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 20 David Yamasaki

21 UNITED STATES DISTRICT COURT
 22 CENTRAL DISTRICT OF CALIFORNIA
 23 SOUTHERN DIVISION

24 COURTHOUSE NEWS SERVICE,

25 Plaintiff,

26 v.

27 DAVID YAMASAKI, IN HIS
 28 OFFICIAL CAPACITY AS COURT
 EXECUTIVE OFFICER/CLERK OF
 THE ORANGE COUNTY SUPERIOR
 COURT,

Defendant.

Case No. 8:17-cv-00126 AG (KESx)

Assigned for all purposes to
 Hon. Andrew J. Guilford

PROTECTIVE ORDER

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or
3 private information requiring special protection from public disclosure and from
4 use for any purpose other than this litigation. Thus, the Court enters this Protective
5 Order. This Order does not confer blanket protections on all disclosures or
6 responses to discovery, and the protection it gives from public disclosure and use
7 extends only to the specific material entitled to confidential treatment under the
8 applicable legal principles. This Order does not automatically authorize the filing
9 under seal of material designated under this Order. Instead, the parties must
10 comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does
11 not govern the use at trial of material designated under this Order.

12 **2. DESIGNATING PROTECTED MATERIAL**

13 **2.1 Over-Designation Prohibited.** Any party or non-party who
14 designates information or items for protection under this Order as
15 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,”
16 or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only
17 designate specific material that qualifies under the appropriate standards. To the
18 extent practicable, only those parts of documents, items, or oral or written
19 communications that require protection shall be designated. Designations with a
20 higher confidentiality level when a lower level would suffice are prohibited. Mass,
21 indiscriminate, or routinized designations are prohibited. Unjustified designations
22 expose the designator to sanctions, including the Court’s striking all confidentiality
23 designations made by that designator. Designation under this Order is allowed only
24 if the designation is necessary to protect material that, if disclosed to persons not
25 authorized to view it, would cause competitive or other recognized harm. Material
26 may not be designated if it has been made public, or if designation is otherwise
27 unnecessary to protect a secrecy interest. If a designator learns that information or
28 items that it designated for protection do not qualify for protection at all or do not

1 qualify for the level of protection initially asserted, that designator must promptly
2 notify all parties that it is withdrawing the mistaken designation.

3 **2.2 Manner and Timing of Designations.** Designation under this Order
4 requires the designator to affix the applicable legend (“CONFIDENTIAL,”
5 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
6 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected
7 material. For testimony given in deposition or other proceeding, the designator
8 shall specify all protected testimony and the level of protection being asserted. It
9 may make that designation during the deposition or proceeding, or may invoke, on
10 the record or by written notice to all parties on or before the next business day, a
11 right to have up to 21 days from the deposition or proceeding to make its
12 designation.

13 **2.2.1** A party or non-party that makes original documents or materials
14 available for inspection need not designate them for protection until after the
15 inspecting party has identified which material it would like copied and
16 produced. During the inspection and before the designation, all material
17 shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES
18 ONLY. After the inspecting party has identified the documents it wants
19 copied and produced, the producing party must designate the documents, or
20 portions thereof, that qualify for protection under this Order.

21 **2.2.2** Parties shall give advance notice if they expect a deposition or
22 other proceeding to include designated material so that the other parties can
23 ensure that only authorized individuals are present at those proceedings when
24 such material is disclosed or used. The use of a document as an exhibit at a
25 deposition shall not in any way affect its designation. Transcripts containing
26 designated material shall have a legend on the title page noting the presence
27 of designated material, and the title page shall be followed by a list of all
28 pages (including line numbers as appropriate) that have been designated, and

1 the level of protection being asserted. The designator shall inform the court
2 reporter of these requirements. Any transcript that is prepared before the
3 expiration of the 21-day period for designation shall be treated during that
4 period as if it had been designated HIGHLY CONFIDENTIAL –
5 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of
6 the 21-day period, the transcript shall be treated only as actually designated.

7 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
8 designate does not, standing alone, waive protection under this Order. Upon timely
9 assertion or correction of a designation, all recipients must make reasonable efforts
10 to ensure that the material is treated according to this Order.

11 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 All challenges to confidentiality designations shall proceed under L.R. 37-1
13 through L.R. 37-4.

14 **4. ACCESS TO DESIGNATED MATERIAL**

15 **4.1 Basic Principles.** A receiving party may use designated material only
16 for this litigation. Designated material may be disclosed only to the categories of
17 persons and under the conditions described in this Order.

