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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ONE-E-WAY, INC.,
Plaintiff,

v.

APPLE INC.,
Defendant.

Case No. 2:20-cv-06339-JAK-GJS

STIPULATED PROTECTIVE
ORDER¹

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. Protected Materials designated under the terms of this Protective Order shall be used by a Receiving Party solely for this case, and shall not be used directly or indirectly for any other purpose whatsoever. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Gail J. Standish’s Procedures.

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

3 B. GOOD CAUSE STATEMENT

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

25 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

26 The parties further acknowledge, as set forth in Section 12.3, below, that this
27 Stipulated Protective Order does not entitle them to file confidential information
28 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed

1 and the standards that will be applied when a party seeks permission from the court
2 to file material under seal.

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

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

25 Any document that is not confidential, privileged, or otherwise protectable in
26 its entirety will not be filed under seal if the confidential portions can be redacted.
27 If documents can be redacted, then a redacted version for public viewing, omitting
28 only the confidential, privileged, or otherwise protectable portions of the document,

1 shall be filed. Any application that seeks to file documents under seal in their
2 entirety should include an explanation of why redaction is not feasible.

3 2. DEFINITIONS

4 2.1 Action: this pending federal lawsuit.

5 2.2 Challenging Party: a Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 2.3 “CONFIDENTIAL,” “CONFIDENTIAL – OUTSIDE ATTORNEYS’
8 EYES ONLY,” or “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY -
9 SOURCE CODE” Information or Items: information (regardless of how it is
10 generated, stored or maintained) or tangible things that qualify for protection under
11 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
12 Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
14 their support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL,” “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
18 ONLY,” or “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY -
19 SOURCE CODE.”

20 2.6 Disclosure or Discovery Material: all items or information, including
21 from any non-party, regardless of the medium or manner in which it is generated,
22 stored, or maintained (including, among other things, testimony, transcripts, and
23 tangible things), that are produced or generated in disclosures or responses to
24 discovery in this matter.

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

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

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

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

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

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

12 2.12 Patents-in-Suit: U.S. Patents Nos. 8,131,391 (“the ’391 patent”),
13 10,468,047 (“the ’047 patent”) and 10,129,627 (“the ’627 patent”).

14 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.14 Professional Vendors: persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.15 Protected Material: any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL,” “CONFIDENTIAL – OUTSIDE ATTORNEYS’
22 EYES ONLY,” or “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY -
23 SOURCE CODE,” as provided for in this Order. Protected Material shall not
24 include: (i) materials that have been actually published or publicly disseminated;
25 and (ii) materials that show on their face they have been disseminated to the public.

26 2.16 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

28 2.17 Source Code: computer code, scripts, assembly, binaries, object code,

1 source code listings (e.g., file names and path structure), descriptions of source code
2 (e.g., descriptions of declarations, functions, and parameters), object code listings
3 and descriptions of object code, Hardware Description Language (HDL) or Register
4 Transfer Level (RTL) files that describe the hardware design of any ASIC or other
5 chip, and Computer Aided Design (CAD) files that describe the hardware or logic
6 design of any circuit, ASIC or other chip.

7
8 3. SCOPE

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

14 Nothing in this Order shall prevent or restrict a Producing Party's own
15 disclosure or use of its own Protected Material for any purpose, and nothing in this
16 Order shall preclude any Producing Party from showing its Protected Material to an
17 individual who prepared the Protected Material.

18 Nothing in this Order shall be construed to prejudice any Party's right to use
19 any Protected Material in court or in any court filing with the consent of the
20 Producing Party or by order of the Court.

21 This Order is without prejudice to the right of any Party to seek further or
22 additional protection of any Discovery Material or to modify this Order in any way,
23 including, without limitation, an order that certain matter not be produced at all.

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

26 4. DURATION

27 FINAL DISPOSITION of the action is defined as the conclusion of any
28 appellate proceedings, or, if no appeal is taken, when the time for filing of an appeal

1 has run. Except as set forth below, the terms of this protective order apply through
2 FINAL DISPOSITION of the action. The parties may stipulate that they will be
3 contractually bound by the terms of this agreement beyond FINAL DISPOSITION,
4 but will have to file a separate action for enforcement of the agreement once all
5 proceedings in this case are complete.

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

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

25 Mass, indiscriminate or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper
27 purpose (e.g., to unnecessarily encumber the case development process or to impose
28

1 unnecessary expenses and burdens on other parties) may expose the Designating
2 Party to sanctions.

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES
16 ONLY," or "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY –
17 SOURCE CODE", to each page that contains protected material.

18 A Party or Non-Party that makes original documents available for inspection
19 need not designate them for protection until after the inspecting Party has indicated
20 which documents it would like copied and produced. During the inspection and
21 before the designation, all of the material made available for inspection shall be
22 deemed "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY." After the
23 inspecting Party has identified the documents it wants copied and produced, the
24 Producing Party must determine which documents, or portions thereof, qualify for
25 protection under this Order. Then, before producing the specified documents, the
26 Producing Party must affix the proper confidentiality legend to each page that
27 contains Protected Material.

