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Attorneys for Plaintiff, THROOP, LLC

19 **UNITED STATES DISTRICT COURT**  
 20 **CENTRAL DISTRICT OF CALIFORNIA**  
 21 **WESTERN DIVISION**

23 THROOP, LLC, a California limited  
 liability company,

24 Plaintiff,

25 v.

26 MICROSOFT CORPORATION, a  
 Washington corporation,

27 Defendant.

Case No. 2:19-cv-10604-AB-MRWx  
 Hon. Andre Birotte Jr.

**STIPULATED CONFIDENTIALITY  
 AND PROTECTIVE ORDER**

**DEMAND FOR JURY TRIAL**

**STIPULATED CONFIDENTIALITY AND PROTECTIVE ORDER**

1 **STIPULATED CONFIDENTIALITY AND PROTECTIVE ORDER**

2  
3 1. PURPOSES AND LIMITATIONS

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

14 1.1 GOOD CAUSE STATEMENT

15 The parties submit that there is good cause for entry of this Protective Order  
16 because they believe certain information that is or will be encompassed by discovery  
17 will warrant protection due to the production or disclosure of confidential business  
18 information, trade secrets, or other proprietary information that is not available to the  
19 public. Special protection is needed from public disclosure and from use for any  
20 purpose other than these proceedings. Examples of such information that the parties  
21 may seek to protect from unrestricted or unprotected disclosure include:

22 (a) Information that is subject of a non-disclosure or confidentiality agreement  
23 or obligation;

24 (b) Agreements with third parties, such as license agreements;

25 (c) Research and development information relating to the technology at issue  
26 in these proceedings;

1 (d) Proprietary engineering or technical information, including product  
2 design, manufacturing techniques, processing information, drawings, memoranda,  
3 source code, or reports;

4 (e) Information related to internal operations such as confidential business  
5 practices;

6 (f) Information related to sales, profits, costs, revenue, product pricing or  
7 other internal non-public financial/accounting information;

8 (g) Information related to past, current, or future product development;

9 (h) Information related to internal, non-public market analyses and business  
10 and marketing development;

11 (i) Trade secrets (as defined by the jurisdiction in which the information is  
12 located); and

13 (j) Information that may be privileged or otherwise protected from disclosure  
14 under state or federal statutes, court rules, case decisions, or common law.

15 Unprotected or unrestricted disclosure of such confidential information would  
16 result in prejudice or harm to the Producing Party by revealing the Producing Party's  
17 competitive confidential information that has been developed at the expense of the  
18 Producing Party and represents valuable tangible and intangible assets of that party.  
19 Accordingly, the parties submit that there is good cause for entry of this Protective  
20 Order.

## 21 2. DEFINITIONS

22 2.1 Challenging Party: a Party or Non-Party that challenges the designation  
23 of information or items under this Order.

24 2.2 "CONFIDENTIAL" Information or Items: shall mean that the Discovery  
25 Material so designated includes non-public information that the  
26 Designating Party reasonably believes should be protected from public  
27 disclosure because such information (i) is proprietary to the Designating  
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1 Party, e.g., a trade secret or other confidential research, development or  
2 commercial information; or (ii) implicates an individual's legitimate  
3 expectation of privacy. "CONFIDENTIAL" information shall apply to  
4 all information, documents and things responsive to requests for  
5 production of documents and things under Fed. R. Civ. P. 34; information  
6 produced by other persons that the producing or Designating Party is  
7 under an obligation to maintain in confidence; responses to written  
8 interrogatories under Fed. R. Civ. P. 33; responses to requests for  
9 admission under Fed. R. Civ. P. 36 or other discovery requests;  
10 testimony adduced at depositions upon oral examination or upon written  
11 questions pursuant to Fed. R. Civ. P. 30 and 31 or during hearings or at  
12 trial. The information contained therein and all copies, abstracts,  
13 excerpts, analyses or other writings that contain, reflect, reveal, suggest  
14 or otherwise disclose such information shall also be deemed  
15 "CONFIDENTIAL" information. Information originally designated as  
16 "CONFIDENTIAL" information shall not retain that status after any  
17 ruling by the Court denying such status to it. "CONFIDENTIAL"  
18 Information or Items shall include any information designated as  
19 "CONFIDENTIAL" and previously produced in connection with this  
20 Action, which shall be treated under the terms of this Protective Order  
21 once it has been entered by the Court.

22 2.3 Designating Party: a Party or Non-Party that designates information or  
23 items that it produces in disclosures or in responses to discovery as  
24 Protected Material under this Order.

25 2.4 Disclosure or Discovery Material: all items or information, regardless of  
26 the medium or manner in which it is generated, stored, or maintained  
27 (including, among other things, testimony, transcripts, and tangible  
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1 things), that are produced or generated in disclosures or responses to  
2 discovery in this matter.

3 2.5 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who (1) has been retained by a Party or its  
5 counsel to serve as a testifying expert witness in this Action, (2) is not a  
6 past or current employee of a Party or of a Party's competitor, and (3) at  
7 the time of retention, is not anticipated to become an employee of a Party  
8 or of a Party's competitor.

