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 20 REIS ROBOTICS USA, INC.

21 UNITED STATES DISTRICT COURT
 22 CENTRAL DISTRICT OF CALIFORNIA

23 GARD VAN ANTWERP, an
 24 individual,

Plaintiffs,

v.

25 REIS ROBOTICS USA, INC., an
 26 Illinois corporation; and DOES 1 to
 27 100, inclusive,

Defendants.

Case No. 2:18-cv-3018-JAK (SK)

DISCOVERY DOCUMENT: REFERRED TO
MAGISTRATE JUDGE STEVE KIM

**STIPULATED PROTECTIVE
ORDER AND FRE 502(D) AND (E)
CLAWBACK ORDER**

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on
8 all disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that are
10 entitled to confidential treatment under the applicable legal principles. The parties
11 further acknowledge, as set forth in Section 14.3, below, that this Stipulated
12 Protective Order does not entitle them to file confidential information under seal;
13 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
14 standards that will be applied when a party seeks permission from the court to file
15 material under seal.

16 **2. GOOD CAUSE STATEMENT**

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

11 **3. DEFINITIONS**

12 3.1 Challenging Party: a Party or Non-Party that challenges the designation
13 of information or items under this Order.

14 3.2 “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c) .

17 3.3 Counsel (without qualifier): Outside Counsel of Record and House
18 Counsel (as well as their support staff).

19 3.4 Designated House Counsel: House Counsel who seek access to
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this
21 matter.

22 3.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to
24 discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY”.

26 3.6 Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including,
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1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 3.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this action.

6 3.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
7 or Items: extremely sensitive “Confidential Information or Items,” disclosure of which
8 to another Party or Non-Party would create a substantial risk of serious harm that
9 could not be avoided by less restrictive means.

10 3.9 House Counsel: attorneys who are employees of a party to this
11 action. House Counsel does not include Outside Counsel of Record or any other
12 outside counsel.

13 3.10 Non-Party: any natural person, partnership, corporation, association, or
14 Other legal entity not named as a Party to this action.

15 3.11 Outside Counsel of Record: attorneys who are not employees
16 of a party to this action but are retained to represent or advise a party to this action
17 and have appeared in this action on behalf of that party or are affiliated with a law
18 firm which has appeared on behalf of that party.

19 3.12 Party: any party to this action, including all of its officers,
20 directors, employees, consultants, retained experts, and Outside Counsel of Record
21 (and their support staffs).

22 3.13 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this action

24 3.14 Professional Vendors: persons or entities that provide litigation
25 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
27 and their employees and subcontractors.
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1 3.15 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY.”

4 3.16 Receiving Party: a Party that receives Disclosure or
5 Discovery Material from a Producing Party.

6 **4. SCOPE**

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or
9 extracted from Protected Material; (2) all copies, excerpts,
10 summaries, or compilations of Protected Material; and (3) any testimony,
11 conversations, or presentations by Parties or their Counsel that might reveal
12 Protected Material. However, the protections conferred by this Stipulation and Order
13 do not cover the following information: (a) any information that is in the public
14 domain at the time of disclosure to a Receiving Party or becomes part of the public
15 domain after its disclosure to a Receiving Party as a result of publication not
16 involving a violation of this Order, including becoming part of the public record
17 through trial or otherwise; and (b) any information known to the Receiving Party
18 prior to the disclosure or obtained by the Receiving Party after the disclosure from a
19 source who obtained the information lawfully and under no obligation of
20 confidentiality to the Designating Party. Any use of Protected Material at trial shall
21 be governed by a separate agreement or order.

22 **5. DURATION**

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

4 **6. DESIGNATING PROTECTED MATERIAL**

5 6.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

19 If it comes to a Designating Party's attention that information or items that it
20 designated for protection do not qualify for protection at all or do not qualify for the
21 level of protection initially asserted, that Designating Party must promptly notify all
22 other parties that it is withdrawing the mistaken designation.

