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**Note changes made by the Court.**

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

PAVO SOLUTIONS, LLC

Plaintiff,

v.

KINGSTON TECHNOLOGY  
COMPANY, INC.

Defendant.

8:14-cv-1352-JLS (KESx)

Hon. Josephine L. Staton

**STIPULATED PROTECTIVE  
ORDER**

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1 It is hereby stipulated by the parties that the Court enter the following Order  
2 protecting confidentiality of both party and non-party information to be disclosed in  
3 these litigations.

4 1. PURPOSES AND LIMITATIONS

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

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation  
18 of information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of  
20 how it is generated, stored or maintained) or tangible things that constitute or  
21 include information that is not publicly known and that cannot be ascertained from  
22 an inspection of publicly available documents.

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
24 Counsel (as well as their respective support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or  
26 items that it produces in disclosures or in responses to discovery as  
27 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
28 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1           2.5    Disclosure or Discovery Material: all items or information, regardless  
2 of the medium or manner in which it is generated, stored, or maintained (including,  
3 among other things, testimony, transcripts, and tangible things), that are produced,  
4 disclosed or generated in disclosures, responses to discovery, or depositions in this  
5 matter.

6           2.6    Expert: a person who (1) has been retained by a Party or its counsel to  
7 serve as an expert witness or as a consultant in this action, (2) is not a past or current  
8 employee of a Party or of a Party's competitor, and (3) at the time of retention, is  
9 not anticipated to become an employee of a Party or of a Party's competitor.

10          2.7    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
11 Information or Items: extremely sensitive "Confidential Information or Items,"  
12 disclosure of which to another Party or Non-Party, even under the restricted terms  
13 and conditions applicable to material designated "CONFIDENTIAL," would not  
14 adequately protect the interests of the Designating Party. Examples of HIGHLY  
15 CONFIDENTIAL – ATTORNEYS' EYES ONLY material include, but are not  
16 limited to, the following:

- 17           A.    Confidential licenses and licensing terms;
- 18           B.    Confidential sales, pricing, profit, and other financial  
19                information;
- 20           C.    Confidential business, marketing, and strategic plans and  
21                forecasts;
- 22           D.    Confidential technical information, including design, engineering  
23                and development documents;
- 24           E.    Employee personal information, to the extent such information is  
25                produced and not redacted;
- 26           F.    Trade Secrets; and

1 G. Any other type or category of information which a Producing  
2 Party believes must be held in highest level of confidence  
3 because it could otherwise create a competitive disadvantage.

4 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
5 Items: “Confidential Information or Items” representing schematics, Hardware  
6 Description Language (HDL) or Register Transfer Level (RTL) files or computer  
7 code and associated comments and revision histories, the disclosure of which the  
8 Parties acknowledge would create a substantial risk of serious harm such that  
9 disclosure could not be avoided by less restrictive means (“Source Code”). For  
10 avoidance of doubt, Source Code includes, but is not limited to, source files,  
11 “include” files, make files, intermediate output files, executable files, header files,  
12 resource files, library files, module definition files, map files, object files, linker  
13 files, net lists, circuit schematics, browser info files, debug files, computer code,  
14 scripts, assembly, binaries and object code and other human-readable files used in  
15 the compilation of Source Code into a software program. The Receiving Party shall  
16 not attempt to build or compile the Source Code.

17 2.9 House Counsel: attorneys who are employees of a Party or a related  
18 entity. House Counsel does not include Outside Counsel of Record or any other  
19 outside counsel.

20 2.10 Non-Party: any natural person, partnership, corporation, association, or  
21 other legal entity not named as a Party.

22 2.11 Outside Counsel of Record: attorneys who are not employees of a Party  
23 but are retained to represent or advise a Party and have appeared in this action on  
24 behalf of that Party or are affiliated with a law firm which has appeared on behalf of  
25 that Party.

26 2.12 Party: any party to this action, including all of its officers, directors,  
27 employees, consultants, retained experts, and Outside Counsel of Record (and their  
28 support staffs).

1           2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
2 Discovery Material in this action.

3           2.14 Professional Vendors: persons or entities that provide litigation support  
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
6 and their employees and subcontractors.

7           2.15 Protected Material: any Disclosure or Discovery Material that is  
8 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

10          2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
11 from a Producing Party.