9 2.6 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall  
10 indicate that the Discovery Material so designated includes, discloses, or  
11 comprises, in whole or in part, information that the Producing Party  
12 deems especially sensitive, which may include, but is not limited to,  
13 confidential research and development, financial, technical, marketing,  
14 licensing information required to be so designated, any other sensitive or  
15 trade secret information "HIGHLY CONFIDENTIAL – ATTORNEYS'  
16 EYES ONLY" Information or Items shall include any information  
17 designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
18 ONLY" and previously produced in connection with this Action, which  
19 shall be treated as such under the terms of this Protective Order once it  
20 has been entered by the Court. "HIGHLY CONFIDENTIAL SOURCE  
21 CODE – ATTORNEYS' EYES ONLY." A Producing Party may  
22 specially designate Source Code (whether in electronic or hardcopy  
23 form) that is not publicly available as "Highly Confidential Source Code  
24 – Attorneys' Eyes Only."

25 2.7 Designated In-House Counsel: (1) in-house counsel designated by a  
26 Party, who have signed the agreement to be bound by the Protective  
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1 Order (Exhibit A), and (2) staff of such counsel to whom it is reasonably  
2 necessary to disclose the information for this Action, including  
3 supporting personnel, such as paralegals, legal secretaries, and legal  
4 clerks.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or  
6 other legal entity who is not a Party to this Action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party  
8 to this Action but are retained to represent or advise a party to this Action  
9 and have appeared in this Action on behalf of that party or are affiliated  
10 with a law firm which has appeared on behalf of that party.

11 2.10 Party: any party to this Action, including all of its officers, directors,  
12 employees, consultants, retained experts, and Outside Counsel of Record  
13 (and their support staff).

14 2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
15 Discovery Material in this Action.

16 2.12 Professional Vendors: persons or entities that provide litigation support  
17 services (*e.g.*, transcription, photocopying, videotaping, translating,  
18 preparing exhibits or demonstrations, and organizing, storing, or  
19 retrieving data in any form or medium) and their employees and  
20 subcontractors.

21 2.13 Protected Material: any Disclosure or Discovery Material that is  
22 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
23 ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL SOURCE  
24 CODE – ATTORNEYS’ EYES ONLY.”

25 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
26 from a Producing Party.

1           2.15 Source Code: any computer source code, instructions, data structures,  
2           data schema executable code, microcode, RTL, HDL or other hardware  
3           description language documents that describe encoding or decoding  
4           algorithms used in computer source code, and copies thereof (*i.e.*,  
5           computer instructions and data definitions expressed in a form suitable  
6           for input to an assembler, compiler, or other translator) and associated  
7           comments and revision histories disclosure of which to another Party or  
8           Non-Party would create a substantial risk of serious harm.

9    3.     SCOPE

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

23           Public Documents. None of the restrictions set forth in this Order shall apply  
24           to any documents or other information that is already public knowledge or becomes  
25           public knowledge by means not in violation of the provisions of this Order.  
26           Nothing in this Order shall prevent a party from using any information that the  
27           party properly possessed prior to receipt of any Protected Material from another  
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1 Party or a non-party or that is discovered independently by the Receiving Party. In  
2 addition, the terms of the treatment of the Protected Material shall be effective only  
3 upon the effective date of this Order.

4 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. In  
15 the first instance, it will be presumed that each party or non-party that  
16 designates information or items for protection under this Order will have  
17 taken reasonable steps to designate for protection only those parts of  
18 material, documents, items, or oral or written communications that  
19 qualify, where reasonableness takes into consideration the burden and  
20 expense of making such designations.

21 However, if it comes to a Designating Party's attention that information  
22 or items that it designated for protection do not qualify for protection at  
23 all or do not qualify for the level of protection initially asserted, that  
24 Designating Party must promptly notify the Receiving Party that it is  
25 withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in  
27 this Order (*see e.g.*, second paragraph of subsection 5.2(a) below), or as  
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1 otherwise stipulated or ordered, Disclosure or Discovery Material that  
2 qualifies for protection under this Order must be clearly so designated  
3 before the material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (*e.g.*, paper or electronic  
6 documents, but excluding transcripts of depositions or other  
7 pretrial or trial proceedings), that the Producing Party affix the  
8 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL  
10 SOURCE CODE – ATTORNEYS’ EYES ONLY.”

11 A Party or Non-Party that makes original documents or materials  
12 available for inspection need not designate them for protection  
13 until after the inspecting Party has indicated which material it  
14 would like copied and produced. During the inspection and  
15 before the designation, all of the material made available for  
16 inspection shall be deemed “HIGHLY CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY.” After the inspecting Party has  
18 identified the documents it wants copied and produced, the  
19 Producing Party must determine which documents, or portions  
20 thereof, qualify for protection under this Order. Then, before  
21 producing the specified documents, the Producing Party must  
22 affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to the  
24 documents containing Protected Material.

