

[Counsel Listed on Signature Block]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

NOTE CHANGES MADE BY THE COURT

SPEX TECHNOLOGIES, INC.,

Case No. 8:16-CV-01790-JVS-AGR

Plaintiff,

STIPULATED PROTECTIVE  
ORDER

v.

KINGSTON TECHNOLOGY  
CORPORATION, KINGSTON  
DIGITAL, INC., KINGSTON  
TECHNOLOGY COMPANY, INC.,  
IMATION CORPORATION,  
DATA LOCKER INC., DATA  
LOCKER INTERNATIONAL, LLC,

Defendants.

SPEX TECHNOLOGIES, INC.,  
Plaintiff,

Case No. 8:16-CV-01799-JVS-AGR

v.

WESTERN DIGITAL  
CORPORATION, WESTERN  
DIGITAL TECHNOLOGIES, INC.,  
HGST, INC.,

NOTE CHANGES MADE BY THE COURT

Defendants.

NOTE CHANGES MADE BY THE COURT

RUSS, AUGUST & KABAT

"Mandatory Chambers Copy"

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RUSS, AUGUST & KABAT

SPEX TECHNOLOGIES, INC.,

Plaintiff

v.

TOSHIBA AMERICA  
ELECTRONICS COMPONENTS  
INC., TOSHIBA AMERICA  
INFORMATION SYSTEMS, INC.,  
TOSHIBA AMERICA, INC., AND  
TOSHIBA CORPORATION,

Defendants.

Case No. 8:16-CV-01800-JVS-AGR

SPEX TECHNOLOGIES, INC.,

Plaintiff,

v.

APRICORN, INC.,

Defendant.

Case No. 2:16-CV-07349-JVS-AGR

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 activity 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  
18 designation 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  
8 current employee of a Party or of a Party's competitor, and (3) at the time of  
9 retention, is not anticipated to become an employee of a Party or of a Party's  
10 competitor.

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

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

28

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 2.09 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  
23 Party but are retained to represent or advise a Party and have appeared in this action  
24 on behalf of that Party or are affiliated with a law firm which has appeared on  
25 behalf of 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  
4 support 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  
11 Material 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.

28 5.2 Manner and Timing of Designations. Except as otherwise provided in

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

5 Designation in conformity with this Order requires:

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

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



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

21 Parties shall give the other parties notice if they reasonably expect a  
22 deposition, ~~hearing, or other proceeding,~~ to include Protected Material so that the  
23 other parties can ensure that only authorized individuals including those who have  
24 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present  
25 at those proceedings. Counsel for the Producing Party shall have the right to  
26 exclude from oral depositions—other than the deponent, the deponent's counsel, the  
27 reporter and the videographer (if any)—any person who is not authorized by this  
28 Protective Order to receive or access Protected Material based on the designation of

1 such Protected Material. Such right of exclusion shall be applicable only during  
2 periods of examination or testimony regarding such Protected Material. The use of  
3 a document as an exhibit at a deposition shall not in any way affect its designation  
4 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
5 ONLY."

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

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

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
25 failure to designate qualified information or items does not, standing alone, waive  
26 the Designating Party's right to secure protection under this Order for such material.  
27 Upon timely correction of a designation, the Receiving Party must make reasonable  
28 efforts to assure that the material is treated in accordance with the provisions of this

1 Order.

2 5.4 Export Restriction. "EXPORT-CONTROL-RESTRICTED"  
3 documents, information, material, and testimony may not be exported, re-exported,  
4 temporarily imported, transferred, or retransferred to any non-U.S. person, country,  
5 or entity, by any means, without the appropriate approval of the U.S. Department of  
6 State, Directorate of Defense Trade Controls ("DDTC") for International Traffic in  
7 Arms Regulations ("ITAR") Restricted materials, and the U.S. Department of  
8 Commerce, Bureau of Industry and Security ("BIS") for Export Administration  
9 Regulations ("EAR") Restricted materials. These restrictions also apply to United  
10 States citizens and permanent residents employed by a company or organization  
11 that falls within the definition of "foreign person." See ITAR, 22 C.F.R. § 120.16.  
12 United States persons employed by such a foreign organization or company are not  
13 eligible to receive ITAR-controlled information absent an authorization from the  
14 DDTC or EAR-controlled information absent an authorization from the BIS.