12 3.    SCOPE

13          The protections conferred by this Order cover not only Protected Material (as  
14 defined above), but also (1) any information copied or extracted from Protected  
15 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
16 and (3) any testimony, conversations, or presentations by Parties or their Counsel  
17 that might reveal Protected Material. However, the protections conferred by this  
18 Order do not cover the following information: (a) any information that is in the  
19 public domain at the time of disclosure to a Receiving Party, including but not  
20 limited to (i) publicly available advertising materials, (ii) materials that have been  
21 published to the general public, or (iii) documents that have been submitted to any  
22 governmental entity without request for confidential treatment, or that becomes part  
23 of the public domain after its disclosure to a Receiving Party as a result of  
24 publication not involving a violation of this Order, including becoming part of the  
25 public record through trial or otherwise; and (b) any information known to the  
26 Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
27 disclosure from a source who obtained the information lawfully and under no  
28 obligation of confidentiality to the Designating Party. Nothing in this Order shall

1 restrict in any way a Producing Party's use or disclosure of its own Protected  
2 Material. Any use of Protected Material at trial shall be governed by a separate  
3 agreement or 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 a 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, with  
9 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 time  
12 pursuant to applicable law. ~~The Court will retain jurisdiction over disputes arising~~  
13 ~~from this stipulated protective order for ninety (90) days after final disposition, as~~  
14 ~~defined in the preceding sentence.~~

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under  
18 this Order must take care to limit any such designation to specific material that it  
19 reasonably believes there is good cause to protect in accordance with the definitions  
20 and provisions of this Order. To the extent it is practical to do so, the Designating  
21 Party must designate for protection only those parts of the material, documents,  
22 items, or oral or written communications that it reasonably believes qualify for  
23 protection. Mass, indiscriminate, or routinized designations are prohibited.

24 If it comes to a Designating Party's attention that information or items that it  
25 designated for protection do not qualify for protection at all or do not qualify for the  
26 level of protection initially asserted, that Designating Party must promptly notify all  
27 other Parties that it is withdrawing the designation.

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

6           Designation in conformity with this Order requires:

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

16           If a Party or Non-Party identifies a set of documents that are better made  
17 available for inspection, the Party or Non-Party may make the original documents or  
18 materials available for inspection as they are kept in the ordinary course of business.  
19 The Party or Non-Party need not designate them for protection until after the  
20 inspecting Party has indicated which material it would like copied and produced.  
21 During the inspection and before the designation, all of the material made available  
22 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’  
23 EYES ONLY.” After the inspecting Party has identified the documents it wants  
24 copied and produced, the Producing Party must determine which documents, or  
25 portions thereof, qualify for protection under this Order. Then, before producing the  
26 specified documents, the Producing Party must affix the appropriate legend  
27 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
28

1 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE) as required by this  
2 Order.

3 (b) for testimony given in deposition or in other pretrial or trial  
4 proceedings, that the Designating Party identify on the record, before the close of  
5 the deposition, hearing, or other proceeding, all protected testimony and specify the  
6 level of protection being asserted. When it is impractical to identify separately each  
7 portion of testimony that is entitled to protection and it appears that substantial  
8 portions of the testimony may qualify for protection, the Designating Party may  
9 invoke on the record (before the deposition, hearing, or other proceeding is  
10 concluded) a right to have up to 30 days from the time the final transcript is  
11 available to identify the specific portions of the testimony as to which protection is  
12 sought and to specify the level of protection being asserted. Only those portions of  
13 the testimony that are appropriately designated for protection within the 30 days  
14 shall be covered by the provisions of this Protective Order. Alternatively, a  
15 Designating Party may specify, at the deposition or up to 30 days afterwards if that  
16 period is properly invoked, that the entire transcript shall be treated as  
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY.” A Designating Party may also specify that portions of the deposition  
19 transcript be identified as containing “HIGHLY CONFIDENTIAL – SOURCE  
20 CODE.” In the event that the deposition is videotaped, the original and all copies of  
21 the videotape shall be marked by the video technician pursuant to the terms of this  
22 Protective Order to indicate that the contents of the videotape are subject to this  
23 Protective Order.