25 (b) for testimony given in deposition or in other pretrial or trial  
26 proceedings, that the Designating Party identify on the record,  
27 before or after the close of the deposition, hearing, or other

1 proceeding, all protected testimony and specify the level of  
2 protection being asserted. When it is impractical to identify  
3 separately each portion of testimony that is entitled to protection  
4 and it appears that substantial portions of the testimony may  
5 qualify for protection, and the Designating Party has stated on the  
6 record that at least some portions of the testimony may be  
7 designated under this Order, the designating party shall have up to  
8 21 calendar days following receipt of the certified transcript by  
9 counsel for the Parties and, in the event of a third-party witness,  
10 counsel for the third party to identify the specific portions of the  
11 testimony as to which protection is sought and to specify the level  
12 of protection being asserted. Until such time as a Designating  
13 Party identifies the specific portions of the testimony as to which  
14 protection is sought, the entire transcript should be treated as if it  
15 was designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
16 EYES ONLY.” Only those portions of the testimony that are  
17 appropriately designated for protection within the 21 days shall be  
18 covered by the provisions of this Order, provided however that  
19 failure to particularly identify the designated portions of testimony  
20 within the 21-day period will not result in a waiver of any  
21 confidentiality designation. Alternatively, a Designating Party  
22 may specify, at the deposition or up to 21 days afterwards, that the  
23 entire transcript shall be treated as “CONFIDENTIAL” or  
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
25 The use of a document as an exhibit at a deposition shall not in  
26 any way affect its designation as “CONFIDENTIAL,” “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY  
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1 CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES  
2 ONLY.”

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

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party may challenge a designation of  
16 confidentiality at any time. A Party does not waive its right to challenge  
17 a confidentiality designation by electing not to mount a challenge  
18 promptly after the original designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
20 resolution process by providing written notice of each designation it is  
21 challenging and describing the basis for each challenge. To avoid  
22 ambiguity as to whether a challenge has been made, the written notice  
23 must recite that the challenge to confidentiality is being made in  
24 accordance with this paragraph. The parties shall attempt to resolve each  
25 challenge in good faith, and if the Designating Party does not voluntarily  
26 withdraw the challenged designation, the parties must confer directly (in  
27 voice to voice dialogue; other forms of communication are not sufficient)

1 within ten (10) court days of the date of service of notice. In conferring,  
2 the Challenging Party must explain the basis for its belief that the  
3 confidentiality designation was not proper and must give the Designating  
4 Party an opportunity to review the designated material, to reconsider the  
5 circumstances, and, if no change in designation is offered, to explain the  
6 basis for the chosen designation. A Challenging Party may proceed to  
7 the next stage of the challenge process only if it has engaged in this meet  
8 and confer process first or establishes that the Designating Party is  
9 unwilling to participate in the meet and confer process in a timely  
10 manner.

11 6.3 Judicial Intervention. If, following the Meet and Confer set forth in  
12 Paragraph 6.2, the Parties cannot resolve a challenge without court  
13 intervention, the Challenging Party may thereafter seek an order to alter  
14 the confidential status of the designated material. Until any dispute under  
15 this paragraph is ruled upon by the presiding judge, the designation will  
16 remain in full force and effect, and the information will continue to be  
17 accorded the confidential treatment required by this Order.

18 Any challenge to a confidentiality designation must comply in full with  
19 the joint filing format described in Local Rule 37 for all discovery  
20 motions. If the Parties cannot resolve a challenge without court  
21 intervention, the Challenging Party may file and serve a motion  
22 challenging a confidentiality designation within 21 days of the initial  
23 notice of challenge or within 14 days of the parties agreeing that the meet  
24 and confer process will not resolve their dispute, whichever is earlier.  
25 Failure by the Challenging Party to make such a motion including the  
26 required declaration within 21 days (or 14 days, if applicable) shall  
27 automatically waive any challenge to the designation. Any motion  
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1 brought pursuant to this provision must be accompanied by a competent  
2 declaration affirming that the movant has complied with the meet and  
3 confer requirements imposed by the preceding paragraph and Local Rule  
4 37.

5 Frivolous challenges and those made for an improper purpose (e.g., to  
6 harass or impose unnecessary expenses and burdens on other parties)  
7 may expose the Challenging Party to sanctions. All parties shall continue  
8 to afford the material in question the level of protection to which it is  
9 entitled under the Producing Party's designation until the Court rules on  
10 the challenge

11 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 7.1 Basic Principles. All Protected Material shall be used solely for this  
13 Action only for prosecuting, defending, or attempting to settle this  
14 litigation. Such Protected Material may be disclosed only to the  
15 categories of persons and under the conditions described in this Order.  
16 When the litigation and any related appellate proceeding described above  
17 has been terminated, a Receiving Party must comply with the provisions  
18 of Section 14 below (FINAL DISPOSITION).

19 (a) Protected Material must be stored and maintained by a Receiving  
20 Party at a location and in a secure manner that ensures that access  
21 is limited to the persons authorized under this Order. Receiving  
22 Parties must take reasonable precautions to protect Protected  
23 Material from loss, misuse, and unauthorized access, disclosure,  
24 alteration and destruction.