23 6.2 Manner and Timing of Designations. Except as otherwise provided in
24 this Order (see, e.g., second paragraph of Section 6.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
26 under this Order must be clearly so designated before the material is disclosed or
27 produced.
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Designation in conformity with this Order requires:

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

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY.” contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

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

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

23 Transcripts containing Protected Material shall have an obvious legend
24 on the title page that the transcript contains Protected Material, and the title page
25 shall be followed by a list of all pages (including line numbers as appropriate) that
26 have been designated as Protected Material and the level of protection being
27 asserted by the Designating Party. The Designating Party shall inform the court
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1 reporter of these requirements. Any transcript that is prepared before the expiration
2 of a 21-day period for designation shall be treated during that period as if it had
3 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in
4 its entirety unless otherwise agreed. After the expiration of that period, the
5 transcript shall be treated only as actually designated.

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

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15 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive
17 the Designating Party’s right to secure protection under this Order for such material.
18 Upon timely correction of a designation, the Receiving Party must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
23 confidentiality at any time. Unless a prompt challenge to a Designating Party’s
24 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
25 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
26 Party does not waive its right to challenge a confidentiality designation by electing not
27 to mount a challenge promptly after the original designation is disclosed.

28 7.2 Meet and Confer. The Challenging Party shall initiate the dispute

1 resolution process by providing written notice of each designation it is challenging
2 and describing the basis for each challenge. To avoid ambiguity as to whether a
3 challenge has been made, the written notice must recite that the challenge to
4 confidentiality is being made in accordance with this specific paragraph of the
5 Protective Order. The parties shall attempt to resolve each challenge in good faith and
6 must begin the process by conferring directly (in voice to voice dialogue; other forms
7 of communication are not sufficient) within 14 days of the date of service of notice. In
8 conferring, the Challenging Party must explain the basis for its belief that the
9 confidentiality designation was not proper and must give the Designating Party an
10 opportunity to review the designated material, to reconsider the circumstances, and, if
11 no change in designation is offered, to explain the basis for the chosen designation. A
12 Challenging Party may proceed to the next stage of the challenge process only if it has
13 engaged in this meet and confer process first or establishes that the Designating Party
14 is unwilling to participate in the meet and confer process in a timely manner.

15 7.3 Judicial Intervention. If the Parties cannot resolve a challenge without
16 court intervention, the Designating Party shall file and serve a motion to retain
17 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
18 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of
19 the parties agreeing that the meet and confer process will not resolve their dispute,
20 whichever is earlier. Each such motion must be accompanied by a competent
21 declaration affirming that the movant has complied with the meet and confer
22 requirements imposed in the preceding paragraph. Failure by the Designating Party to
23 make such a motion including the required declaration within 21 days (or 14 days, if
24 applicable) shall automatically waive the confidentiality designation for each
25 challenged designation. In addition, the Challenging Party may file a motion
26 challenging a confidentiality designation at any time if there is good cause for doing
27 so, including a challenge to the designation of a deposition transcript or any portions
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1 thereof. Any motion brought pursuant to this provision must be accompanied by a
2 competent declaration affirming that the movant has complied with the meet and
3 confer requirements imposed by the preceding paragraph.

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

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

13 8.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
14 or produced by another Party or by a Non-Party in connection with this case only
15 for prosecuting, defending, or attempting to settle this litigation. Such Protected
16 Material may be disclosed only to the categories of persons and under the conditions
17 described in this Order. When the litigation has been terminated, a Receiving Party
18 must comply with the provisions of Section 15 below (FINAL DISPOSITION).
19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 in a secure manner that ensures that access is limited to the persons authorized
22 under this Order.

23 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving
25 Party may disclose any information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as
27 well as employees of said Outside Counsel of Record to whom it is reasonably
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1 necessary to disclose the information for this litigation;

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

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

7 (d) the court and its personnel;

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

12 (f) during their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the “Acknowledgment and Agreement to
14 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
15 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
16 reveal Protected Material must be separately bound by the court reporter and may not
17 be disclosed to anyone except as permitted under this Stipulated Protective Order.