24 Parties shall give the other parties notice if they reasonably expect a  
25 deposition, hearing, or other proceeding to include Protected Material so that the  
26 other parties can ensure that only authorized individuals including those who have  
27 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present  
28 at those proceedings. Counsel for the Producing Party shall have the right to exclude

1 from oral depositions—other than the deponent, the deponent’s counsel, the reporter  
2 and the videographer (if any)—any person who is not authorized by this Protective  
3 Order to receive or access Protected Material based on the designation of such  
4 Protected Material. Such right of exclusion shall be applicable only during periods  
5 of examination or testimony regarding such Protected Material. The use of a  
6 document as an exhibit at a deposition shall not in any way affect its designation as  
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
8 ONLY.”

9 Transcripts containing Protected Material shall have an obvious legend on the  
10 title page that the transcript contains Protected Material, and the title page shall be  
11 followed by a list of all pages (including line numbers as appropriate) that have been  
12 designated as Protected Material and the level of protection being asserted by the  
13 Designating Party. The Designating Party shall inform the court reporter of these  
14 requirements. Any transcript that is prepared before the expiration of the 30- day  
15 period for designation shall be treated during that period as if it had been designated  
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
17 otherwise agreed. After the expiration of that period, the transcript shall be treated  
18 only as actually designated.

19 (c) for information produced in some form other than documentary and for  
20 any other tangible items, that the Producing Party affix in a prominent place on the  
21 exterior of the container or containers in which the information or item is stored the  
22 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
23 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or  
24 portions of the information or item warrant protection, the Producing Party, to the  
25 extent practicable, shall identify the protected portion(s) and specify the level of  
26 protection being asserted.

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
28 failure to designate qualified information or items does not, standing alone, waive

1 the Designating Party's right to secure protection under this Order for such material.  
2 Upon timely correction of a designation, the Receiving Party must make reasonable  
3 efforts to assure that the material is treated in accordance with the provisions of this  
4 Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
7 designation of confidentiality at any time *prior to the discovery cutoff date*. Unless  
8 a prompt challenge to a Designating Party's confidentiality designation is necessary  
9 to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a  
10 significant disruption or delay of the litigation, a Party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge  
12 promptly after the original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
14 resolution process by providing written notice of each designation it is challenging  
15 and describing the basis for each challenge. To avoid ambiguity as to whether a  
16 challenge has been made, the written notice must recite that the challenge to  
17 confidentiality is being made in accordance with this specific paragraph of the  
18 Protective Order. The parties shall attempt to resolve each challenge in good faith  
19 and must begin the process by conferring directly (in voice to voice dialogue; other  
20 forms of communication are not sufficient) within 14 days of the date of service of  
21 notice. In conferring, the Challenging Party must explain the basis for its belief that  
22 the confidentiality designation was not proper and must give the Designating Party  
23 an opportunity to review the designated material, to reconsider the circumstances,  
24 and, if no change in designation is offered, to explain the basis for the chosen  
25 designation. A Challenging Party may proceed to the next stage of the challenge  
26 process only if (1) it has engaged in this meet and confer process first, or (2)  
27 establishes that the Designating Party is unwilling to participate in the meet and  
28 confer process in a timely manner.

1           **6.3**    Judicial Intervention. If the Parties cannot resolve a challenge without  
2 court intervention, the Designating Party shall file and serve a motion to retain  
3 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule  
4 79-5, if applicable) within 21 days of the initial notice of challenge or within 14  
5 days of the parties agreeing that the meet and confer process will not resolve their  
6 dispute, whichever is later. In addition, the Challenging Party may file a motion  
7 challenging a confidentiality designation at any time after complying with the meet  
8 and confer requirements imposed in the preceding paragraph, including a challenge  
9 to the designation of a deposition transcript or any portions thereof. Any motion  
10 brought pursuant to this provision, whether by the Designating Party or Challenging  
11 Party, must be accompanied by a competent declaration affirming that the movant  
12 has complied with the meet and confer requirements imposed by the preceding  
13 paragraph. *Alternatively, the parties may stipulate to use the informal, telephonic*  
14 *procedure described on the court's website.*

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

23    7.       ACCESS TO AND USE OF PROTECTED MATERIAL

24           7.1    Basic Principles. A Receiving Party may use Protected Material that is  
25 disclosed or produced by another Party or by a Non-Party in connection with this  
26 case only for prosecuting, defending, or attempting to settle this litigation. Such  
27 Protected Material may be disclosed only to the categories of persons and under the  
28 conditions described in this Order. Nothing in this Order shall bar or otherwise

1 restrict any attorney herein from rendering advice to his or her client with respect to  
2 this litigation; provided, however, that in rendering such advice and in otherwise  
3 communicating with his client, the attorney shall not make specific disclosure of any  
4 information or item of the Protected Material *except as authorized by section 7.2*.  
5 When the litigation has been terminated, a Receiving Party must comply with the  
6 provisions of section 15 below (FINAL DISPOSITION).