25 (b) Patent Prosecution Bar. Any individual attorney, agent,  
26 consultant, or expert employed or retained by Plaintiff, who  
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1 reviews any material designated “HIGHLY CONFIDENTIAL –  
2 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL  
3 SOURCE CODE – ATTORNEYS’ EYES ONLY” shall not  
4 thereafter prosecute or materially assist in the prosecution of any  
5 patent application relating to claims encompassing any technology  
6 at issue in the Action or any cases related to the Action. For  
7 purposes of this paragraph, “prosecution” includes drafting,  
8 amending or otherwise affecting the scope of patent claims, but,  
9 subject to the other provisions of this Paragraph, shall not apply  
10 to patent reexamination proceedings, *inter partes* review  
11 proceedings, post-grant review proceedings, or covered business  
12 method review proceedings (including amendments in any post-  
13 grant proceeding with the United States Patent and Trademark  
14 Office) involving one or more patents asserted in this Action  
15 brought by a Party to this Action, an affiliate or subsidiary of a  
16 Party to this Action, or a third party “privity” as that term is used in  
17 35 U.S.C. § 315(e)(2) with a Party to this Action as long as such  
18 person receiving “HIGHLY CONFIDENTIAL – ATTORNEYS’  
19 EYES ONLY” or “HIGHLY CONFIDENTIAL SOURCE CODE  
20 – ATTORNEYS’ EYES ONLY” information is not involved in  
21 amending any claims in such proceeding. This Prosecution Bar  
22 shall begin when access to the material designated “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
24 CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES  
25 ONLY” is first received by the affected individual and shall end  
26 eighteen (18) months after final termination of the specific case  
27 involving the Party represented by the individual receiving the  
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1 Protected Material. This restriction does not apply generally to the  
2 law firms involved in this Action, but applies only to the specified  
3 individuals who have actually reviewed material designated  
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
5 “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’  
6 EYES ONLY” in connection with this Action.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
8 otherwise ordered by the court or permitted in writing by the Designating  
9 Party, a Receiving Party may disclose any information or item designated  
10 “CONFIDENTIAL” only to:

- 11 (a) the Receiving Party’s Outside Counsel of Record in this Action,  
12 as well as employees of said Outside Counsel of Record to whom  
13 it is reasonably necessary to disclose the information for this  
14 litigation;
- 15 (b) Experts (as defined in this Order) or non-testifying consultants of  
16 the Receiving Party to whom disclosure is reasonably necessary  
17 for this litigation and properly designated under Paragraph 7.6 of  
18 this Order;
- 19 (c) the Court and its personnel;
- 20 (d) professional jury or trial consultants (including any support  
21 personnel and mock jurors);
- 22 (e) with respect to Discovery Materials from the Designating Party  
23 and only during his or her deposition, any person currently  
24 employed by that Designating Party or designated by that  
25 Designating Party as a witness under Fed. R. Civ. P. 30(b)(6);  
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- 1 (f) the author or recipient of a document containing the information  
2 or a custodian or other person who otherwise possessed or knew  
3 the information;
- 4 (g) stenographic, videographic, and clerical personnel taking  
5 testimony involving such documents, and any staff used by such  
6 personnel to edit or finalize testimony;
- 7 (h) Professional Vendors to whom disclosure is reasonably necessary  
8 for this litigation;
- 9 (i) a total of two (2) Designated In-House Counsel of each Party to  
10 whom such disclosure is reasonably necessary for the oversight,  
11 conduct and/or resolution of this litigation, all of whom have  
12 signed the “Acknowledgement and Agreement to Be Bound”  
13 (Exhibit A); and
- 14 (j) Two (2) representatives of the Receiving Party, where each such  
15 person has been previously identified by providing the Producing  
16 Party a completed copy of Exhibit A.

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY” Information or Items. Documents, materials, items, testimony,  
19 or information designated “HIGHLY CONFIDENTIAL –  
20 ATTORNEYS’ EYES ONLY” pursuant to this Order, or copies,  
21 derivations, or extracts therefrom, compilations and summaries thereof,  
22 and the information therein, may be given, shown, made available to, or  
23 communicated in any way only to the persons identified in subsections  
24 (a) through (h) of Paragraph 7.2 of this Order and a total of one (1)  
25 Designated In-House Counsel of each Party to whom such disclosure is  
26 reasonably necessary for the oversight, conduct and/or resolution of this  
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1 litigation, and one (1) representative on behalf of Throop who may  
2 review non-public sales/revenue information designated as HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY, provided that any  
4 such designated individual has signed the “Acknowledgement and  
5 Agreement to Be Bound” (Exhibit A)<sup>1</sup> and pursuant to the procedures  
6 set forth in Paragraph 7.6 of this Order, as applicable.  
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27 <sup>1</sup> However, in house counsel for one defendant shall not have access to “HIGHLY CONFIDENTIAL  
28 – ATTORNEYS’ EYES ONLY” information of another defendant.