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information.

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21 8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
23 writing by the Designating Party, a Receiving Party may disclose any
24 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as
27 well as employees of said Outside Counsel of Record to whom it is reasonably
28 necessary to disclose the information for this litigation;

1 (b) Designated House Counsel of the receiving Party (1) who has no involvement in
2 competitive decision-making and (2) to whom disclosure is reasonably necessary for
3 this litigation;

4 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
5 necessary for this litigation, (2) who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
7 paragraph 8.4(a)(2), below, have been followed;

8 (d) the court and its personnel;

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

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

15 8.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
17 Designated House Counsel or Experts.

18 (a)(1) Unless otherwise ordered by the court or agreed to in writing by
19 the Designating Party, a Party that seeks to disclose to Designated House Counsel any
20 information or item that has been designated “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY” pursuant to Section 8.3 first must make a written
22 request to the Designating Party that (1) sets forth the full name of the Designated
23 House Counsel and the city and state of his or her residence, and (2) describes the
24 Designated House Counsel’s current and reasonably foreseeable future primary job
25 duties and responsibilities in sufficient detail to determine if House Counsel is
26 involved, or may become involved, in any competitive decision-making.

27 (a)(2) Unless otherwise ordered by the court or agreed to in writing by
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1 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this
2 Order) any information or item that has been designated “HIGHLY CONFIDENTIAL
3 – ATTORNEYS’ EYES ONLY” pursuant to paragraph 8.3(b) first must make a
4 written request to the Designating Party that (1) identifies the general categories of
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the
6 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name
7 of the Expert and the city and state of his or her primary residence, (3) attaches a copy
8 of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
9 identifies each person or entity from whom the Expert has received compensation or
10 funding for work in his or her areas of expertise or to whom the expert has provided
11 professional services, including in connection with a litigation, at any time during the
12 preceding five years, and (6) identifies (by name and number of the case, filing date,
13 and location of court) any litigation in connection with which the Expert has offered
14 expert testimony, including through a declaration, report, or testimony at a deposition
15 or trial, during the preceding five years.

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

21 (c) A Party that receives a timely written objection must meet and confer
22 with the Designating Party (through direct voice to voice dialogue) to try to resolve
23 the matter by agreement within seven days of the written objection. If no agreement is
24 reached, the Party seeking to make the disclosure to Designated House Counsel or the
25 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
26 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any
27 such motion must describe the circumstances with specificity, set forth in detail the
28 reasons why the disclosure to Designated House Counsel or the Expert is reasonably

1 necessary, assess the risk of harm that the disclosure would entail, and suggest any
2 additional means that could be used to reduce that risk. In addition, any such motion
3 must be accompanied by a competent declaration describing the parties' efforts to
4 resolve the matter by agreement (i.e., the extent and the content of the meet and confer
5 discussions) and setting forth the reasons advanced by the Designating Party for its
6 refusal to approve the disclosure.

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

12 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION**

14 If a Party is served with a subpoena or a court order issued in other litigation
15 that compels disclosure of any information or items designated in this action as
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
17 ONLY" that Party must:

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

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

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

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

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

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

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

20 1. promptly notify in writing the Requesting Party and the Non-Party
21 that some or all of the information requested is subject to a confidentiality
22 agreement with a Non-Party;

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

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

9 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

18
19 **12. FILING PROTECTED MATERIAL**

20 All documents containing “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
21 – ATTORNEYS’ EYES ONLY” information that are filed with the Court in this
22 action shall, as permitted by the Court, be sealed and designated with the appropriate
23 Confidentiality Designation, along with a notation that the contents subject to a
24 Protective Order and are not to be revealed except by further Order of the Court. A
25 Party that seeks to file under seal any Protected Material must comply with Civil
26 Local Rule 79-5.