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

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

14 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
15 as employees of said Outside Counsel of Record to whom disclosure is reasonably  
16 necessary for this litigation;

17 (b) the officers, directors, and employees (including House Counsel) of the  
18 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
19 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (c) Experts (as defined in this Order) of the Receiving Party (1) to whom  
21 disclosure is reasonably necessary for this litigation, (2) who have signed the  
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom  
23 the procedures set forth in paragraph 7.4, below, have been followed;

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants,  
26 interpreters or translators, and Professional Vendors to whom disclosure is  
27 reasonably necessary for this litigation and who have signed the “Acknowledgment  
28 and Agreement to Be Bound” (Exhibit A);

1 (f) during their depositions, witnesses in the action for the Designating  
2 Party, the Producing Party and any party with knowledge about the document;

3 (g) the author or recipient appearing on the face of a document containing  
4 the information or a custodian or other person who otherwise possessed or knew the  
5 information; and

6 (h) any mediator who is assigned to hear this matter, and his or her staff.

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
8 ONLY,” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
9 Items. Unless otherwise ordered by the court or permitted in writing by the  
10 Designating Party, a Receiving Party may disclose any information or item  
11 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
12 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
14 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
15 to disclose the information for this litigation;<sup>1</sup>

16 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
17 necessary for this litigation, (2) who have signed the “Acknowledgment and  
18 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in  
19 paragraph 7.4, below, have been followed;

20 (c) the court and its personnel;

21 (d) court reporters and their staff, professional jury or trial consultants,  
22 interpreters or translators, and Professional Vendors to whom disclosure is  
23 reasonably necessary for this litigation and who have signed the “Acknowledgment  
24 and Agreement to Be Bound” (Exhibit A);

25 (e) during their depositions, witnesses in the action for the Designating  
26 Party or the Producing Party (not the Receiving Party), including former employees

27 \_\_\_\_\_  
28 <sup>1</sup> This Order contemplates that House Counsel shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 whom Receiving Party has a good faith belief had access to the information during  
2 their employment with the Designating Party or the Producing Party;

3 (f) the author or recipients appearing on the face of a document containing  
4 the information or a custodian or other person who otherwise possessed or knew the  
5 information; and

6 (g) any mediator who is assigned to hear this matter, and his or her staff.

7 7.4 Procedures for Approving or Objecting to Disclosure of  
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
9 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items  
10 to Experts.

11 (a) Unless otherwise ordered by the Court or agreed to in writing by the  
12 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
13 Order) any information or item that has been designated “CONFIDENTIAL,”  
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY  
15 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.2 or 7.3 first must  
16 make a written request to the Designating Party that (1) sets forth the full name of  
17 the Expert and the city and state of his or her primary residence, (2) attaches a copy  
18 of the Expert’s current resume and the “Acknowledgement and Agreement to be  
19 Bound,” (3) identifies the Expert’s current employer(s), (4) identifies each person or  
20 entity from whom the Expert has received compensation or funding for work in his  
21 or her areas of expertise or to whom the expert has provided professional services,  
22 including in connection with a litigation, at any time during the preceding five  
23 years,<sup>2</sup> and (5) identifies (by name and number of the case, filing date, and location  
24 of court) any litigation in connection with which the Expert has offered expert  
25

26 \_\_\_\_\_  
27 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a Non-Party, then the Expert  
28 should provide whatever information the Expert believes can be disclosed without violating any confidentiality  
agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating  
Party regarding any such engagement.

1 testimony, including through a declaration, report, or testimony at a deposition or  
2 trial, during the preceding five years.