15 The parties agree to treat all materials designated by another party as  
16 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," "HIGHLY  
17 CONFIDENTIAL – SOURCE CODE," or "EXPORT-CONTROL RESTRICTED"  
18 as EXPORT-CONTROL-RESTRICTED materials. Absent appropriate  
19 authorization (as explained above) or consent from the Producing Party (as  
20 explained below), persons (as defined by ITAR § 120.15) with access to documents  
21 treated as EXPORT-CONTROL-RESTRICTED shall not transfer, carry, or send  
22 such information to a location outside the United States, including via any  
23 electronic device or means, nor otherwise share such information with any person  
24 not explicitly authorized to receive such information as set forth above.

25 Although materials designated as "HIGHLY CONFIDENTIAL –  
26 ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL – SOURCE CODE,"  
27 or "EXPORT-CONTROLLED RESTRICTED" by another party will be treated as  
28 EXPORT-CONTROL-RESTRICTED by default as a precautionary measure, the

1 parties anticipate that not all such materials are subject to the above federal export  
2 restrictions. If the Receiving Party believes any “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS' EYES ONLY,” “HIGHLY CONFIDENTIAL – SOURCE CODE,”  
4 or “EXPORT-CONTROL-RESTRICTED” materials are not subject to federal  
5 export restrictions and can properly be shared with a foreign national under the  
6 other provisions of this Order, the Receiving Party may seek consent of the  
7 Producing Party to share the document. Consent shall not be withheld except for  
8 good cause shown. The restrictions contained within this paragraph do not create  
9 or otherwise impose an obligation on the Receiving Party to verify an individual’s  
10 citizenship, who is permitted to have access under Paragraph 7.3 (c), (e) (f) or (g).

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
13 designation of confidentiality at any time. Unless a prompt challenge to a  
14 Designating Party's confidentiality designation is necessary to avoid foreseeable,  
15 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
16 delay of the litigation, a Party does not waive its right to challenge a confidentiality  
17 designation by electing not to mount a challenge promptly after the original  
18 designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
20 resolution process by providing written notice of each designation it is challenging  
21 and describing the basis for each challenge. To avoid ambiguity as to whether a  
22 challenge has been made, the written notice must recite that the challenge to  
23 confidentiality is being made in accordance with this specific paragraph of the  
24 Protective Order. The parties shall attempt to resolve each challenge in good faith  
25 and must begin the process by conferring directly (in voice to voice dialogue; other  
26 forms of communication are not sufficient) within 14 days of the date of service of  
27 notice. In conferring, the Challenging Party must explain the basis for its belief that  
28 the confidentiality designation was not proper and must give the Designating Party

to request a discovery conference regarding a proposed motion

1 an opportunity to review the designated material, to reconsider the circumstances,  
2 and, if no change in designation is offered, to explain the basis for the chosen  
3 designation. A Challenging Party may proceed to the next stage of the challenge  
4 process only if (1) it has engaged in this meet and confer process first, or (2)  
5 establishes that the Designating Party is unwilling to participate in the meet and  
6 confer process in a timely manner.

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7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
8 court intervention, the Designating Party shall <sup>contact the magistrate judge's CRD</sup> ~~file and serve a motion~~ to retain  
9 confidentiality ~~under Civil Local Rule 7 (and in compliance with Civil Local Rule~~  
10 ~~79-5, if applicable)~~ within 21 days of the initial notice of challenge or within 14  
11 days of the parties agreeing that the meet and confer process will not resolve their  
12 dispute, whichever is later. <sup>request a discovery conference regarding a proposed</sup> In addition, the Challenging Party may ~~file a motion~~  
13 challenging a confidentiality designation at any time after complying with the meet  
14 and confer requirements imposed in the preceding paragraph, including a challenge  
15 to the designation of a deposition transcript or any portions thereof. Any motion  
16 brought pursuant to this provision, whether by the Designating Party or Challenging  
17 Party, must be accompanied by a competent declaration affirming that the movant  
18 has complied with the meet and confer requirements imposed by the preceding  
19 paragraph.