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

1 the Disclosure or Discovery Material on the record, before the close of the
2 deposition all protected testimony, or by sending written notice of how portions of
3 the transcript of the testimony is designated within thirty (30) days of receipt of the
4 transcript of the testimony. If no indication on the record is made, all information
5 disclosed during a deposition shall be deemed “CONFIDENTIAL – OUTSIDE
6 ATTORNEYS’ EYES ONLY” until the time within which it may be appropriately
7 designated as provided for herein has passed. Any Party that wishes to disclose the
8 transcript, or information contained therein, may provide written notice of its intent
9 to treat the transcript as non-confidential, after which time, any Party that wants to
10 maintain any portion of the transcript as confidential must designate the confidential
11 portions within fourteen (14) days, or else the transcript may be treated as non-
12 confidential. Any Protected Material that is used in the taking of a deposition shall
13 remain subject to the provisions of this Protective Order, along with the transcript
14 pages of the deposition testimony dealing with such Protected Material. In such
15 cases the court reporter shall be informed of this Protective Order and shall be
16 required to operate in a manner consistent with this Protective Order. In the event
17 the deposition is videotaped, the original and all copies of the videotape shall be
18 marked by the video technician to indicate that the contents of the videotape are
19 subject to this Protective Order, substantially along the lines of “This videotape
20 contains confidential testimony used in this case and is not to be viewed or the
21 contents thereof to be displayed or revealed except pursuant to the terms of the
22 operative Protective Order in this matter or pursuant to written stipulation of the
23 parties.” Counsel for any Producing Party shall have the right to exclude from oral
24 depositions, other than the deponent, deponent’s counsel, the reporter and
25 videographer (if any), any person who is not authorized by this Protective Order to
26 receive or access Protected Material based on the designation of such Protected
27 Material. Such right of exclusion shall be applicable only during periods of
28 examination or testimony regarding such Protected Material.

1 (c) Written Discovery and Documents and Tangible Things. Written
2 discovery, documents (which include “electronically stored information,” as that
3 phrase is used in Federal Rule of Procedure 34), and tangible things that meet the
4 requirements for the confidentiality designations may be so designated by placing
5 the appropriate designation on every page of the written material prior to
6 production. For digital files being produced, the Producing Party may mark each
7 viewable page or image with the appropriate designation, and mark the medium,
8 container, and/or communication in which the digital files were contained. In the
9 event that original documents are produced for inspection, the original documents
10 shall be presumed “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”
11 during the inspection and re-designated, as appropriate during the copying process.

12 (d) Native Files. Where electronic files and documents are produced in
13 native electronic format, such electronic files and documents shall be designated for
14 protection under this Order by appending to the file names or designators
15 information indicating whether the file contains “CONFIDENTIAL,”
16 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or
17 “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE,”
18 material, or shall use any other reasonable method for so designating Protected
19 Materials produced in electronic format. When electronic files or documents are
20 printed for use at deposition, in a court proceeding, or for provision in printed form
21 to an expert or consultant pre-approved pursuant to Paragraph 10, the party printing
22 the electronic files or documents shall affix a legend to the printed document
23 corresponding to the designation of the Designating Party and including the
24 production number and designation associated with the native file. No one shall
25 seek to use in this litigation a .tiff, .pdf or other image format version of a document
26 produced in native file format without first (1) providing a copy of the image format
27 version to the Producing Party so that the Producing Party can review the image to
28 ensure that no information has been altered, and (2) obtaining the consent of the

1 Producing Party, which consent shall not be unreasonably withheld.

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
3 failure to designate qualified information or items does not, standing alone, waive
4 the Designating Party’s right to secure protection under this Order for such material.
5 Upon timely correction of a designation, the Receiving Party must make reasonable
6 efforts to assure that the material is treated in accordance with the provisions of this
7 Order.

8 A Receiving Party shall not be in breach of this Order for any use of such
9 Discovery Material before the Receiving Party receives such notice that such
10 Discovery Material is protected under one of the categories of this Order, unless an
11 objectively reasonable person would have realized that the Discovery Material
12 should have been appropriately designated with a confidentiality designation under
13 this Order. Once a Receiving Party has received notification of the correct
14 confidentiality designation for the Protected Material with the correct confidentiality
15 designation, the Receiving Party shall treat such Discovery Material (subject to the
16 exception below) at the appropriately designated level pursuant to the terms of this
17 Order.

18 Notwithstanding the above, a subsequent designation of “CONFIDENTIAL,”
19 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or
20 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” shall apply
21 on a going forward basis and shall not disqualify anyone who reviewed
22 “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
23 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” materials
24 while the materials were not marked “CONFIDENTIAL – ATTORNEYS’ EYES
25 ONLY” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE”
26 from engaging in the activities set forth in Paragraph 7.2.