3 (b) A Party that makes a request and provides the information specified in  
4 the preceding respective paragraphs may disclose the subject Protected Material to  
5 the identified Expert unless, within 7 days of delivering the request, the Party  
6 receives a written objection from the Designating Party. Any such objection must  
7 set forth in detail the grounds on which it is based.

8 (c) A Party that receives a timely written objection must meet and confer  
9 with the Designating Party (through direct voice to voice dialogue) to try to resolve  
10 the matter by agreement within seven days of the written objection. If no agreement  
11 is reached, the Party seeking to make the disclosure to the Expert may file a motion  
12 as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
13 applicable) seeking permission from the court to do so. Any such motion must  
14 describe the circumstances with specificity, set forth in detail the reasons why  
15 disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
16 disclosure would entail, and suggest any additional means that could be used to  
17 reduce that risk. In addition, any such motion must be accompanied by a competent  
18 declaration describing the parties' efforts to resolve the matter by agreement (i.e.,  
19 the extent and the content of the meet and confer discussions) and setting forth the  
20 reasons advanced by the Designating Party for its refusal to approve the disclosure.

21 In any such proceeding, the Party opposing disclosure to the Expert shall bear  
22 the burden of proving that the risk of harm that the disclosure would entail (under  
23 the safeguards proposed) outweighs the Receiving Party's need to disclose the  
24 Protected Material to its Expert.

25 8. PROSECUTION BAR

26 Absent written consent from the Producing Party, any individual who reviews  
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY  
28 CONFIDENTIAL – SOURCE CODE" information shall not be involved in the

1 prosecution of patents or patent applications relating to the subject matter of the  
2 patents asserted in this action, including without limitation the patents asserted in  
3 this action and any patent or application claiming priority to or otherwise related to  
4 the patents asserted in this action, before any foreign or domestic agency, including  
5 the United States Patent and Trademark Office (“the Patent Office”). For purposes  
6 of this paragraph, “prosecution” includes directly or indirectly drafting, amending,  
7 advising or otherwise affecting the scope or maintenance of patent claims. These  
8 prohibitions, however, are not intended to and shall not preclude Counsel from  
9 participating in reexamination, reissue proceedings, *inter partes* review proceedings,  
10 or post-grant proceedings on behalf of a party challenging or defending the validity  
11 of any patent so long as those activities do not involve directly or indirectly drafting  
12 or amending the patent claims. This Prosecution Bar shall begin when access to  
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
14 CONFIDENTIAL – SOURCE CODE” information is first received by the affected  
15 individual and shall end one (1) year after final disposition of this action.

16 9. SOURCE CODE

17 (a) To the extent production of source code becomes necessary in this case,  
18 a Producing Party may designate source code as “HIGHLY CONFIDENTIAL -  
19 SOURCE CODE” if it comprises or includes confidential, proprietary or trade secret  
20 source code.

21 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –  
22 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, including the  
24 Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the  
25 individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
26 information may be disclosed, as set forth in Paragraph 7.3.

27 (c) Any Source Code produced in discovery shall be made available for  
28 inspection as it is kept in the ordinary course of business (including but not limited

1 to in native form and in the file-naming and directory structure in which it is  
2 ordinarily kept), in a format allowing it to be reasonably reviewed and searched,  
3 during normal business hours (or at other mutually agreeable times), at an office of  
4 the Producing Party's counsel or another mutually agreed upon location, or, in the  
5 case of Non-Party Source Code, at a location designated by the Non-Party. Upon  
6 initial inspection, the Receiving Party shall give at least ten (10) days prior written  
7 notice of its intent to review Source Code. Written notices of subsequent inspections  
8 shall be made at least three (3) business days prior to the intended start of the  
9 review. The Source Code shall be made available for inspection in a secured room  
10 ("Source Code Room") on a secured computer without Internet access or network  
11 access to other computers ("Source Code Computer"), and the Receiving Party shall  
12 not copy, remove, or otherwise transfer any portion of the Source Code onto any  
13 recordable media or recordable device. The Producing Party may designate a person  
14 to periodically visually monitor the activities of the Receiving Party's  
15 representatives during any source code review, but only to ensure that there is no  
16 unauthorized recording, copying, or transmission of the source code. The inspection  
17 may not be monitored using mechanical, software or electronic means, including  
18 video cameras, still cameras or keyloggers. The use of any laptop computer with a  
19 camera that is enabled, input/output device, recordable media, or recordable device  
20 (e.g., USB memory stick, CDs, portable hard drives, cameras (including cellular  
21 phones with camera functionality), sound recorders, etc.) is prohibited while  
22 accessing the Protected Code Computer, and no such devices or media shall be  
23 permitted in the Source Code Room.

