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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YAN GUO, an individual; JU JIN GUO, an individual; and all those similarly situated,

Plaintiffs,

v.

KYÄNI, INC., an Idaho corporation; MICHAEL BRESHEARS, an individual; KIRK HANSEN, an individual; and DOES 1-100,

Defendants.

Case No. CV 2:17-08257-JAK-GJS

STIPULATED PROTECTIVE ORDER

INTRODUCTION

Pursuant to the agreement among Plaintiffs Yan Guo and Ju Jin Guo (collectively, "Plaintiffs") and Defendants Kyäni, Inc., Michael Breshears, and Kirk Hansen (collectively, "Defendants"), and the approval of this Court, this Stipulated Protective Order ("Order") shall govern the production of confidential documents, deposition testimony, and information in the above-captioned action.

1 1.

2 A. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation is
6 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles.

12 B. GOOD CAUSE STATEMENT

13 This action is likely to involve trade secrets, customer and pricing lists,
14 confidential financial and compensation information, distributor information, and
15 other valuable research, development, commercial, financial, technical and/or
16 proprietary information for which special protection from public disclosure and
17 from use for any purpose other than prosecution of this action is warranted. Such
18 confidential and proprietary materials and information may consist of, among other
19 things, confidential business or financial information, information regarding
20 confidential business practices, or other confidential research, development, or
21 commercial information (including information implicating privacy rights of third
22 parties), information otherwise generally unavailable to the public, or which may be
23 privileged or otherwise protected from disclosure under state or federal statutes,
24 court rules, case decisions, or common law. Accordingly, to expedite the flow of
25 information, to facilitate the prompt resolution of disputes over confidentiality of
26 discovery materials, to adequately protect information the parties are entitled to keep
27 confidential, to ensure that the parties are permitted reasonable and necessary uses
28 of such material in preparation for and in the conduct of trial, to address their

1 handling at the end of the litigation, and serve the ends of justice, a protective order
2 for such information is justified in this matter. It is the intent of the parties that
3 information will not be designated as confidential or confidential – attorney’s eyes
4 only for tactical reasons and that nothing be so designated without a good faith
5 belief that it has been maintained in a confidential, non-public manner, and there is
6 good cause why it should not be part of the public record of this case.

7 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

8 The parties further acknowledge, as set forth in Section 12.3, below, that this
9 Stipulated Protective Order does not entitle them to file confidential information
10 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
11 and the standards that will be applied when a party seeks permission from the court
12 to file material under seal.

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

27 Further, if a party requests sealing related to a dispositive motion or trial, then
28 compelling reasons, not only good cause, for the sealing must be shown, and the

1 relief sought shall be narrowly tailored to serve the specific interest to be protected.
2 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
3 each item or type of information, document, or thing sought to be filed or introduced
4 under seal in connection with a dispositive motion or trial, the party seeking
5 protection must articulate compelling reasons, supported by specific facts and legal
6 justification, for the requested sealing order. Again, competent evidence supporting
7 the application to file documents under seal must be provided by declaration.

8 Any document that is not confidential, privileged, or otherwise protectable in
9 its entirety will not be filed under seal if the confidential portions can be redacted.
10 If documents can be redacted, then a redacted version for public viewing, omitting
11 only the confidential, privileged, or otherwise protectable portions of the document,
12 shall be filed. Any application that seeks to file documents under seal in their
13 entirety should include an explanation of why redaction is not feasible.

14 15 2. DEFINITIONS

16 2.1 Action: *Yan Guo, et. al., v. Kyani Inc., et. al.*, No. 2:17-cv-08257-JAK-
17 GJS (C.D. Cal.).

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

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

24 2.3.1 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Information or
25 Items: CONFIDENTIAL information (regardless of how it is generated, stored, or
26 maintained) or tangible things so designated by the Producing Party and that qualify
27 for protection under Federal Rule of Civil Procedure 26(c) as specified above in the
28 Good Cause Statement, and that also meets the definition set forth below.

1 Specifically, the designation CONFIDENTIAL – ATTORNEY’S EYES ONLY
2 may be used only for the following types of past, current, or future
3 CONFIDENTIAL information: (1) sensitive technical information, including current
4 research, development, and manufacturing information, (2) sensitive and non-public
5 business information, including sensitive financial, compensation, or marketing
6 information and the identity of suppliers, distributors, and potential or actual
7 customers, (3) competitive technical information, including technical analysis or
8 comparisons of competitor’s products, or (4) competitive business information,
9 including non-public financial or marketing analyses or comparisons of competitor’s
10 products and strategic product planning.

11 2.4 Counsel: Outside Counsel and House Counsel (as well as their support
12 staff).

13 2.5 Designating Party: A Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless
17 of the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel.

25 2.9 Non-Party: any natural person, partnership, corporation, association or
26 other legal entity not named as a Party to this action.

