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14 Attorneys for Defendant
HOAG MEMORIAL HOSPITAL
15 PRESBYTERIAN (erroneously sued as
HOAG MEMORIAL HOSPITAL
16 PRESBYTERIAN, INC.)

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19
20 BASWARE, INC., a Delaware corporation,
21 Plaintiff,
22 vs.
23 HOAG MEMORIAL HOSPITAL
24 PRESBYTERIAN, INC., a California
25 corporation, and DOES 1 through 10,
26 inclusive,
27 Defendants.

CASE NO.: 8:20-cv-00403-KES
Hon. Karen E. Scott
**ORDER RE STIPULATED
PROTECTIVE ORDER**
Action Filed: February 27, 2020

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1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. This action may also involve protected health information (“PHI”) under the Health Insurance Portability and Accountability Act (“HIPAA”).

1 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
2 disputes over confidentiality of discovery materials, to adequately protect information
3 the parties are entitled to keep confidential, to ensure that the parties are permitted
4 reasonable necessary uses of such material in preparation for and in the conduct of trial,
5 to address their handling at the end of the litigation, and serve the ends of justice, a
6 protective order for such information is justified in this matter. It is the intent of the
7 parties that information will not be designated as confidential for tactical reasons and
8 that nothing be so designated without a good faith belief that it has been maintained in
9 a confidential, non-public manner, and there is good cause why it should not be part of
10 the public record of this case.

11
12 2. DEFINITIONS

13 2.1 Action: this pending federal law suit.

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
17 it is generated, stored or maintained) or tangible things that qualify for protection under
18 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
19 Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
21 support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or items
23 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including, among other
26 things, testimony, transcripts, and tangible things), that are produced or generated in
27 disclosures or responses to discovery in this matter.

28 2.7 Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
2 expert witness or as a consultant in this Action.

3 2.8 House Counsel: attorneys who are employees of a party to this Action.
4 House Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party to this action.

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

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

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
19 their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is designated
21 as “CONFIDENTIAL.”

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24
25
26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected
28 Material (as defined above), but also (1) any information copied or extracted from

1 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
 2 Material; and (3) any testimony, conversations, or presentations by Parties or their
 3 Counsel that might reveal Protected Material.

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

7 4. DURATION

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

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
 18 Party or Non-Party that designates information or items for protection under this Order
 19 must take care to limit any such designation to specific material that qualifies under the
 20 appropriate standards. The Designating Party must designate for protection only those
 21 parts of material, documents, items, or oral or written communications that qualify so that
 22 other portions of the material, documents, items, or communications for which protection
 23 is not warranted are not swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 25 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
 26 to unnecessarily encumber the case development process or to impose unnecessary
 27 expenses and burdens on other parties) may expose the Designating Party to sanctions.

28 If it comes to a Designating Party's attention that information or items that it

1 designated for protection do not qualify for protection, that Designating Party must
2 promptly notify all other Parties that it is withdrawing the inapplicable designation.

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

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents,
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
11 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
12 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
13 portion or portions of the material on a page qualifies for protection, the Producing Party
14 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
15 in the margins).

16 A Party or Non-Party that makes original documents available for inspection need
17 not designate them for protection until after the inspecting Party has indicated which
18 documents it would like copied and produced. During the inspection and before the
19 designation, all of the material made available for inspection shall be deemed
20 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
21 copied and produced, the Producing Party must determine which documents, or portions
22 thereof, qualify for protection under this Order. Then, before producing the specified
23 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
24 that contains Protected Material. If only a portion or portions of the material on a page
25 qualifies for protection, the Producing Party also must clearly identify the protected
26 portion(s) (e.g., by making appropriate markings in the margins).

27 (b) for testimony given in depositions that the Designating Party identify the
28 Disclosure or Discovery Material on the record, before the close of the deposition all

1 protected testimony.

2 (c) for information produced in some form other than documentary and for
3 any other tangible items, that the Producing Party affix in a prominent place on the
4 exterior of the container or containers in which the information is stored the legend
5 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
6 the Producing Party, to the extent practicable, shall identify the protected portion(s).

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

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
14 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37.1 *et seq.* or follow the procedures for informal,
17 telephonic discovery hearings on the Court's website.