24         The Source Code Computer shall include software utilities that provide the  
25 ability to (a) view, search, and identify the line number of any source file, (b) search  
26 for a given pattern of text through multiple files, and (c) compare two files.

27 Acceptable software utilities for source code include Notepad++ and Eclipse.

28 Default Windows programs such as Notepad are not sufficient. Schematics shall be

1 produced using the software used by the Producing Party to access the schematics  
2 during the normal course of business. In addition to these tools, the Receiving Party  
3 may request that commercially available software tools for reviewing and searching  
4 Source Code be installed on the Source Code Computer, provided, however, that (a)  
5 the Receiving Party possesses any appropriate license to such software tools which  
6 may be transferred to the Producing Party for the purposes of the inspection, or  
7 reimburses the Producing Party for the costs to obtain a license to such software  
8 tools; (b) the Producing Party approves such software tools (such approval shall not  
9 be unreasonably withheld); (c) the Receiving Party provides the Producing Party  
10 with written justification as to why such other software tools are reasonably  
11 necessary for the Receiving Party to perform its review of the Source Code  
12 consistent with all of the protections herein; and (d) the request to install the  
13 software tools is made at least five (5) business days in advance of the date upon  
14 which the Receiving Party wishes to have the additional software tools available for  
15 use on the Source Code Computer. To the extent only the Receiving Party possesses  
16 or has access to the software tools, the Receiving Party must provide the Producing  
17 Party with the licensed software tool(s) at least five (5) business days in advance of  
18 the date upon which the Receiving Party wishes to have the additional software  
19 tools available for use on the Source Code Computer if the Producing Party does not  
20 object to such installation. If the Producing Party objects to a software tool  
21 requested by the Receiving Party, it shall, within five (5) business days of receiving  
22 the Receiving Party's request, initiate the dispute resolution process set forth in  
23 Paragraph 6. For emphasis, it should be noted that Source Code review tools may  
24 not be used to circumvent the protections of this Protective Order in any way. The  
25 electronic Source Code shall be produced in a manner that preserves filenames and  
26 directory structures.

27 The Receiving Party's Outside Counsel of Record and/or Experts shall be  
28 entitled to take notes relating to the Source Code, including on a laptop computer if

1 the laptop's camera and all other recording functions are turned off or disabled, but  
2 may not copy the Source Code into their notes. Any notes relating to the Source  
3 Code shall be subject to all of the restrictions of the "HIGHLY CONFIDENTIAL –  
4 SOURCE CODE" designation. The inadvertent leaving of materials in the Source  
5 Code Room does not operate as a waiver of the attorney work product doctrine or  
6 any other applicable privilege and such materials shall be returned to their owner  
7 promptly. No copies of all or any portion of the Source Code may leave the Source  
8 Code Room except as otherwise provided in this Protective Order. Further, no other  
9 written or electronic record of the Source Code is permitted except as otherwise  
10 provided in this Protective Order.

11 (d) During or after a Source Code inspection, the Receiving Party may  
12 request that the Producing Party print specified portions of the Source Code that are  
13 reasonably necessary for the preparation of court filings, pleadings, expert reports,  
14 or other papers, or for deposition or trial, but shall not request paper copies for the  
15 purpose of reviewing the Source Code other than electronically as set forth in  
16 paragraph (c) in the first instance. Should the Producing Party believe the requested  
17 number or content of the printouts is excessive, the parties shall meet and confer  
18 regarding the request. If the concerns cannot be resolved, the Producing Party shall  
19 file for a protective order within 10 business days of raising its objection. Unless it  
20 objects to the request, within three (3) business days of receiving a request for paper  
21 copies of Source Code from the Receiving Party, the Producing Party shall provide  
22 the requested portions of Source Code in paper form to the Receiving Party, with  
23 bates numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." If  
24 the Producing Party objects to the amount of Source Code requested by the  
25 Receiving Party in paper form, it shall, within three (3) business days of receiving  
26 the Receiving Party's request, initiate the dispute resolution process set forth in  
27 Paragraph 6.