27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a

1 designation of confidentiality at any time that is consistent with the Court's
2 Scheduling Order. A Party shall not be obligated to challenge the propriety of any
3 designation of Discovery Material under this Order at the time the designation is
4 made, and a failure to do so shall not preclude a subsequent challenge thereto.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq. Any challenge to a designation of
7 Discovery Material under this Order shall be written, shall be served on outside
8 counsel for the Producing Party, shall particularly identify the documents or
9 information that the Receiving Party contends should be differently designated, and
10 shall state the grounds for the objection. Thereafter, further protection of such
11 material shall be resolved in accordance with the following procedures:

12 (i) The Challenging Party shall have the burden of conferring either in
13 person, in writing, or by telephone with the Producing Party claiming protection (as
14 well as any other interested party) in a good faith effort to resolve the dispute. The
15 Producing Party shall have the burden of justifying the disputed designation;

16 (ii) Failing agreement, the Receiving Party may bring a motion to the Court
17 for a ruling that the Discovery Material in question is not entitled to the status and
18 protection of the Producing Party's designation. The Parties' entry into this Order
19 shall not preclude or prejudice either Party from arguing for or against any
20 designation, establish any presumption that a particular designation is valid, or alter
21 the burden of proof that would otherwise apply in a dispute over discovery or
22 disclosure of information;

23 (iii) Notwithstanding any challenge to a designation, the Discovery Material
24 in question shall continue to be treated as designated under this Order until one of
25 the following occurs: (a) the Party who designated the Discovery Material in
26 question withdraws such designation in writing; or (b) the Court rules that the
27 Discovery Material in question is not entitled to the designation.

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1 6.3 The burden of persuasion in any such challenge proceeding shall be on
2 the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, all parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party’s designation until the Court rules on the
8 challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

20 7.2 Patent Prosecution Bar. Absent the written consent of the Producing Party,
21 any person on behalf of the Plaintiff who receives one or more items designated
22 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or
23 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” by a
24 Defendant shall not be involved, directly or indirectly, in any of the following
25 activities before any foreign or domestic agency, including the United States Patent
26 and Trademark Office: (i) drafting or amending any claims of any patent or patent
27 application related to the patents-in-suit; (ii) drafting or amending any claims to
28 Bluetooth-related technology in any patent or patent application that claims priority

1 to a date earlier than the date of entry of this Order; and (iii) drafting or amending
2 any claims of any patent or patent application that cover the accused devices in this
3 case. This Prosecution Bar shall begin when “CONFIDENTIAL – OUTSIDE
4 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY – SOURCE CODE” information is first received by the affected individual
6 and shall end after final termination of this action.

7 7.3 Secure Storage, No Export. Protected Material must be stored and
8 maintained by a Receiving Party at a location in the United States and in a secure
9 manner that ensures that access is limited to the persons authorized under this Order.
10 Protected Material may not be exported outside the United States or released to any
11 foreign national (even if within the United States).

12 7.4 Legal Advice Based on Protected Material. Nothing in this Protective
13 Order shall be construed to prevent counsel from advising their clients with respect
14 to this case based in whole or in part upon Protected Materials, provided counsel
15 does not disclose the Protected Material itself except as provided in this Order.

16 7.5 Limitations. Nothing in this Order shall restrict in any way a
17 Producing Party’s use or disclosure of its own Protected Material. Nothing in this
18 Order shall restrict in any way the use or disclosure of Discovery Material by a
19 Receiving Party: (i) that is or has become publicly known through no fault of the
20 Receiving Party; (ii) that is lawfully acquired by or known to the Receiving Party
21 independent of the Producing Party; (iii) previously produced, disclosed and/or
22 provided by the Producing Party to the Receiving Party or a non-party without an
23 obligation of confidentiality and not by inadvertence or mistake; (iv) with the
24 consent of the Producing Party; or (v) pursuant to order of the Court.

25 7.6 Disclosure of “CONFIDENTIAL” Information or Items. A Producing
26 Party may designate Discovery Material as “CONFIDENTIAL” if it contains or
27 reflects confidential, proprietary, and/or commercially sensitive information. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated

2 “CONFIDENTIAL” only to:

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

6 (b) Not more than three (3) representatives of the Receiving Party who are
7 officers, directors, and employees (including House Counsel) of the Receiving Party
8 to whom disclosure is reasonably necessary for this Action, provided that (i) each
9 such person has agreed to be bound by the provisions of the Protective Order by
10 signing a copy of Exhibit A; and (ii) no unresolved objections to such disclosure
11 exist after proper notice has been given to all Parties as set forth in Paragraph 10
12 below;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed a copy of
15 Exhibit A, and provided that: (i) such expert or consultant is not a current officer,
16 director, or employee of a Party or of a competitor of a Party, nor anticipated at the
17 time of retention to become an officer, director or employee of a Party or of a
18 competitor of a Party; (ii) such expert or consultant accesses the materials in the
19 United States only, and does not transport them to or access them from any foreign
20 jurisdiction; and (iii) no unresolved objections to such disclosure exist after proper
21 notice has been given to all Parties as set forth in Paragraph 10 below;

22 (d) the court and its personnel;

23 (e) court reporters and their staff;

24 (f) professional jury or trial consultants, mock jurors, and Professional
25 Vendors to whom disclosure is reasonably necessary for this Action and who have
26 signed a copy of Exhibit A;

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

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

10 (i) any mediator or settlement officer, and their supporting personnel,
11 mutually agreed upon by any of the parties engaged in settlement discussions; and

12 (j) any other person with the prior written consent of the Producing Party.