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

28 7. ACCESS TO AND USE OF PROTECTED MATERIAL

1           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
2 disclosed or produced by another Party or by a Non-Party in connection with this  
3 case only for prosecuting, defending, or attempting to settle this litigation. Such  
4 Protected Material may be disclosed only to the categories of persons and under the  
5 conditions described in this Order. Nothing in this Order shall bar or otherwise  
6 restrict any attorney herein from rendering advice to his or her client with respect to  
7 this litigation; provided, however, that in rendering such advice and in otherwise  
8 communicating with his client, the attorney shall not make specific disclosure of  
9 any information or item of the Protected Material. When the litigation has been  
10 terminated, a Receiving Party must comply with the provisions of section 15 below  
11 (FINAL DISPOSITION).

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

15           7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
16 otherwise ordered by the court or permitted in writing by the Designating Party, a  
17 Receiving Party may disclose any information or item designated  
18 "CONFIDENTIAL" only to:

19           (a) the Receiving Party's Outside Counsel of Record in this action, as well  
20 as employees of said Outside Counsel of Record to whom disclosure is reasonably  
21 necessary for this litigation;

22           (b) the officers, directors, and employees (including House Counsel) of  
23 the Receiving Party to whom disclosure is reasonably necessary for this litigation  
24 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
25 A);

26           (c) Experts (as defined in this Order) of the Receiving Party (1) to whom  
27 disclosure is reasonably necessary for this litigation, (2) who have signed the  
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom

1 the procedures set forth in paragraph 7.4, below, have been followed;

2 (d) the court and its personnel;

3 (e) court reporters and their staff, professional jury or trial consultants,  
4 interpreters or translators, and Professional Vendors to whom disclosure is  
5 reasonably necessary for this litigation and who have signed the "Acknowledgment  
6 and Agreement to Be Bound" (Exhibit A);

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

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

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

13 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
14 ONLY," and "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or  
15 Items. Unless otherwise ordered by the court or permitted in writing by the  
16 Designating Party, a Receiving Party may disclose any information or item  
17 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or  
18 "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

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

22 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
23 necessary for this litigation, (2) who have signed the "Acknowledgment and  
24 Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth  
25

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

1 in paragraph 7.4, below, have been followed;

2 (c) the court and its personnel;

3 (d) court reporters and their staff, professional jury or trial consultants,  
4 interpreters or translators, and Professional Vendors to whom disclosure is  
5 reasonably necessary for this litigation and who have signed the "Acknowledgment  
6 and Agreement to Be Bound" (Exhibit A);

7 (e) during their depositions, witnesses in the action for the Designating  
8 Party or the Producing Party (not the Receiving Party), including former employees  
9 whom Receiving Party has a good faith belief had access to the information during  
10 their employment with the Designating Party or the Producing Party;

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

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

15 7.4 Procedures for Approving or Objecting to Disclosure of  
16 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
17 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items  
18 to Experts.

19 (a) Unless otherwise ordered by the Court or agreed to in writing by the  
20 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
21 Order) any information or item that has been designated "CONFIDENTIAL,"  
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY  
23 CONFIDENTIAL – SOURCE CODE" pursuant to paragraph 7.2 or 7.3 first must  
24 make a written request to the Designating Party that (1) sets forth the full name of  
25 the Expert and the city and state of his or her primary residence, (2) attaches a copy  
26 of the Expert's current resume and the "Acknowledgement and Agreement to be  
27 Bound," (3) identifies the Expert's current employer(s), (4) identifies each person or  
28 entity from whom the Expert has received compensation or funding for work in his