1 (e) The Receiving Party shall maintain a record of the address where each  
2 paper copy of the Source Code is kept or moved and the name of each person with  
3 access to each paper copy of the Source Code at the provided address. The  
4 Receiving Party shall further maintain a record indicating any individual who has  
5 inspected any portion of the Source Code in electronic or paper form. The Receiving  
6 Party shall maintain all paper copies of any printed portions of the Source Code in a  
7 secured, locked area when not in immediate use. In addition, the Receiving Party  
8 may ship paper copies of printed portions of the Source Code via a secure courier  
9 delivery service, signature required (e.g. Federal Express) to persons authorized to  
10 access same under this Protective Order, who shall also maintain all paper copies of  
11 any printed portions of the Source Code in a secured, locked area when not in  
12 immediate use. The Receiving Party shall not create any electronic or other images  
13 of the paper copies and shall not convert any of the information contained in the  
14 paper copies into any electronic format, except small excerpts thereof reasonably  
15 necessary for court filings, expert reports, discovery responses and other similar  
16 documents. All such documents shall be clearly marked “HIGHLY  
17 CONFIDENTIAL – SOURCE CODE” and, if filed, shall be filed under seal. The  
18 Receiving Party shall only make additional paper copies if such additional copies  
19 are (1) necessary to prepare court filings, pleadings, or other papers (including  
20 expert reports), (2) necessary for deposition, or (3) otherwise necessary for the  
21 preparation of its case. Any paper copies used during a deposition shall be retrieved  
22 by the Producing Party at the end of each day and must not be given to or left with a  
23 court reporter or any other unauthorized individual.

24 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
25 IN OTHER LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation  
27 that compels disclosure of any information or items designated in this action as  
28

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

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

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

9 (c) cooperate with respect to all reasonable procedures sought to be  
10 pursued by the Designating Party whose Protected Material may be affected.<sup>3</sup>

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

21 11. 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 a  
24 Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY  
26 CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties

27 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to  
28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from  
which the subpoena or order issued.

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

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

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

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

14 3. make the information requested available for inspection by the  
15 Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from this  
17 court within 14 days of receiving the notice and accompanying information, the  
18 Receiving Party may produce the Non-Party's confidential information responsive  
19 to the discovery request. If the Non-Party timely seeks a protective order, the  
20 Receiving Party shall not produce any information in its possession or control that is  
21 subject to the confidentiality agreement with the Non-Party before a determination  
22 by the court.<sup>4</sup> Absent a court order to the contrary, the Non-Party shall bear the  
23 burden and expense of seeking protection in this court of its Protected Material.

24 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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28 <sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Protective Order, the Receiving Party must immediately (a) notify in writing the  
2 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
3 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
4 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
5 request that such person or persons execute the “Acknowledgment and Agreement  
6 to Be Bound” that is attached hereto as Exhibit A.

7 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
8 PROTECTED MATERIAL

9 Inadvertent or unintentional production of “CONFIDENTIAL,” “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
11 CONFIDENTIAL – SOURCE CODE” documents or information without such  
12 designations shall not be deemed a waiver in whole or in part of a claim for  
13 treatment as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
14 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If, through  
15 inadvertence, a Producing Party provides any information pursuant to this litigation  
16 without marking the information as “CONFIDENTIAL,” “HIGHLY  
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
18 CONFIDENTIAL – SOURCE CODE” the Producing Party may subsequently  
19 inform the Receiving Party of the specific designation of the disclosed information,  
20 and the Receiving Party shall treat the disclosed information as  
21 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
22 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information upon  
23 receipt of written notice from the Producing Party. To the extent the Receiving Party  
24 has already disclosed such information, the Receiving Party shall use its best efforts  
25 to promptly collect any copies of disclosed material that have been provided to  
26 individuals other than those authorized under this Protective Order, and if collected,  
27 shall destroy or return them to the Producing Party.