1 7.4 Disclosure of “HIGHLY CONFIDENTIAL SOURCE CODE –  
2 ATTORNEYS’ EYES ONLY.” To the extent Source Code is produced in  
3 this Action, access to such Source Code designated as “HIGHLY  
4 CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY”  
5 shall be given only to those individuals associated with the Receiving  
6 Party identified in subsections (a), (b), (d) (except excluding mock  
7 jurors), or (h) of Paragraph 7.2, individuals associated with the  
8 Producing Party identified in subsections (e) and (f) of Paragraph 7.2, or  
9 other individuals identified in subsections (c) and (g) of Paragraph 7.2 of  
10 this Order and pursuant to the procedures set forth in Paragraph 7.6 of  
11 this Order, as applicable.

12 7.5 Disclosure and Review of Source Code

13 (a) Unless otherwise agreed to in writing between the Producing Party  
14 and the Receiving Party, a Receiving Party may only review Source  
15 Code that was produced in electronic form on “stand-alone”  
16 computers (on at least two computers) that reside at an office of  
17 the producing counsel of record in the Southern California area or  
18 at some other mutually agreed location. Access is to be made  
19 available during regular business hours (9:00 a.m. to 5:00 p.m.  
20 local time) on ten (10) business-days’ notice for the initial  
21 inspection and three (3) business-days’ notice for any subsequent  
22 inspection. Any single inspection may span multiple days based  
23 on the same notice. No devices capable of recording, copying or  
24 transmitting the source code may be brought into the room with  
25 the stand-alone computer.

26 (b) No recordable media, recordable devices, input/output devices,  
27 devices with Internet or network access, or other electronic  
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1 devices, including without limitation sound recorders, computers,  
2 cellular telephones, peripheral equipment, cameras, CDs, DVDs,  
3 or drives of any kind shall be permitted in the source code  
4 reviewing room. The Receiving Party may bring non-networked  
5 electronic devices into the inspection room for note-taking, which  
6 will not be connected to a local area network (“LAN”), an intranet  
7 or the Internet, and has had all image making functionality  
8 disabled. Such note-taking computer shall be used for the sole  
9 purpose of note-taking.

10 (c) No person shall copy, email, transmit, upload, download, print,  
11 photograph or otherwise duplicate any portion of the designated  
12 Source Code, except as explicitly permitted herein.

13 (d) The Receiving Party may request that commercially available  
14 software tools for viewing and searching Source Code be installed,  
15 so long as such tools are reasonably necessary to review the  
16 Source Code.

17 (e) The Producing Party shall allow printing of paper copies of the  
18 Source Code at the time of inspection by the Receiving Party or  
19 the Receiving Party’s consultants or experts (hereinafter,  
20 collectively referred to as the “Reviewing Party”). Immediately  
21 after printing and without removing the print-outs from the  
22 location of the Source Code Computer, the Receiving Party shall  
23 provide the print-outs to the Producing Party and the Producing  
24 Party will provide Bates-labeled and appropriately designated  
25 three (3) copies of the print-outs to the Receiving Party within  
26 three (3) business days. The Reviewing Party shall keep all  
27 Source Code in a secured container or location at all times as  
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1 provided in paragraph 7.1(a). Paper copies of Source Code may  
2 not be copied and may not be removed from a secured container  
3 or location unless in a secured, private area, except as specified in  
4 Paragraph 7.6(i) of this Order.

5 (f) The Receiving Party shall not print more than twenty-five (25)  
6 consecutive pages of continuous Source Code. The Receiving  
7 Party may request permission to print additional consecutive pages  
8 of continuous Source Code. Such requests shall not be  
9 unreasonably denied by the Producing Party. In addition, the  
10 Receiving Party shall be limited to printing a total of three hundred  
11 and seventy-five (375) pages of Source Code, a page being defined  
12 as an 8.5" x 11" paper page with 1.25" margins and using no  
13 smaller than a 12 point font. If at the time of inspection and  
14 requested printing, the Producing Party objects to the printed  
15 portions as excessive and/or not done for a permitted purpose, the  
16 Receiving Party shall not be provided with the print portions until  
17 such objection is resolved. In the event of an objection, the Parties  
18 shall meet and confer within five (5) days of the objection and  
19 attempt in good faith to resolve the dispute on an informal basis.  
20 To the extent Receiving Party requires an aggregate total of more  
21 than 250 pages of source code, the Receiving Party shall make  
22 such request in writing, including the basis of such a request. The  
23 Producing Party will have five (5) business days to object and  
24 provide a good-faith basis to object to the request. If Producing  
25 Party objects to the request, and the parties are not able to resolve  
26 the issue within ten (10) business days of the request, Receiving  
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1 Party can move the Court to compel Producing Party to produce  
2 the requested source code over the 250-page limit.

3 (g) The Producing Party may visually monitor the activities of the  
4 Receiving Party's representatives during any source code review  
5 subject to a reasonable approach that is free from interference that  
6 might otherwise impede the representatives' source code review,  
7 and only to the extent to ensure that there is no unauthorized  
8 recording, copying, or transmission of the Producing Party's  
9 Source Code. For the sake of clarity, the Producing Party will  
10 refrain from any monitoring activities that reveal Attorney Work  
11 Product (*e.g.*, viewing the source code review notes or monitoring  
12 the contents of the review computer's screen during the review);  
13 such monitoring activities will not be considered to be a  
14 reasonable approach.