13 7.7 Disclosure of “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
14 ONLY” Information or Items. A Producing Party may designate Discovery
15 Material as “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” if it
16 contains or reflects information that is extremely confidential and/or sensitive in
17 nature and the Producing Party reasonably believes that the disclosure of such
18 Discovery Material is likely to cause economic harm or significant competitive
19 disadvantage to the Producing Party. The Parties agree that the following
20 information, if non-public, shall be presumed to merit the “CONFIDENTIAL –
21 OUTSIDE ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing
22 information, financial data, sales information, sales or marketing forecasts or plans,
23 business plans, sales or marketing strategy, product development information,
24 engineering documents, testing documents, employee information, and other non-
25 public information of similar competitive and business sensitivity. Unless otherwise
26 ordered by the Court, Discovery Material designated as “CONFIDENTIAL –
27 OUTSIDE ATTORNEYS’ EYES ONLY” may be disclosed only to:

28 (a) The Receiving Party’s Outside Counsel, provided that such Outside

1 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v.*
2 *United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
3 competitor of a Party, and such Outside Counsel’s immediate paralegals and staff,
4 and any copying or clerical litigation support services working at the direction of
5 such counsel, paralegals, and staff;

6 (b) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this Action and who have signed a copy of
8 Exhibit A, and provided that: (i) such expert or consultant is not a current officer,
9 director, or employee of a Party or of a competitor of a Party, nor anticipated at the
10 time of retention to become an officer, director, or employee of a Party or of a
11 competitor of a Party; (ii) such expert or consultant is not involved in competitive
12 decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3
13 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party; (iii) such expert or
14 consultant accesses the materials in the United States only, and does not transport
15 them to or access them from any foreign jurisdiction; and (iv) no unresolved
16 objections to such disclosure exist after proper notice has been given to all Parties as
17 set forth in Paragraph 10 below;

18 (c) the court and its personnel;

19 (e) court reporters and their staff;

20 (e) professional jury or trial consultants, and Professional Vendors to
21 whom disclosure is reasonably necessary for this Action and who have signed a
22 copy of Exhibit A;

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

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

27 (h) any other person with the prior written consent of the Producing Party.

28 7.8 Disclosure of “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES

1 ONLY – SOURCE CODE” Information or Items. A Producing Party may designate
2 Discovery Material as “CONFIDENTIAL – – OUTSIDE ATTORNEYS’ EYES
3 ONLY – SOURCE CODE” if it comprises or includes confidential, proprietary,
4 and/or trade secret Source Code. Nothing in this Order shall be construed as a
5 representation or admission that Source Code is properly discoverable in this action,
6 or to obligate any Party to produce any Source Code. Unless otherwise ordered by
7 the Court, Discovery Material designated as “CONFIDENTIAL – – OUTSIDE
8 ATTORNEYS’ EYES ONLY – SOURCE CODE” shall be subject to the provisions
9 set forth in Paragraph 8 below, and may be disclosed, subject to Paragraph 8 below,
10 solely to:

11 (a) The Receiving Party’s Outside Counsel, provided that such Outside
12 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v.*
13 *United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
14 competitor of a Party, and such Outside Counsel’s immediate paralegals and staff,
15 and any copying or clerical litigation support services working at the direction of
16 such counsel, paralegals, and staff;

17 (b) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this Action and who have signed a copy of
19 Exhibit A, and provided that: (i) such expert or consultant is not a current officer,
20 director, or employee of a Party or of a competitor of a Party, nor anticipated at the
21 time of retention to become an officer, director, or employee of a Party or of a
22 competitor of a Party; (ii) such expert or consultant is not involved in competitive
23 decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3
24 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party; and (iii) no
25 unresolved objections to such disclosure exist after proper notice has been given to
26 all Parties as set forth in Paragraph 10 below;

27 (c) the court and its personnel;

28 (d) court reporters and their staff;

1 (e) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement discussions; and
3 (f) any other person with the prior written consent of the Producing Party.

4 8. DISCLOSURE AND REVIEW OF SOURCE CODE

5 (a) Any Source Code that is produced by Plaintiff shall be made available
6 for inspection in electronic format at the Irvine, California office of its outside
7 counsel, Knobbe, Martens, Olson & Bear, LLP, or any other location mutually
8 agreed by the Parties. Any Source Code that is produced by Apple Inc. will be
9 made available for inspection at the Palo Alto, California office of its outside
10 counsel, Cooley LLP, or any other location mutually agreed by the Parties. Source
11 Code will be made available for inspection between the hours of 9 a.m. and 5 p.m.
12 on business days (i.e., weekdays that are not Federal holidays), although the Parties
13 will be reasonable in accommodating reasonable requests to conduct inspections at
14 other times. In the event that it is not feasible for the Producing Party to make
15 source code available for inspection at the office of its outside counsel, the
16 Producing Party shall not unreasonably withhold consent to making source code
17 available for inspection at an outside vendor's facility (for example, some Iron
18 Mountain facilities) that has sufficient security and logistical capabilities. If the
19 parties mutually agree to such review at an outside vendor's facility, the Producing
20 Party shall be responsible for the costs of locating one review machine at that one
21 facility and any facility costs for the Receiving Party to inspect the source code at
22 that facility for no more than ten (10) days; the parties may meet and confer about
23 any other costs, such as for additional days, which shall be borne by the Receiving
24 Party absent a showing of good cause.

25 (b) Prior to the first inspection of any requested Source Code, the
26 Receiving Party shall provide fourteen (14) days notice of the Source Code that it
27 wishes to inspect. The Receiving Party shall provide fourteen (14) days notice prior
28 to any additional inspections.