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1 2.10 Outside Counsel: attorneys who are not employees of a party to this
2 Action but are retained to represent or advise a party to this Action, including their
3 support staff.

4 2.11 Party: any party to this Action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel (and their support
6 staffs).

7 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
8 Discovery Material in this Action.

9 2.13 Professional Vendors: persons or entities that provide litigation
10 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material that is
14 designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES
15 ONLY.”

16 2.15 Receiving Party: A Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18
19 3. SCOPE

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

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

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4. DURATION

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

5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in depositions that the Designating Party identifies
2 the Disclosure or Discovery Material on the record, before the close of the
3 deposition all protected testimony.

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

10 5.2.1 Depositions Designation in conformity with this Order of
11 deposition testimony, transcripts, exhibits, and other information requires:

12 (a) If information designated as “CONFIDENTIAL” or
13 “CONFIDENTIAL – ATTORNEY’S EYES ONLY” is marked as a deposition
14 exhibit, such exhibit shall retain its designated status, and, if filed, shall be filed
15 under seal pursuant to Local Civil Rule 79-5 and provided there is good cause
16 shown.

17 (b) During any deposition, counsel for the Producing party may
18 request that any portion of the deposition or deposition exhibits also be treated as
19 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY.” The
20 room in which the deposition is being taken shall, at the request of the Producing
21 Party, be closed in accordance with the restrictions of this order. The presence of
22 persons not entitled to attend a deposition pursuant to this paragraph shall constitute
23 justification for counsel to the Producing Party to advise or instruct the witness not
24 to answer.

25 (c) Upon receipt, all deposition transcripts and the exhibits thereto
26 shall be treated initially as designated for protection in their entirety until thirty (30)
27 days after receipt of the transcript, unless the parties expressly agree otherwise.
28 Within thirty (30) days after receipt of the transcript, any party may designate

1 portions of a deposition transcript as “CONFIDENTIAL” or “CONFIDENTIAL –
2 ATTORNEY’S EYES ONLY.” The designation shall be accomplished by a letter to
3 all other parties and the court reporter listing the pages, lines, and exhibits
4 constituting protected information and the specific designation. If the Producing
5 Party previously designated portions of testimony as “CONFIDENTIAL” or
6 “CONFIDENTIAL – ATTORNEY’S EYES ONLY” during the deposition, the
7 Producing party is not required to re-designate those portions of the transcript during
8 the thirty (30) day period unless the Producing Party wants to change the
9 designation.

10 (d) The pages of the transcript designated for protection and the
11 numbers (but not the descriptions) of the deposition exhibits designated as protected
12 information shall be appropriately noted on the front of the original deposition
13 transcript and identified with the appropriate category. Those designated pages and
14 exhibits shall be separately bound in one or more volumes as appropriate and
15 marked as set forth in Paragraph 5.2. To facilitate this requirement, the party
16 seeking specific designation of a deposition transcript shall ensure that a copy of the
17 Protective Order is provided to the court reporter.

18 (e) Documents and any other materials containing “CONFIDENTIAL”
19 or “ATTORNEY’S EYES ONLY” information may be shown to a witness to
20 examine or cross-examine the witness during a deposition or trial in circumstances
21 only where the disclosure of such information is relevant to the subject of
22 examination, but the witness shall not be permitted to view such materials in
23 advance of the deposition or trial or to retain any such documents or things or any
24 copies thereof after the deposition or trial (except for the purpose of reviewing the
25 transcript of his or her deposition in connection with its correction or execution),
26 unless the witness is otherwise authorized under this Order to receive such
27 information. Notwithstanding the foregoing, if the Producing Party objects to the
28 use of “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

1 information at a deposition or at trial, such information shall not be disclosed at the
2 deposition or at trial and the Producing Party shall file a motion for a protective
3 order with the Court objecting to such disclosure within seven (7) days. The
4 protected information at issue shall not be disclosed to such witness while the
5 Producing Party's motion objecting to such disclosure is pending before the Court.

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the Designating Party's right to secure protection under this Order for such material.
9 Upon timely correction of a designation, the Receiving Party must make reasonable
10 efforts to assure that the material is treated in accordance with the provisions of this
11 Order.

12 13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court's
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37.1 et seq.

19 6.3 The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party's designation until the Court rules on the
26 challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party only in connection with
4 this Action for prosecuting, defending or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

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

12 7.2.1 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

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

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

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

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

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

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

14 7.2.2 Disclosure of “CONFIDENTIAL – ATTORNEY’S EYES
15 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
16 writing by the Designating Party, a Receiving Party may disclose any information or
17 item designated “CONFIDENTIAL – ATTORNEY’S EYES ONLY” to only:

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

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

24 (c) the Court and its personnel;

25 (d) court reporters and their staff;

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

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

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

12 (h) any mediator or settlement officer, and their supporting personnel,
13 mutually agreed upon by any of the parties engaged in settlement discussions.

