained by a Party or its counsel to
27 serve as an expert witness or as a consultant in this Action.

28 2.8 House Counsel: attorneys who are employees of a party to this

1 Action. House Counsel does not include Outside Counsel of Record or any
2 other outside counsel.

3 2.9 Non-Party: any natural person, partnership, corporation, association
4 or other legal entity not named as a Party to this action.

5 2.10 Outside Counsel of Record: attorneys who are not employees of
6 a party to this Action but are retained to represent or advise a party to this Action
7 and have appeared in this Action on behalf of that party or are affiliated with a law
8 firm that has appeared on behalf of that party, and includes support staff.

9 2.11 Party: any party to this Action, including all of its officers,
10 directors, employees, consultants, retained experts, and Outside Counsel of
11 Record (and their support staffs).

12 2.12 Producing Party: a Party or Non-Party that produces Disclosure
13 or Discovery Material in this Action.

14 2.13 Professional Vendors: persons or entities that provide
15 litigation support services (e.g., photocopying, videotaping, translating, preparing
16 exhibits or demonstrations, and organizing, storing, or retrieving data in any form
17 or medium) and their employees and subcontractors.

18 2.14 Protected Material: any Disclosure or Discovery Material that is
19 designated as “CONFIDENTIAL.”

20 2.15 Receiving Party: a Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22 3. SCOPE

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

28 Any use of Protected Material at trial shall be governed by the orders of

1 the trial judge. This Order does not govern the use of Protected Material at trial.

2 4. DURATION

3 Once a case proceeds to trial, information that was designated as
4 CONFIDENTIAL or maintained pursuant to this protective order used or
5 introduced as an exhibit at trial becomes public and will be presumptively
6 available to all members of the public, including the press, unless compelling
7 reasons supported by specific factual findings to proceed otherwise are made to the
8 trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81
9 (distinguishing “good cause” showing for sealing documents produced in
10 discovery from “compelling reasons” standard when merits-related documents are
11 part of court record). Accordingly, the terms of this protective order do not extend
12 beyond the commencement of the trial.

13 5. DESIGNATING PROTECTED MATERIAL

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

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

27 If it comes to a Designating Party’s attention that information or items that
28 it designated for protection do not qualify for protection, that Designating Party

1 must promptly notify all other Parties that it is withdrawing 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
5 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
6 for protection under this Order must be clearly so designated before the material
7 is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or
10 electronic documents, but excluding transcripts of depositions or other pretrial
11 or trial proceedings), that the Producing Party affix at minimum, the legend
12 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
13 contains protected material. If only a portion of the material on a page qualifies for
14 protection, the Producing Party also must clearly identify the protected portion(s)
15 (e.g., by making appropriate markings in the margins).

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

28 (b) for testimony given in depositions that the Designating Party

1 identifies the Disclosure or Discovery Material on the record, before the
2 close of the deposition all protected testimony.

3 (c) for information produced in some form other than
4 documentary and for any other tangible items, that the Producing Party affix in a
5 prominent place on the exterior of the container or containers in which the
6 information is stored the legend "CONFIDENTIAL." If only a portion or
7 portions of the information warrants protection, the Producing Party, to the extent
8 practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an
10 inadvertent failure to designate qualified information or items does not, standing
11 alone, waive the Designating Party's right to secure protection under this Order for
12 such material. Upon timely correction of a designation, the Receiving Party must
13 make reasonable efforts to assure that the material is treated in accordance with the
14 provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the
18 Court's Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37-1, *et seq.*

21 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via
22 a joint stipulation pursuant to Local Rule 37-2.

23 6.4 The burden of persuasion in any such challenge proceeding shall be
24 on the Designating Party. Frivolous challenges, and those made for an
25 improper purpose (e.g., to harass or impose unnecessary expenses and
26 burdens on other parties) may expose the Challenging Party to sanctions.
27 Unless the Designating Party has waived or withdrawn the confidentiality
28 designation, all parties shall continue to afford the material in question the

1 level of protection to which it is entitled under the Producing Party's
2 designation until the Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that
5 is disclosed or produced by another Party or by a Non-Party in connection with
6 this Action only for prosecuting, defending or attempting to settle this Action.
7 Such Protected Material may be disclosed only to the categories of persons and
8 under the conditions described in this Order. When the Action has been
9 terminated, a Receiving Party must comply with the provisions of section 13
10 below (FINAL DISPOSITION).

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

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this
19 Action, as well as employees of said Outside Counsel of Record to whom it is
20 reasonably necessary to disclose the information for this Action;

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

24 (c) Experts (as defined in this Order) of the Receiving Party to
25 whom disclosure is reasonably necessary for this Action and who have
26 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (d) the court and its personnel;

28 (e) court reporters and their staff;

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

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

8 (h) during their depositions, witnesses, and attorneys for witnesses,
9 in the Action to whom disclosure is reasonably necessary provided: (1) the
10 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
11 and (2) they will not be permitted to keep any confidential information
12 unless they sign the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by
14 the court. Pages of transcribed deposition testimony or exhibits to depositions
15 that reveal Protected Material may be separately bound by the court reporter and
16 may not be disclosed to anyone except as permitted under this Stipulated Protective
17 Order; and

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

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
22 IN OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation
24 that compels disclosure of any information or items designated in this Action as
25 “CONFIDENTIAL,” that Party must:

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

28 (b) promptly notify in writing the party who caused the subpoena or

1 order to issue in the other litigation that some or all of the material covered
2 by the subpoena or order is subject to this Protective Order. Such notification shall
3 include a copy of this Stipulated Protective Order; and

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

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

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

16 (a) The terms of this Order are applicable to information produced
17 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
18 information produced by Non-Parties in connection with this litigation is
19 protected by the remedies and relief provided by this Order. Nothing in these
20 provisions should be construed as prohibiting a Non-Party from seeking additional
21 protections.

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

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

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

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

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

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
28 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
2 procedure may be established in an e-discovery order that provides for production
3 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
4 (e), insofar as the parties reach an agreement on the effect of disclosure of a
5 communication or information covered by the attorney-client privilege or work
6 product protection, the parties may incorporate their agreement in the stipulated
7 protective order submitted to the court.

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 Local Civil Rule 79-5. Protected Material
18 may 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 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must return
25 all Protected Material to the Producing Party or destroy such material. As used in
26 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
28 Material. Whether the Protected Material is returned or destroyed, the Receiving

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

13 14. VIOLATION

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

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: November 30, 2017

18 WESTERMAN LAW CORP.

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1 DATED: November 30, 2017

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12 Attorneys for Defendant

13
14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15 DATED: 12/1/2017

16 

17 ALEXANDER F. MacKINNON
18 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Thornton, et al. v. MSI Computer Corp., et al.*, Case No. 2:17-cv-03231-CAS (AFM). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____