1 (c) Source Code that is designated “CONFIDENTIAL – OUTSIDE
2 ATTORNEYS’ EYES ONLY - SOURCE CODE” shall be produced for inspection
3 and review subject to the following provisions, unless otherwise agreed by the
4 Producing Party:

5 (i) All Source Code shall be made available by the Producing Party to
6 the Receiving Party’s outside counsel and/or experts in a secure room on a secured
7 computer without Internet access or network access to other computers and on
8 which all access ports have been disabled (except for one printer port), as necessary
9 and appropriate to prevent and protect against any unauthorized copying,
10 transmission, removal or other transfer of any Source Code outside or away from the
11 computer on which the Source Code is provided for inspection (the “Source Code
12 Computer” in the “Source Code Review Room”). The Producing Party shall install
13 tools that are sufficient for viewing and searching the code produced, on the
14 platform produced, if such tools exist and are presently used in the ordinary course
15 of the Producing Party’s business. The Receiving Party’s outside counsel and/or
16 experts may request that commercially available software tools for viewing and
17 searching Source Code be installed on the secured computer, provided, however,
18 that (a) the Receiving Party possesses an appropriate license to such software tools;
19 (b) the Producing Party approves such software tools; and (c) such other software
20 tools are reasonably necessary for the Receiving Party to perform its review of the
21 Source Code consistent with all of the protections herein. The Receiving Party must
22 provide the Producing Party with the CD or DVD containing such licensed software
23 tool(s) at least fourteen (14) days in advance of the date upon which the Receiving
24 Party wishes to have the additional software tools available for use on the Source
25 Code Computer.

26 (ii) No recordable media or recordable devices, including without
27 limitation sound recorders, computers, cellular telephones, peripheral equipment,
28 cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code

1 Review Room.

2 (iii) The Receiving Party's outside counsel and/or experts shall be
3 entitled to take notes relating to the Source Code but may not copy the Source Code
4 into the notes and may not take such notes electronically on the Source Code
5 Computer itself or any other computer.

6 (iv) The Producing Party may visually monitor the activities of the
7 Receiving Party's representatives during any Source Code review, but only to
8 ensure that no unauthorized electronic records of the Source Code and no
9 information concerning the Source Code are being created or transmitted in any
10 way.

11 (v) No copies of all or any portion of the Source Code may leave the
12 room in which the Source Code is inspected except as otherwise provided herein.
13 Further, no other written or electronic record of the Source Code is permitted except
14 as otherwise provided herein. The Producing Party shall make available a laser
15 printer with commercially reasonable printing speeds for on-site printing during
16 inspection of the Source Code. The Receiving Party may print limited portions of
17 the Source Code only when necessary to prepare court filings or pleadings or other
18 papers (including a testifying expert's expert report). Any printed portion that
19 consists of more than five (5) pages of a continuous block of Source Code shall be
20 presumed to be excessive, and the burden shall be on the Receiving Party to
21 demonstrate the need for such a printed copy. The Receiving Party may print out no
22 more than 20 pages total. The Receiving Party shall not print Source Code in order
23 to review blocks of Source Code elsewhere in the first instance, i.e., as an alternative
24 to reviewing that Source Code electronically on the Source Code Computer, as the
25 Parties acknowledge and agree that the purpose of the protections herein would be
26 frustrated by printing portions of code for review and analysis elsewhere, and that
27 printing is permitted only when necessary to prepare court filings or pleadings or
28 other papers (including a testifying expert's expert report). Upon printing any such

1 portions of Source Code, the printed pages shall be collected by the Producing
2 Party. The Producing Party shall Bates number, copy, and label “CONFIDENTIAL
3 – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” any pages printed
4 by the Receiving Party. Within fourteen (14) days, the Producing Party shall either
5 (i) provide one copy set of such pages to the Receiving Party or (ii) inform the
6 Requesting Party that it objects that the printed portions are excessive and/or not
7 done for a permitted purpose. If, after meeting and conferring, the Producing Party
8 and the Receiving Party cannot resolve the objection, the Receiving Party shall be
9 entitled to seek a Court resolution of whether the printed Source Code in question is
10 narrowly tailored and was printed for a permitted purpose. The burden shall be on
11 the Receiving Party to demonstrate that such printed portions are no more than is
12 reasonably necessary for a permitted purpose and not merely printed for the
13 purposes of review and analysis elsewhere. The printed pages shall constitute part
14 of the Source Code produced by the Producing Party in this action.

15 (vi) All persons who will review a Producing Party’s Source Code on
16 behalf of a Receiving Party, including members of a Receiving Party’s outside law
17 firm, shall be identified in writing to the Producing Party at least five (5) days in
18 advance of the first time that such person reviews such Source Code. Such
19 identification shall be in addition to any other disclosure required under this Order.
20 All persons viewing Source Code shall sign on each day they view Source Code a
21 log that will include the names of persons who enter the locked room to view the
22 Source Code and when they enter and depart. The Producing Party shall be entitled
23 to a copy of the log upon one (1) day’s advance notice to the Receiving Party.

24 (vii) Unless otherwise agreed in advance by the Parties in writing,
25 following each day on which inspection is done under this Order, the Receiving
26 Party’s outside counsel and/or experts shall remove all notes, documents, and all
27 other materials from the Source Code Review Room. The Producing Party shall not
28 be responsible for any items left in the room following each inspection session, and

1 the Receiving Party shall have no expectation of confidentiality for any items left in
2 the room following each inspection session without a prior agreement to that effect.
3 Proper identification of all authorized persons shall be provided prior to any access
4 to the secure room or the computer containing Source Code. Proper identification
5 requires showing, at a minimum, a photo identification card sanctioned by the
6 government of any State of the United States, by the government of the United
7 States, or by the nation state of the authorized person's current citizenship. Access
8 to the secure room or the Source Code Computer may be denied, at the discretion of
9 the supplier, to any individual who fails to provide proper identification.