14 7.2.3 Leave for Further Disclosure. To the extent a Receiving Party
15 wishes to seek leave to disclose information designated as CONFIDENTIAL or
16 CONFIDENTIAL – ATTORNEY’S EYES ONLY to a person who is not qualified
17 to receive such information under the terms set forth above, the Receiving Party
18 may request permission from the Producing Party in writing by identifying the
19 specific documents, groups of documents, or portions thereof to be disclosed, and
20 the persons to whom the designated information would be disclosed. Upon receipt
21 of such a letter, the Producing Party must respond in writing within seven (7)
22 calendar days. If the Producing Party does not agree to the Receiving Party’s
23 request, it shall provide a written explanation for its decision. The Receiving Party
24 may then seek a ruling from the Court authorizing disclosure of the designated
25 information to the persons proposed by the Receiving Party.

26 7.2.4 Nothing in this Protective Order shall bar or otherwise restrict outside
27 counsel from rendering advice to his or her client with respect to this action and, in
28 the course thereof, from relying in a general way upon his or her examination of

1 materials designated CONFIDENTIAL or CONFIDENTIAL – ATTORNEY’S
2 EYES ONLY, provided, however, that in rendering such advice and in otherwise
3 communicating with his or her clients, such counsel shall not disclose the specific
4 contents of any materials designated CONFIDENTIAL or CONFIDENTIAL –
5 ATTORNEY’S EYES ONLY to persons who are not qualified under this Protective
6 Order to receive such materials.

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8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
9 IN OTHER LITIGATION

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

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

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

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

22 If the Designating Party timely seeks a protective order, the Party served with the
23 subpoena or court order shall not produce any information designated in this action
24 as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY”
25 before a determination by the court from which the subpoena or order issued, unless
26 the Party has obtained the Designating Party’s permission. The Designating Party
27 shall bear the burden and expense of seeking protection in that court of its
28 confidential material and nothing in these provisions should be construed as

1 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
2 directive from another court.

3
4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
5 PRODUCED IN THIS LITIGATION

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

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

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

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

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

24 (c) If the Non-Party fails to seek a protective order from this court within
25 14 days of receiving the notice and accompanying information, the Receiving Party
26 may produce the Non-Party’s confidential information responsive to the discovery
27 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
28 not produce any information in its possession or control that is subject to the

1 confidentiality agreement with the Non-Party before a determination by the court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and
3 expense of seeking protection in this court of its Protected Material.

4
5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14
15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

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

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1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order, no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 12.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Local Civil Rule 79-5. Protected Material
11 may only be filed under seal pursuant to a court order authorizing the sealing of the
12 specific Protected Material at issue. If a Party’s request to file Protected Material
13 under seal is denied by the court, then the Receiving Party may file the information
14 in the public record unless otherwise instructed by the court.

15
16 13. FINAL DISPOSITION

17 After the final disposition of this Action, as defined in paragraph 4, within 60
18 days of a written request by the Designating Party, each Receiving Party must return
19 all Protected Material to the Producing Party or destroy such material. As used in
20 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
21 summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving
23 Party must submit a written certification to the Producing Party (and, if not the same
24 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
25 (by category, where appropriate) all the Protected Material that was returned or
26 destroyed and (2) affirms that the Receiving Party has not retained any copies,
27 abstracts, compilations, summaries or any other format reproducing or capturing any
28 of the Protected Material. Notwithstanding this provision, Counsel are entitled to

1 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
2 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, and consultant and expert work product, even if such
4 materials contain Protected Material. Any such archival copies that contain or
5 constitute Protected Material remain subject to this Protective Order as set forth in
6 Section 4 (DURATION).

7
8 14. VIOLATION

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

11
12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 DATED: June 15, 2018

MANNING CURTIS BRADSHAW
& BEDNAR PLLC

15 BUCHALTER, A Professional Corporation

17 By _____ /s/

18 Lawrence B. Steinberg
Attorneys for defendants KYANI, INC.,
19 MICHAEL BRESHEARS and KIRK HANSEN

20 DATED: June 15, 2018

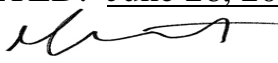
LINDEMANN LAW FIRM, APC

22 By _____ /s/

23 Blake J. Lindemann
Attorney for plaintiffs YAN GUO
and JU JIN GUO

24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25 DATED: June 26, 2018

26 

27 GAIL J. STANDISH
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 Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of *Yan Guo, et al. v. Kyäni, Inc., et al.*, No. CV 2:17-08257-
9 JAK-GJS . I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that
13 is subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Central District of California for enforcing the terms of this Stipulated Protective
17 Order, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____