15 (h) Any printed pages of Source Code, and any other documents or  
16 things reflecting Source Code that have been designated by the  
17 Producing Party as "HIGHLY CONFIDENTIAL SOURCE  
18 CODE – ATTORNEYS' EYES ONLY" may not be copied,  
19 digitally imaged or otherwise duplicated, unless authorized herein.

20 (i) Any documents or things designated "HIGHLY  
21 CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES  
22 ONLY" shall be stored or viewed only at (i) the site of an  
23 inspection conducted pursuant to paragraph 7.6(a) of this Order,  
24 (ii) the offices of Outside Counsel for the Receiving Party in the  
25 Southern California area; (iii) the offices of outside experts or  
26 consultants who have been approved to access Source Code; (iv)  
27 the site where any deposition is taken; (v) the court; or (vi) any  
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1 secure intermediate location necessary to transport the information  
2 to a hearing, trial, or deposition. Any such paper copies shall be  
3 maintained at all times in a locked and secure location, except  
4 when being transported pursuant to this subsection, during which  
5 time reasonable precautions will be taken to safeguard their  
6 confidentiality including storing the source code in a locked  
7 container in the possession of Outside Counsel.

8 (j) Copies of Source Code that are marked as deposition exhibits shall  
9 not be provided to the court reporter or attached to deposition  
10 transcripts; rather, the deposition record will identify the exhibit  
11 by its production numbers. Except as provided in this paragraph,  
12 absent express written permission from the Producing Party, the  
13 Receiving Party may not create electronic images, or any other  
14 images, or make electronic copies, of the Source Code from any  
15 paper copy of Source Code for use in any manner. Where the  
16 Producing Party has provided the express written permission  
17 required under this provision for a Receiving Party to create  
18 electronic copies of Source Code, and if the Producing Party  
19 requests it, the Receiving Party shall maintain a log of all such  
20 electronic copies of any portion of Source Code in its possession  
21 or in the possession of its retained consultants, including the  
22 names of the reviewers and/or recipients of any such electronic  
23 copies, and the locations and manner in which the electronic  
24 copies are stored. Additionally, any such electronic copies must be  
25 labeled “HIGHLY CONFIDENTIAL SOURCE CODE –  
26 ATTORNEYS’ EYES ONLY” as provided for in this Order.

27 7.6 Notice of Disclosure.



1 (a) The procedure for providing notice of disclosure of Protected  
2 Material to the persons described in Paragraph 7.2 (b), (d), and (h)  
3 with respect to “CONFIDENTIAL” information, “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
5 CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES  
6 ONLY” shall be as follows:

7 The Party seeking to disclose such information shall, before any  
8 such disclosure, provide to each Producing Party:

- 9 (i) The name of the person or name of the entity to whom  
10 Protected Material is being disclosed;
- 11 (ii) Current contact information for the person or entity (e.g.,  
12 address, phone number, and email address);
- 13 (iii) A signed, written acknowledgment by the person, or  
14 authorized representative of the entity, that he/she has read  
15 this Order and agrees to be bound by its terms, as provided  
16 in Exhibit A;
- 17 (iv) For technical experts and consultants under Paragraph  
18 7.2(b), a current resume and a list of names and general  
19 business descriptions of all companies for which the  
20 individual has consulted or by which the individual has been  
21 employed during the last four (4) years. (Such a listing, as  
22 appropriate, may itself be designated as Protected  
23 Material.); and
- 24 (v) Outside Counsel of record shall retain copies of all executed  
25 acknowledgements. Within seven (7) calendar days after  
26 receipt of the information and written acknowledgment  
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1 described in Paragraphs 7.2 and 7.6, for good cause<sup>2</sup>, the  
2 Producing Party may object to the disclosure of Protected  
3 Material to the proposed recipient by serving a written  
4 objection stating the reasons for the objection. In the absence  
5 of an objection at the end of the seven (7) calendar day period,  
6 the person shall be deemed approved under this Protective Order.  
7 If a Party objects, the Parties shall meet and confer to try to  
8 resolve the objection. If the Parties are unable to do so, the  
9 objecting Party shall file a motion for protective order  
10 preventing disclosure of the Protected Material to the  
11 proposed recipient to be heard telephonically on the earliest  
12 date available, or as otherwise ordered by the Court. Such  
13 motions must be filed and served within ten (10) calendar  
14 days of service of the Party's written objection. If a motion  
15 for protective order is sought by the Producing Party, no  
16 disclosure of Protected Material shall be made to the  
17 proposed recipient who is the subject of the motion unless  
18 and until a court order permitting disclosure to the proposed  
19 recipient is permitted. The Objecting Party bears the burden  
20 of proof to prevent disclosure to the expert or consultant.

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," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES

26 \_\_\_\_\_  
27 <sup>2</sup> For purposes of this section, "good cause" shall include an objectively reasonable concern that the  
28 disclosure of Protected Material to a proposed outside expert or consultant will cause harm to the  
Producing Party.