10 (viii) Other than as provided above, the Receiving Party will not copy,
11 remove, or otherwise transfer any Source Code from the Source Code Computer
12 including, without limitation, copying, removing, or transferring the Source Code
13 onto any recordable media or recordable device. The Receiving Party will not
14 transmit any Source Code in any way from the Producing Party's facilities or the
15 offices of its outside counsel of record.

16 (ix) The Receiving Party's outside counsel of record may make no
17 more than three (3) additional paper copies of any portions of the Source Code
18 received from a Producing Party pursuant to Paragraph 8(c)(v), not including copies
19 attached to court filings or used at depositions, and shall maintain a log of all paper
20 copies of the Source Code. The log shall include the names of the reviewers and/or
21 recipients of paper copies and locations where the paper copies are stored. Upon
22 one (1) day's advance notice to the Receiving Party by the Producing Party, the
23 Receiving Party shall provide a copy of this log to the Producing Party.

24 (x) The Receiving Party's outside counsel of record and any person
25 receiving a copy of any Source Code shall maintain and store any paper copies of
26 the Source Code at their offices in a manner that prevents duplication of or
27 unauthorized access to the Source Code, including, without limitation, storing the
28 Source Code in a locked room or cabinet at all times when it is not in use. No more

1 than a total of ten (10) individuals identified by the receiving party shall have access
2 to the printed portions of Apple Source Code (except insofar as such code appears in
3 any court filing or expert report).

4 (xi) For depositions, the Receiving Party shall not bring copies of any
5 printed Source Code. Rather, at least ten (10) days before the date of the deposition,
6 the Receiving Party shall notify the Producing Party about the specific portions of
7 Source Code it wishes to use at the deposition, and the Producing Party shall bring
8 printed copies of those portions to the deposition for use by the Receiving Party.
9 Copies of Source Code that are marked as deposition exhibits shall not be provided
10 to the Court Reporter or attached to deposition transcripts; rather, the deposition
11 record will identify the exhibit by its production numbers. All paper copies of
12 Source Code brought to the deposition shall remain with the Producing Counsel's
13 outside counsel for secure destruction in a timely manner following the deposition.

14 (xii) Except as provided in this sub-paragraph, absent express written
15 permission from the Producing Party, the Receiving Party may not create electronic
16 images, or any other images, or make electronic copies, of the Source Code from
17 any paper copy of Source Code for use in any manner (including by way of example
18 only, the Receiving Party may not scan the Source Code to a PDF or photograph the
19 code). Images or copies of Source Code shall not be included in correspondence
20 between the Parties (references to production numbers shall be used instead), and
21 shall be omitted from pleadings and other papers whenever possible. If a Party
22 reasonably believes that it needs to submit a portion of Source Code as part of a
23 filing with the Court, the Parties shall meet and confer as to how to make such a
24 filing while protecting the confidentiality of the Source Code and such Source Code
25 will not be filed absent agreement from the Producing Party that the confidentiality
26 protections will be adequate. If a Producing Party agrees to produce an electronic
27 copy of all or any portion of its Source Code or provide written permission to the
28 Receiving Party that an electronic or any other copy needs to be made for a Court

1 filing, access to the Receiving Party's submission, communication, and/or disclosure
2 of electronic files or other materials containing any portion of Source Code (paper
3 or electronic) shall at all times be limited solely to individuals who are expressly
4 authorized to view Source Code under the provisions of this Order. Where the
5 Producing Party has provided the express written permission required under this
6 provision for a Receiving Party to create electronic copies of Source Code, the
7 Receiving Party shall maintain a log of all such electronic copies of any portion of
8 Source Code in its possession or in the possession of its retained consultants,
9 including the names of the reviewers and/or recipients of any such electronic copies,
10 and the locations and manner in which the electronic copies are stored.
11 Additionally, any such electronic copies must be labeled "CONFIDENTIAL -
12 ATTORNEYS' EYES ONLY - SOURCE CODE" as provided for in this Order.

13 9. NOTICE OF DISCLOSURE

14 (a) Prior to disclosing any Protected Material to any person
15 described in Paragraphs 7.6(b), 7.6(c), 7.7(b), or 7.8(b) (referenced below as
16 "Person"), the Party seeking to disclose such information shall provide the
17 Producing Party with written notice that includes:

- 18 (i) the name of the Person;
19 (ii) an up-to-date curriculum vitae of the Person;
20 (iii) the present employer and title of the Person;
21 (iv) an identification of all of the Person's past and current
22 employment and consulting relationships, including direct relationships and
23 relationships through entities owned or controlled by the Person, including but
24 not limited to an identification of any individual or entity with or for whom the
25 person is employed or to whom the person provides consulting services relating
26 to the design, development, operation, or patenting of wireless communication
27 systems or digital audio systems, or relating to the acquisition of intellectual
28 property assets relating to wireless communication systems or digital audio

1 systems;

2 (v) an identification of all pending patent applications on which the
3 Person is named as an inventor, in which the Person has any ownership interest,
4 or as to which the Person has had or anticipates in the future any involvement in
5 advising on, consulting on, preparing, prosecuting, drafting, editing, amending,
6 or otherwise affecting the scope of the claims; and

7 (vi) a list of the cases in which the Person has testified at deposition
8 or trial within the last five (5) years.