1           If a Producing Party inadvertently produces a document, tangible item or  
2 electronically stored information that it later discovers or in good faith asserts to be  
3 privileged, protected by the work product doctrine, or subject to some other  
4 immunity from disclosure (“Privileged Material”) the production of that Privileged  
5 Material shall not be deemed to constitute a waiver of any applicable privileges,  
6 work product protection, or immunity from disclosure. In such circumstances, upon  
7 discovery of the inadvertent disclosure, the Producing Party shall immediately  
8 notify the Receiving Party of the inadvertent production, and request either the  
9 return or confirmation of destruction of the Privileged Materials. Within five (5)  
10 business days of receiving such notification, the Receiving Party shall return or  
11 confirm destruction of all such materials. Such return or confirmation of destruction  
12 shall not preclude the Receiving Party from seeking to compel production of the  
13 materials (based on information independent of the content of the returned, allegedly  
14 privileged materials in question) and shall not constitute an admission by the  
15 Receiving Party that the materials were, in fact, privileged or otherwise protected in  
16 any way. The Producing Party shall retain the Privileged Material for submission to  
17 the Court in the event the Receiving Party moves to compel.

18   14.   MISCELLANEOUS

19           14.1 Right to Further Relief. Nothing in this Order abridges the right of any  
20 person to seek its modification by the court in the future.

21           14.2 Right to Assert Other Objections. No Party waives any right it  
22 otherwise would have to object to disclosing or producing any information or item  
23 on any ground not addressed in this Protective Order. Similarly, no Party waives any  
24 right to object on any ground to use in evidence of any of the material covered by  
25 this Protective Order.

26           14.3 Filing Protected Material. Without written permission from the  
27 Designating Party or a court order secured after appropriate notice to all interested  
28 persons, a Party may not file in the public record in this action any Protected

1 Material. In order to be treated as confidential, any *unredacted Protected* Materials  
2 filed with the Court must be lodged with a request for filing under seal in  
3 compliance with Civil Local Rule 79-5.

4 15. FINAL DISPOSITION

5 Within 60 days after the final disposition of this action, as defined in  
6 paragraph 4, each Receiving Party must return all Protected Material to the  
7 Producing Party or destroy such material. As used in this subdivision, “all Protected  
8 Material” includes all copies, abstracts, compilations, summaries, and any other  
9 format reproducing or capturing any of the Protected Material. Whether the  
10 Protected Material is returned or destroyed, the Receiving Party must submit a  
11 written certification to the Producing Party (and, if not the same person or entity, to  
12 the Designating Party) by the 60 day deadline that (1) identifies (by category, where  
13 appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
14 that the Receiving Party has not retained any copies, abstracts, compilations,  
15 summaries or any other format reproducing or capturing any of the Protected  
16 Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
17 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
18 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
19 work product, and consultant and expert work product, even if such materials  
20 contain Protected Material. Outside Counsel of Record need not purge its document  
21 management system or backup tapes to eliminate Protected Material. Any such  
22 archival copies that contain or constitute Protected Material remain subject to this  
23 Protective Order as set forth in Section 4 (DURATION).

24  
25 IT IS SO ORDERED.

26  
27 DATED: April 11, 2018



28 Hon. Karen E. Scott  
United States Magistrate Judge

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DATED: April 5, 2018

/s/ David M. Hoffman

Christine Yang  
David M. Hoffman (*pro hac vice*)  
Maria Elena Stiteler

Attorneys for Defendant  
KINGSTON TECHNOLOGY  
COMPANY, INC.

DATED: April 5, 2018

/s/ Benjamin T. Wang

Benjamin T. Wang  
Minna Y. Chan

Attorneys for Plaintiff  
PAVO SOLUTIONS, LLC

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  
6 perjury that I have read in its entirety and understand the Protective Order that was  
7 issued by the United States District Court for the Central District of California on  
8 \_\_\_\_\_ [date] in *Pavo Solutions, LLC v. Kingston Technology Company,*  
9 *Inc.*, Case No. 8:14-cv-1352 (C.D. Cal). I agree to comply with and to be bound by  
10 all the terms of this Protective Order, and I understand and acknowledge that failure  
11 to so comply could expose me to sanctions and punishment in the nature of  
12 contempt. I solemnly promise that I will not disclose in any manner any information  
13 or item that is subject to this Protective Order to any person or entity except in strict  
14 compliance with the provisions of this Order.

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

19  
20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22  
23 Printed name: \_\_\_\_\_

24 [printed name]

25  
26  
27 Signature: \_\_\_\_\_

28 [signatur