1 ONLY” “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES  
2 ONLY” that Party must:

- 3 (a) promptly notify in writing the Designating Party. Such  
4 notification shall include a copy of the subpoena or court order if  
5 allowed under applicable protective orders in the other litigation;  
6 (b) promptly notify in writing the party who caused the subpoena or  
7 order to issue in the other litigation that some or all of the material  
8 covered by the subpoena or order is subject to this Protective  
9 Order. Such notification shall include a copy of this Order.

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

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

- 23 (a) The terms of this Order are applicable to information produced by  
24 a Non-Party in this Action and designated as “CONFIDENTIAL,”  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”  
26 or “HIGHLY CONFIDENTIAL SOURCE CODE  
27 – ATTORNEYS’ EYES ONLY.”

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

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

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

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

16       (iii) make the information requested available for inspection by  
17 the Non-Party.

18       (c) If the Non-Party fails to object or seek a protective order from this  
19 Court within 14 days of receiving the notice and accompanying  
20 information, the Receiving Party may produce the Non-Party's  
21 confidential information responsive to the discovery request. If the  
22 Non-Party timely seeks a protective order, the Receiving Party  
23 shall not produce any information in its possession or control that  
24 is subject to the confidentiality agreement with the Non-Party  
25 before a determination by the court. Absent a court order to the  
26 contrary, the Non-Party shall bear the burden and expense of  
27 seeking protection in this court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

10 11. INADVERTENT PRODUCTION OF MIS-DESIGNATED, PRIVILEGED,  
11 OR OTHERWISE PROTECTED MATERIAL

12 (a) Inadvertent Failure to Designate. A Party or Non-Party providing  
13 Discovery Material that inadvertently fails to properly designate  
14 an item pursuant to this Order when it is produced may re-  
15 designate that item in order to correct its failure consistent with the  
16 obligations and procedures as set forth in Federal Rule of Civil  
17 Procedure 26(b)(5)(B).

18 (b) Such inadvertent disclosure shall not be deemed a waiver in whole  
19 or in part of the Producing Party’s claim of confidentiality, either  
20 as to the specific information disclosed or as to any other  
21 information relating thereto or on the same or related subject  
22 matter. Nothing in this paragraph changes a party’s right to  
23 challenge a designation under Section 6 of this Order.

24 (c) Inadvertent Disclosure of Privileged or Work Product  
25 Information. Inadvertent production or disclosure of Discovery  
26 Material or any other material subject to attorney-client privilege,  
27 work product immunity, or any other applicable privilege shall not  
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1 constitute a waiver of, nor a prejudice to, any claim that such  
2 material or related material is subject to the relevant privilege or  
3 protection in this or any other judicial or administrative  
4 proceeding. Such inadvertently produced or disclosed material,  
5 including all copies thereof, shall be returned to the Producing  
6 Party immediately upon receiving a written or on-the-record  
7 request, and the Receiving Party shall immediately destroy any  
8 notes or other writing or recordings that summarize, reflect,  
9 discuss, or otherwise include the content of such material. No use  
10 shall be made of such material during deposition or at trial, or for  
11 any other purpose or in any other manner, nor shall such material  
12 be shown to anyone except as necessary to facilitate the return or  
13 destruction of such documents or information. The Producing  
14 Party shall include the documents in a privilege log identifying  
15 such inadvertently produced or disclosed documents. The  
16 Receiving Party may move the Court for an order compelling  
17 production of any inadvertently produced or disclosed privileged  
18 documents or information, but the motion shall not assert as a  
19 ground for production the fact of the inadvertent production or  
20 disclosure, nor shall the motion disclose or otherwise use the  
21 content of the inadvertently produced document or information  
22 (beyond any information appearing on the above-referenced  
23 privilege log) in any way in connection with any such motion.

24 **12. DISCOVERY FROM EXPERTS OR CONSULTANTS**

25 The parties agree the limitations of Rule 26, Fed. R. Civ. P., including Rules  
26 26(b)(4)(B) and (C), shall govern the discovery and disclosure of expert testimony,  
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1 communications, and materials in this case, except “considered” in Rule  
2 26(b)(4)(B)(ii) shall be changed to “relied upon.”

3 For the avoidance of doubt, the parties agree that all communications between  
4 a party’s counsel and an expert, and all materials generated by a testifying expert,  
5 including all drafts of such materials, are exempt from discovery unless relied upon  
6 by the expert in forming any opinions in this case. The parties further agree that all  
7 communications with a non-testifying (consulting) expert, and all material  
8 generated by a non-testifying expert, including all drafts of such materials, are  
9 exempt from discovery unless relied upon by a testifying expert in forming any  
10 opinions in this case.

11 13. MISCELLANEOUS

12 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
13 person to seek additional relief from the Court not specified in this Order,  
14 or from applying to the Court for further or additional Orders.

15 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
16 Order, no Party waives any right it otherwise would have to object to  
17 disclosing or producing any information or item on any ground not  
18 addressed in this Order. Similarly, no Party waives any right to object on  
19 any ground to use in evidence of any of the material covered by this  
20 Order.

21 13.3 Filing Protected Material.