9 Further, the Party seeking to disclose Protected Material shall provide such other
10 information regarding the Person's professional activities reasonably requested
11 by the Producing Party for it to evaluate whether good cause exists to object to
12 the disclosure of Protected Material to the outside expert or consultant. During
13 the pendency of and for a period of two (2) years after the final resolution of this
14 action, including all appeals, the Party seeking to disclose Protected Material
15 shall immediately provide written notice of any change with respect to the
16 Person's involvement in the design, development, operation or patenting of
17 wireless communication systems or digital audio systems, or the acquisition of
18 intellectual property assets relating to wireless communication systems or digital
19 audio systems.

20 (b) Within fourteen (14) days of receipt of the disclosure of the
21 Person, the Producing Party or Parties may object in writing to the Person for
22 good cause. In the absence of an objection at the end of the fourteen (14) day
23 period, the Person shall be deemed approved under this Protective Order. There
24 shall be no disclosure of Protected Material to the Person prior to expiration of
25 this fourteen (14) day period. If the Producing Party objects to disclosure to the
26 Person within such fourteen (14) day period, the Parties shall meet and confer via
27 telephone or in person within seven (7) days following the objection and attempt
28 in good faith to resolve the dispute on an informal basis. If the dispute is not

1 resolved, the Party objecting to the disclosure will have seven (7) days from the
2 date of the meet and confer to seek relief from the Court. If relief is not sought
3 from the Court within that time, the objection shall be deemed withdrawn. If
4 relief is sought, designated materials shall not be disclosed to the Person in
5 question until the Court resolves the objection.

6 (c) For purposes of this section, “good cause” shall include an
7 objectively reasonable concern that the Person will, advertently or inadvertently,
8 use or disclose Discovery Materials in a way or ways that are inconsistent with
9 the provisions contained in this Order.

10 (d) Prior to receiving any Protected Material under this Order, the
11 Person must execute a copy of the “Agreement to Be Bound by Protective
12 Order” (Exhibit A hereto) and serve it on all Parties.

13 (e) An initial failure to object to a Person under this Paragraph shall
14 not preclude the nonobjecting Party from later objecting to continued access by
15 that Person for good cause. If an objection is made, the Parties shall meet and
16 confer via telephone or in person within seven (7) days following the objection
17 and attempt in good faith to resolve the dispute informally. If the dispute is not
18 resolved, the Party objecting to the disclosure will have seven (7) days from the
19 date of the meet and confer to seek relief from the Court. The designated Person
20 may continue to have access to information that was provided to such Person
21 prior to the date of the objection. If a later objection is made, no further
22 Protected Material shall be disclosed to the Person until the Court resolves the
23 matter or the Producing Party withdraws its objection. Notwithstanding the
24 foregoing, if the Producing Party fails to move for a protective order within
25 seven (7) business days after the meet and confer, further Protected Material may
26 thereafter be provided to the Person.

27
28 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED

1 IN OTHER LITIGATION

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

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

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

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

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

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

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

1 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or
2 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY - SOURCE CODE.” Such
3 information produced by Non-Parties in connection with this litigation is protected
4 by the remedies and relief provided by this Order. Nothing in these provisions
5 should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

16 (3) if the Non-Party does not have a copy of the information, make the
17 information requested available for inspection by the Non-Party, if requested.

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

26 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
2 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
3 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
4 persons to whom unauthorized disclosures were made of all the terms of this Order,
5 and (d) request such person or persons to execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A. Unauthorized or
7 inadvertent disclosure does not change the status of Protected Material or waive the
8 right to hold the disclosed document or information as Protected.

9 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

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

21 The inadvertent production by a Party of Discovery Material subject to the
22 attorney-client privilege, work-product protection, or any other applicable privilege
23 or protection, despite the Producing Party’s reasonable efforts to prescreen such
24 Discovery Material prior to production, will not waive the applicable privilege
25 and/or protection if a request for return of such inadvertently produced Discovery
26 Material is made promptly after the Producing Party learns of its inadvertent
27 production.

28 Upon a request from any Producing Party who has inadvertently produced

1 Discovery Material that it believes is privileged and/or protected, each Receiving
2 Party shall immediately return such Protected Material or Discovery Material and all
3 copies to the Producing Party, except for any pages containing privileged markings
4 by the Receiving Party which shall instead be destroyed and certified as such by the
5 Receiving Party to the Producing Party.

6 Nothing herein shall prevent the Receiving Party from preparing a record for its own
7 use containing the date, author, addresses, and topic of the inadvertently produced
8 Discovery Material and such other information as is reasonably necessary to identify
9 the Discovery Material and describe its nature to the Court in any motion to compel
10 production of the Discovery Material.