1 **13. CLAWBACK AGREEMENT**

2 Pursuant to FRE 502(d) and (e), the Parties agree to and the Court orders
3 protection of privileged and otherwise protected Documents against claims of waiver
4 (including as against third parties and in other federal and state proceedings) as
5 follows:

6 (a) The disclosure or production of Documents by a Producing Party
7 subject to the attorney-client privilege and/or the work-product doctrine, to a
8 Receiving Party, shall in no way constitute the voluntary disclosure of such
9 Document.

10 (b) The inadvertent disclosure or production of any Document in this
11 action shall not result in the waiver of the attorney-client privilege and/or work-
12 product doctrine associated with such Document as to the Receiving Party or any third
13 parties, and shall not result in any waiver, including subject matter waiver, of any
14 kind.

15 (c) If, during the course of this litigation, a party determines that any
16 Document produced by another party is or may reasonably be subject to the attorney-
17 client privilege and/or work product doctrine (“Protected Document”):

18 i. the Receiving Party shall: (A) refrain from reading the
19 Protected Document any more closely than is necessary to ascertain that it is
20 privileged or otherwise protected from disclosure; (B) immediately notify the
21 Producing Party in writing that it has discovered Documents believed to be privileged
22 or protected; (C) specifically identify the Protected Documents by Bates number range
23 or hash value, and, (D) within ten (10) days of discovery by the Receiving Party,
24 return, sequester, or destroy all copies of such Protected Documents, along with any
25 notes, abstracts or compilations of the content thereof. To the extent that a Protected
26 Document has been loaded into a litigation review database under the control of the
27 Receiving Party, the Receiving Party shall have all electronic copies of the Protected
28 Document extracted from the database. Where such Protected Documents cannot be

1 destroyed or separated, they shall not be reviewed, disclosed, or otherwise used by the
2 Receiving Party. Notwithstanding, the Receiving Party is under no obligation to
3 search or review the Producing Party's Documents to identify potentially privileged or
4 work product Protected Documents.

5 ii. If the Producing Party intends to assert a claim of attorney-
6 client privilege and/or work product over Documents identified by the Receiving
7 Party as Protected Documents, the Producing Party will, within ten (10) days of
8 receiving the Receiving Party's written notification described above, inform the
9 Receiving Party of such

10 iii. intention in writing and shall provide the Receiving Party
11 with a log for such Protected Documents that is consistent with the requirements of
12 the Federal Rules of Civil Procedure, setting forth the basis for the claim of privilege
13 or other protection. In the event that any portion of a Protected Document does not
14 contain privileged or protected information, the Producing Party shall also provide to
15 the Receiving Party a redacted copy of the document that omits the information that
16 the Producing Party believes is subject to a claim of privilege or other protection.

17 (d) If, during the course of this litigation, a party determines it has
18 produced a Protected Document:

19 i. the Producing Party may notify the Receiving Party of such
20 inadvertent production in writing, and demand the return of such documents. Such
21 notice shall be in writing, however, it may be delivered orally on the record at a
22 deposition, promptly followed up in writing. The Producing Party's written notice
23 will identify the Protected Document inadvertently produced by bates number range
24 or hash value, the privilege or protection claimed, and the basis for the assertion of the
25 privilege and shall provide the Receiving Party with a log for such Protected
26 Documents that is consistent with the requirements of the Federal Rules of Civil
27 Procedure, setting forth the basis for the claim of privilege or other protection. In the
28 event that any portion of the Protected Document does not contain privileged or

1 protected information, the Producing Party shall also provide to the Receiving Party a
2 redacted copy of the Document that omits the information that the Producing Party
3 believes is subject to a claim of privilege or other protection.

4 ii. The Receiving Party must, within ten (10) days of receiving
5 the Producing Party's written notification described above, return, sequester, or
6 destroy the Protected Document and any copies, along with any notes, abstracts or
7 compilations of the content thereof. To the extent that a Protected Document has been
8 loaded into a litigation review database under the control of the Receiving Party, the
9 Receiving Party shall have all electronic copies of the Protected Document extracted
10 from the database.