18 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**
19 Unless otherwise ordered by the Court or permitted in writing by the designator, a
20 receiving party may disclose any material designated CONFIDENTIAL only to:

21 **4.2.1** The receiving party's outside counsel of record in this action
22 and employees of outside counsel of record to whom disclosure is reasonably
23 necessary;

24 **4.2.2** The officers, directors, and employees of the receiving party to
25 whom disclosure is reasonably necessary, and who have signed the
26 Agreement to Be Bound (Exhibit A);

27 **4.2.3** Experts retained by the receiving party's outside counsel of
28 record to whom disclosure is reasonably necessary, and who have signed the

1 Agreement to Be Bound (Exhibit A);

2 4.2.4 The Court and its personnel;

3 4.2.5 Outside court reporters and their staff, professional jury or trial
4 consultants, and professional vendors to whom disclosure is reasonably
5 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

6 4.2.6 During their depositions, witnesses in the action to whom
7 disclosure is reasonably necessary and who have signed the Agreement to Be
8 Bound (Exhibit A); and

9 4.2.7 The author or recipient of a document containing the material, or
10 a custodian or other person who otherwise possessed or knew the
11 information.

12 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
13 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**
14 **Further Approval.** Unless permitted in writing by the designator, a receiving
15 party may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY
16 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further
17 approval only to:

18 4.3.1 The receiving party's outside counsel of record in this action
19 and employees of outside counsel of record to whom it is reasonably
20 necessary to disclose the information;

21 4.3.2 The Court and its personnel;

22 4.3.3 Outside court reporters and their staff, professional jury or trial
23 consultants, and professional vendors to whom disclosure is reasonably
24 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

25 4.3.4 The author or recipient of a document containing the material, or
26 a custodian or other person who otherwise possessed or knew the
27 information.

28

1 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
2 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**
3 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**
4 **Experts.** Unless agreed to in writing by the designator:

5 **4.4.1** A party seeking to disclose to in-house counsel any material
6 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must
7 first make a written request to the designator providing the full name of the
8 in-house counsel, the city and state of such counsel’s residence, and such
9 counsel’s current and reasonably foreseeable future primary job duties and
10 responsibilities in sufficient detail to determine present or potential
11 involvement in any competitive decision-making. In-house counsel are not
12 authorized to receive material designated HIGHLY CONFIDENTIAL –
13 SOURCE CODE.

14 **4.4.2** A party seeking to disclose to an expert retained by outside
15 counsel of record any information or item that has been designated HIGHLY
16 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
17 CONFIDENTIAL – SOURCE CODE must first make a written request to
18 the designator that (1) identifies the general categories of HIGHLY
19 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
20 CONFIDENTIAL – SOURCE CODE information that the receiving party
21 seeks permission to disclose to the expert, (2) sets forth the full name of the
22 expert and the city and state of his or her primary residence, (3) attaches a
23 copy of the expert’s current resume, (4) identifies the expert’s current
24 employer(s), (5) identifies each person or entity from whom the expert has
25 received compensation or funding for work in his or her areas of expertise
26 (including in connection with litigation) in the past five years, and (6)
27 identifies (by name and number of the case, filing date, and location of court)
28 any litigation where the expert has offered expert testimony, including by

1 declaration, report, or testimony at deposition or trial, in the past five years.
2 If the expert believes any of this information at (4) - (6) is subject to a
3 confidentiality obligation to a third party, then the expert should provide
4 whatever information the expert believes can be disclosed without violating
5 any confidentiality agreements, and the party seeking to disclose the
6 information to the expert shall be available to meet and confer with the
7 designator regarding any such confidentiality obligations.

8 **4.4.3** A party that makes a request and provides the information
9 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to
10 the identified in-house counsel or expert unless, within seven days of
11 delivering the request, the party receives a written objection from the
12 designator providing detailed grounds for the objection.

13 **4.4.4** All challenges to objections from the designator shall proceed
14 under L.R. 37-1 through L.R. 37-4.

15 **5. SOURCE CODE**

16 **5.1 Designation of Source Code.** If production of source code is
17 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE
18 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

19 **5.2 Location and Supervision of Inspection.** Any HIGHLY
20 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made
21 available for inspection, in a format allowing it to be reasonably reviewed and
22 searched, during normal business hours or at other mutually agreeable times, at an
23 office of the designating party's counsel or another mutually agreeable location.
24 The source code shall be made available for inspection on a secured computer in a
25 secured room, and the inspecting party shall not copy, remove, or otherwise transfer
26 any portion of the source code onto any recordable media or recordable device.
27 The designator may visually monitor the activities of the inspecting party's
28 representatives during any source code review, but only to ensure that there is no

1 unauthorized recording, copying, or transmission of the source code.

2 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may
3 request paper copies of limited portions of source code that are reasonably
4 necessary for the preparation of court filings, pleadings, expert reports, other
5 papers, or for deposition or trial. The designator shall provide all such source code
6 in paper form, including Bates numbers and the label “HIGHLY CONFIDENTIAL
7 – SOURCE CODE.”

8 **5.4 Access Record.** The inspecting party shall maintain a record of any
9 individual who has inspected any portion of the source code in electronic or paper
10 form, and shall maintain all paper copies of any printed portions of the source code
11 in a secured, locked area. The inspecting party shall not convert any of the
12 information contained in the paper copies into any electronic format other than for
13 the preparation of a pleading, exhibit, expert report, discovery document, deposition
14 transcript, or other Court document. Any paper copies used during a deposition
15 shall be retrieved at the end of each day and must not be left with a court reporter or
16 any other unauthorized individual.