11 14. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future. By stipulating to this
14 Order, the Parties do not waive the right to argue that certain material may require
15 additional or different confidentiality protections than those set forth herein.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order, no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in this
19 Stipulated Protective Order. Similarly, no Party waives any right to object on any
20 ground to use in evidence of any of the material covered by this Protective Order.
21 This Order shall not constitute a waiver of the right of any Party to claim in this
22 action or otherwise that any Discovery Material, or any portion thereof, is privileged
23 or otherwise non-discoverable, or is not admissible in evidence in this action or any
24 other proceeding.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any
26 Protected Material must comply with Local Civil Rule 79-5. Protected Material
27 may only be filed under seal pursuant to a court order authorizing the sealing of the
28 specific Protected Material at issue. If a Party's request to file Protected Material

1 under seal is denied by the court, then the Receiving Party may file the information
2 in the public record unless otherwise instructed by the court. However, nothing in
3 this section shall in any way limit or detract from this Order's requirements as to
4 Source Code.

5 12.4 Computation of Time. The computation of any period of time
6 prescribed or allowed by this Order shall be governed by the provisions for
7 computing time set forth in Federal Rules of Civil Procedure 6.

8 12.5 Discovery from Experts or Consultants. Absent good cause, notes and
9 drafts of reports of testifying experts, and reports and other written materials,
10 including drafts, of consulting experts, shall not be discoverable. Reports and
11 materials exempt from discovery under the foregoing Paragraph shall be treated as
12 attorney work product for the purposes of this case and Protective Order.

13 12.6 Termination of Matter and Retention of Jurisdiction. The Parties agree
14 that the terms of this Protective Order shall survive and remain in effect after the
15 Final Determination of the above-captioned matter. The Court shall retain
16 jurisdiction after Final Determination of this matter to hear and resolve any disputes
17 arising out of this Protective Order.

18 12.7 Successors. This Order shall be binding upon the Parties hereto, their
19 attorneys, and their successors.

20 12.8 Burdens of Proof. Notwithstanding anything to the contrary above,
21 nothing in this Protective Order shall be construed to change the burdens of proof or
22 legal standards applicable in disputes regarding whether particular Discovery
23 Material is confidential, which level of confidentiality is appropriate, whether
24 disclosure should be restricted, and if so, what restrictions should apply.

25 12.9 Modification by Court. This Order is subject to further court order
26 based upon public policy or other considerations, and the Court may modify this
27 Order sua sponte in the interests of justice. The United States District Court for the
28 Central District of California is responsible for the interpretation and enforcement of

1 this Order. All disputes concerning Protected Material, however designated,
2 produced under the protection of this Order shall be resolved by the United States
3 District Court for the Central District of California.

4 12.10 Discovery Rules Remain Unchanged. Nothing herein shall alter or
5 change in any way the discovery provisions of the Federal Rules of Civil Procedure,
6 the Local Rules for the United States District Court for the Central District of
7 California, or the Court's own orders. Identification of any individual pursuant to
8 this Protective Order does not make that individual available for deposition or any
9 other form of discovery outside of the restrictions and procedures of the Federal
10 Rules of Civil Procedure, the Local Rules for the United States District Court for the
11 Central District of California, or the Court's own orders.

12 13. FINAL DISPOSITION

13 Not later than ninety (90) days after the final disposition of this Action, as
14 defined in paragraph 4, each Receiving Party must return all Protected Material to
15 the Producing Party or destroy such material, at the option of the Producing Party.
16 As used in this subdivision, "all Protected Material" includes all copies, abstracts,
17 compilations, summaries, and any other format reproducing or capturing any of the
18 Protected Material. Whether the Protected Material is returned or destroyed, the
19 Receiving Party must submit a written certification to the Producing Party (and, if
20 not the same person or entity, to the Designating Party) by the 90 day deadline that
21 (1) identifies (by category, where appropriate) all the Protected Material that was
22 returned or destroyed and (2) affirms that the Receiving Party has not retained any
23 copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
25 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
26 and hearing transcripts, legal memoranda, correspondence, deposition and trial
27 exhibits, expert reports, attorney work product, and consultant and expert work
28 product, even if such materials contain Protected Material, but must return or

1 destroy any pleadings, correspondence, and consultant work product that contain
2 Source Code. Any such archival copies that contain or constitute Protected Material
3 remain subject to this Protective Order as set forth in Section 4 (DURATION).

4 14. VIOLATION

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

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 DATED January 27, 2022

10
11 /s/ Douglas G. Muehlhauser
12 Attorneys for Plaintiff

13
14 DATED January 27, 2022

15
16 /s/ Heidi L. Keefe
17 Attorneys for Defendant

18
19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20
21 DATED: January 28, 2022

22
23 
24 _____
25 HON. GAIL J. STANDISH
26 United States Magistrate Judge

27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of *One-E-Way, Inc. v. Apple Inc.*, United States District Court,
9 Central District of California, Western Division, Civil Action No. 2:20-cv-06339-
10 JAK-GJS. I agree to comply with and to be bound by all the terms of this Stipulated
11 Protective Order and I understand and acknowledge that failure to so comply could
12 expose me to sanctions and punishment in the nature of contempt. I solemnly
13 promise that I will not disclose in any manner any information or item that is subject
14 to this Stipulated Protective Order to any person or entity except in strict compliance
15 with the provisions of this Order.

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

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

24 Date: _____

25 City and State where sworn and signed: _____

26 Present occupation/job description: _____

27
28 Name of Company or Firm: _____

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Printed name: _____

Signature: _____