11 (e) To the extent that the information contained in a Protected
12 Document has already been used in or described in other documents generated or
13 maintained by the Receiving Party prior to the date of receipt of written notice by the
14 Producing Party as set forth in paragraphs 11(c)(ii) and 11(d)(i), then the Receiving
15 Party shall sequester such documents until the claim has been resolved. If the
16 Receiving Party disclosed the Protected Document before being notified of its
17 inadvertent production, it must take reasonable steps to retrieve it.

18 (f) The Receiving Party's return, sequestering or destruction of
19 Protected Documents as provided herein will not act as a waiver of the Requesting
20 Party's right to move for the production of the returned, sequestered or destroyed
21 documents on the grounds that the documents are not, in fact, subject to a viable claim
22 of privilege or protection. However, the Receiving Party is prohibited and estopped
23 from arguing that:

24 i. the disclosure or production of the Protected Documents acts
25 as a waiver of an applicable privilege or evidentiary protection;

26 ii. the disclosure of the Protected Documents was not
27 inadvertent;

1 14.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any

5 14.3 Filing Protected Material. Without written permission from the
6 Designating Party or a court order secured after appropriate notice to all interested
7 persons, a Party may not file in the public record in this action any Protected
8 Material. A Party that seeks to file under seal any Protected Material must comply
9 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant
10 to a court order authorizing the sealing of the specific Protected Material at issue.

11 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
12 establishing that the Protected Material at issue is privileged, protectable as a trade
13 secret, or otherwise entitled to protection under the law. If a Receiving Party's request
14 to file Protected Material under seal pursuant to Civil Local Rule 79-5 is denied by
15 the court, then the Receiving Party may file the Protected Material in the public
16 record pursuant to Civil Local Rule 79-5.2.2(b)(ii) unless otherwise instructed by the
17 court.

18 **15. FINAL DISPOSITION**

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

1 returned or destroyed and (2) affirms that the Receiving Party has not retained
2 any copies, abstracts, compilations, summaries or any other format reproducing or
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel
4 are entitled to retain an archival copy of all pleadings, motion papers, trial,
5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
6 and trial exhibits, expert reports, attorney work product, and consultant and expert
7 work product, even if such materials contain Protected Material. Any such
8 archival copies that contain or constitute Protected Material remain subject to this
9 Protective Order as set forth in Section 5 (DURATION).

10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

11
12 Dated: 6/28/18

13 
14 Stephen F. McAndrew
15 Attorneys for Plaintiff
16 GARD VAN ANTWERP

17 Date: June 28, 2018

18 /s/ Michael J. Hui
19 NATALIE A. PIERCE
20 MICHAEL J. HUI
21 WILLIAM A. COSMOPULOUS
22 Attorneys for Defendant
23 REIS ROBOTICS USA, INC.

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: June 29, 2018



HONORABLE STEVE KIM
UNITED STATES MAGISTRATE
JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
 4 _____ [print or type full address], declare under penalty of perjury that
 5 I have read in its entirety and understand the Stipulated Protective Order that was
 6 issued by the United States District Court for the Central District of California on
 7 [date] in the case of *Gard Van Antwerp v. Reis Robotics USA, Inc.*, Docket No.
 8 Case No. 2:18-cv-03018-JAK-SK. I agree to comply with and to be bound by all the
 9 terms of this Stipulated Protective Order and I understand and acknowledge that
 10 failure to so comply could expose me to sanctions and punishment in the nature of
 11 contempt. I solemnly promise that I will not disclose in any manner any information
 12 or item that is subject to this Stipulated Protective Order to any person or entity
 13 except in strict compliance with the provisions of this Order. I further agree to submit
 14 to the jurisdiction of the United States District Court for the Central District of
 15 California for the purpose of enforcing the terms of this Stipulated Protective Order,
 16 even if such enforcement proceedings occur after termination of this action. I hereby
 17 appoint _____ [print or type full name] of
 18 _____ [print or type full address and telephone number] as my
 19 California agent for service of process in connection with this action or any
 20 proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 [printed name]

26 Signature: _____

27 [signature]

28 Firmwide:155404114.3 080120.1004