22 (a) Absent written permission from the Producing Party or a court  
23 order secured after appropriate notice to all interested persons, a  
24 Receiving Party may not file, or disclose in the public record, any  
25 Protected Material.

26 (b) Unless the Court orders otherwise, redacted versions of sealed  
27 documents must be filed publicly.



1 (c) A Party seeking to file material under seal with the Court due to  
2 the provisions of this Protective Order must submit an appropriate  
3 application pursuant to Local Rule of Court 79-5.1. All Protected  
4 Material so filed shall be released from confidential treatment only  
5 by order of the Court.

6 (d) The parties must not unreasonably file under seal pleadings,  
7 motions, or other papers that do not qualify for protection from  
8 disclosure under this Order. Rather, the parties must attempt to file  
9 unsealed as much of a pleading, motion, or other paper as they  
10 reasonably can without undermining the protections conferred by  
11 this Order.

12 13.4 Privilege Log. The Parties to this Action agree that there is no  
13 requirement to log privileged documents created on or after the date  
14 plaintiff filed its initial complaint in this Action.

15 13.5 Use and Control of Protected Material. Nothing contained in this Order  
16 shall be construed to limit any Receiving Party's rights to use in briefs,  
17 at trial, or in any proceeding in this litigation, Protected Material of a  
18 Designating Party, subject to the provisions in Section 7 above. Nor shall  
19 this Order prevent counsel from examining a witness to determine  
20 whether he or she has knowledge of the subject matter comprising  
21 Protected Material, so long as such examination shall be in a manner that  
22 does not disclose the details of the Protected Material.

23 13.6 Right to Withhold or Redact. Notwithstanding the provisions of this  
24 Order, Parties may redact from any document, whether designated  
25 Protected Material or not, any information containing privileged  
26 material, or any other data protected from disclosure by State, Federal,  
27 or foreign regulations. Any such redaction shall be identified clearly on  
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1 each page containing redaction, and the redacted material shall be listed  
2 on a privilege or redaction log.

3 13.7 Amendment. This Order may be amended with respect to (a) specific  
4 documents or items of Protected Material or (b) persons to whom  
5 Protected Material may be disclosed, by Court order. This Order shall  
6 remain in force and effect indefinitely until modified, superseded, or  
7 terminated by order of this Court.

8 14. FINAL DISPOSITION

9 Within 60 days after the final disposition of this Action, as defined in Section  
10 4, each Receiving Party must return all Protected Material to the Producing Party  
11 or destroy such material, at the Receiving Party's option. As used in this  
12 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
13 summaries, and any other format reproducing or capturing any of the Protected  
14 Material. Whether the Protected Material is returned or destroyed, the Receiving  
15 Party must submit a written certification to the Producing Party (and, if not the  
16 same person or entity, to the Designating Party) by the 60-day deadline that affirms  
17 that the Receiving Party has not retained any copies, abstracts, compilations,  
18 summaries or any other format reproducing or capturing any of the Protected  
19 Material. Notwithstanding this provision, outside counsel of record are entitled to  
20 retain an archival copy of all pleadings, motion papers, trial, deposition, and  
21 hearing transcripts, legal memoranda, correspondence, deposition and trial  
22 exhibits, expert reports, attorney work product, and consultant and expert work  
23 product, even if such materials contain Protected Material. Any such archival copies  
24 that contain or constitute Protected Material remain subject to this Order as set  
25 forth in Section 4. Additionally, the Designating Party may permit the use of any  
26 Protected Material or portion thereof that it has produced (*e.g.*, for use in related  
27 litigations) according to the terms of this Order and/or upon such terms that satisfy

1 the Designating Party that the Protected Material will be sufficiently protected  
2 (e.g., under the protective order of another case). Nothing in this order requires a  
3 Party to destroy any information it is required by law to retain or to alter its back  
4 up/archive systems.

5 Notwithstanding the above, this paragraph does not apply to the Court, its  
6 personnel, or its employees.

7 **15. OTHER PROCEEDINGS**

8 By entering this order and limiting the disclosure of information in this case,  
9 the Court does not intend to preclude another court from finding that information  
10 may be relevant and subject to disclosure in another case. Any person or party  
11 subject to this order who becomes subject to a motion to disclose another party's  
12 information designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL –  
13 ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL SOURCE CODE –  
14 ATTORNEYS' EYES ONLY" pursuant to this order shall promptly notify that  
15 party of the motion so that the party may have an opportunity to appear and be heard  
16 on whether that information should be disclosed.

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**IT IS SO ORDERED**

Dated: August 27, 2020



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THE HONORABLE MICHAEL R. WILNER  
U.S. MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type employer/entity that you represent, if any], 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 in the case of *Throop, LLC v. Microsoft Corporation*, 2:19-cv-10604-AB-MRW, agree to comply with and to be bound by all the terms of that Stipulated Confidential 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 that Stipulated Protective Order to any person or entity except in strict compliance with the provisions of the Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of the aforementioned Stipulated Protective Order, even if such enforcement proceedings occur after termination of the above-captioned action.

Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
Email address: \_\_\_\_\_ Signature: \_\_\_\_\_