17 **6. PROSECUTION BAR**

18 Absent written consent from the designator, any individual who receives
19 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
20 CONFIDENTIAL – SOURCE CODE information shall not be involved in the
21 prosecution of patents or patent applications concerning the field of the invention of
22 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or
23 other affiliate during the pendency of this action and for one year after its
24 conclusion, including any appeals. “Prosecution” means drafting, amending,
25 advising on the content of, or otherwise affecting the scope or content of patent
26 claims or specifications. These prohibitions shall not preclude counsel from
27 participating in reexamination or *inter partes* review proceedings to challenge or
28

1 defend the validity of any patent, but counsel may not participate in the drafting of
2 amended claims in any such proceedings.

3 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

5 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-
6 compliance with a lawful subpoena or court order. The purpose of the duties
7 described in this section is to alert the interested parties to the existence of this
8 Order and to give the designator an opportunity to protect its confidentiality
9 interests in the court where the subpoena or order issued.

10 **7.2 Notification Requirement.** If a party is served with a subpoena or a
11 court order issued in other litigation that compels disclosure of any information or
12 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –
13 ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,
14 that party must:

15 **7.2.1** Promptly notify the designator in writing. Such notification
16 shall include a copy of the subpoena or court order;

17 **7.2.2** Promptly notify in writing the party who caused the subpoena or
18 order to issue in the other litigation that some or all of the material covered
19 by the subpoena or order is subject to this Order. Such notification shall
20 include a copy of this Order; and

21 **7.2.3** Cooperate with all reasonable procedures sought by the
22 designator whose material may be affected.

23 **7.3 Wait For Resolution of Protective Order.** If the designator timely
24 seeks a protective order, the party served with the subpoena or court order shall not
25 produce any information designated in this action as CONFIDENTIAL, HIGHLY
26 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
27 SOURCE CODE before determination by the court where the subpoena or order
28 issued, unless the party has obtained the designator's permission. The designator

1 shall bear the burden and expense of seeking protection of its confidential material
2 in that court.

3 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
5 designated material to any person or in any circumstance not authorized under this
6 Order, must immediately (1) notify in writing the designator of the unauthorized
7 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
8 designated material, (3) inform the person or persons to whom unauthorized
9 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
10 to have such person or persons execute the Agreement Be Bound (Exhibit A).

11 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 When a producing party gives notice that certain inadvertently produced
14 material is subject to a claim of privilege or other protection, the obligations of the
15 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
16 This provision is not intended modify whatever procedure may be established in an
17 e-discovery order that provides for production without prior privilege review
18 pursuant to Federal Rule of Evidence 502(d) and (e).

19 **10. FILING UNDER SEAL**

20 Without written permission from the designator or a Court order, a party may
21 not file in the public record in this action any designated material. A party seeking
22 to file under seal any designated material must comply with L.R. 79-5.1. Filings
23 may be made under seal only pursuant to a court order authorizing the sealing of the
24 specific material at issue. The fact that a document has been designated under this
25 Order is insufficient to justify filing under seal. Instead, parties must explain the
26 basis for confidentiality of each document sought to be filed under seal. Because a
27 party other than the designator will often be seeking to file designated material,
28 cooperation between the parties in preparing, and in reducing the number and extent

1 of, requests for under seal filing is essential. If a *receiving party's* request to file
2 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then
3 the receiving party *may file the material in the public record* unless (1) *the*
4 *designator* seeks reconsideration within four days of the denial, or (2) as otherwise
5 instructed by the Court.

6 **11. FINAL DISPOSITION**

7 Within 60 days after the final disposition of this action, each party shall
8 return all designated material to the designator or destroy such material, including
9 all copies, abstracts, compilations, summaries, and any other format reproducing or
10 capturing any designated material. The receiving party must submit a written
11 certification to the designator by the 60-day deadline that (1) identifies (by
12 category, where appropriate) all the designated material that was returned or
13 destroyed, and (2) affirms that the receiving party has not retained any copies,
14 abstracts, compilations, summaries, or any other format reproducing or capturing
15 any of the designated material. This provision shall not prevent counsel from
16 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
17 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
18 expert reports, attorney work product, and consultant and expert work product, even
19 if such materials contain designated material. Any such archival copies remain
20 subject to this Order.

21 IT IS SO ORDERED.

22
23 DATED: 11/09/2017

Karen E. Scott

United States Magistrate Judge

EXHIBIT A
AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name],
4 of _____
5 [print or type full address], declare under penalty of perjury that I have read in its
6 entirety and understand the Protective Order that was issued by the United States
7 District Court for the Central District of California on _____ [date] in the case of
8 *Courthouse News Service v. David Yamasaki*, Case No. 8:17-cv-00126 AG (KESx).
9 I agree to comply with and to be bound by all the terms of this Protective Order,
10 and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment for contempt. I solemnly promise that I will not disclose
12 in any manner any information or item that is subject to this Protective Order to any
13 person or entity except in strict compliance with this Order.

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

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

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

[printed name]

26
27 Signature: _____

[signature]

28