18 6.3 The burden of persuasion in any such challenge proceeding shall be on the
19 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
20 to harass or impose unnecessary expenses and burdens on other parties) may expose the
21 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
22 the confidentiality designation, all parties shall continue to afford the material in question
23 the level of protection to which it is entitled under the Producing Party’s designation until
24 the Court rules on the challenge.
25

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28

1 disclosed or produced by another Party or by a Non-Party in connection with this Action
2 only for prosecuting, defending, or attempting to settle this Action. Such Protected
3 Material may be disclosed only to the categories of persons and under the conditions
4 described in this Order. When the Action has been terminated, a Receiving Party must
5 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

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

16 (b) the officers, directors, and employees (including House Counsel) of
17 the Receiving Party to whom disclosure is reasonably necessary for this Action;

18 (c) Experts (as defined in this Order) of the Receiving Party to whom
19 disclosure is reasonably necessary for this Action and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and Professional
24 Vendors to whom disclosure is reasonably necessary for this Action and who have signed
25 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

28 (h) during their depositions, witnesses, and attorneys for witnesses, in the

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

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

11
12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
13 OTHER LITIGATION

14 If a Party is served with a subpoena or a court order issued in other litigation that
15 compels disclosure of any information or items designated in this Action as
16 “CONFIDENTIAL,” that Party must:

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

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

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

25 If the Designating Party timely seeks a protective order, the Party served with the
26 subpoena or court order shall not produce any information designated in this action as
27 “CONFIDENTIAL” before a determination by the court from which the subpoena or
28 order issued, unless the Party has obtained the Designating Party’s permission. The

1 Designating Party shall bear the burden and expense of seeking protection in that court
2 of its confidential material and nothing in these provisions should be construed as
3 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
4 from another court.

5
6 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
7 IN THIS LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-
9 Party in this Action and designated as “CONFIDENTIAL.” Such information produced
10 by Non-Parties in connection with this litigation is protected by the remedies and relief
11 provided by this Order. Nothing in these provisions should be construed as prohibiting a
12 Non-Party from seeking additional protections.

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

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

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

23 (3) make the information requested available for inspection by the Non-
24 Party, if requested.

25 (c) If the Non-Party fails to seek a protective order from this court within 14
26 days of receiving the notice and accompanying information, the Receiving Party may
27 produce the Non-Party’s confidential information responsive to the discovery request.
28 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce

1 any information in its possession or control that is subject to the confidentiality
2 agreement with the Non-Party before a determination by the court. Absent a court order
3 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
4 in this court of its Protected Material.

5
6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

15
16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain inadvertently
19 produced material is subject to a claim of privilege or other protection, the obligations of
20 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
21 This provision is not intended to modify whatever procedure may be established in an e-
22 discovery order that provides for production without prior privilege review.

23
24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to disclosing

1 or producing any information or item on any ground not addressed in this Stipulated
2 Protective Order. Similarly, no Party waives any right to object on any ground to use in
3 evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
5 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
6 under seal pursuant to a court order authorizing the sealing of the specific Protected
7 Material at issue. If a Party's request to file Protected Material under seal is denied by the
8 court, then the Receiving Party may file the information in the public record unless
9 otherwise instructed by the court.

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12 13. FINAL DISPOSITION

13 After the final disposition of this Action, as defined in paragraph 4, within 60 days
14 of a written request by the Designating Party, each Receiving Party must return all
15 Protected Material to the Producing Party or destroy such material. As used in this
16 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
17 summaries, and any other format reproducing or capturing any of the Protected Material.
18 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
19 a written certification to the Producing Party (and, if not the same person or entity, to the
20 Designating Party) by the 60 day deadline that (1) identifies (by category, where
21 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
22 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
23 any other format reproducing or capturing any of the Protected Material. Notwithstanding
24 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
25 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
26 deposition and trial exhibits, expert reports, attorney work product, and consultant and
27 expert work product, even if such materials contain Protected Material. Any such archival
28 copies that contain or constitute Protected Material remain subject to this Protective

1 Order as set forth in Section 4 (DURATION).

2
3 14. Any violation of this Order may be punished by any and all appropriate measures
4 including, without limitation, contempt proceedings and/or monetary
5 sanctions.

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: January 6, 2021

9
10
11 
12 _____
13 Joshua H. Abel
14 Evan M. Rothman
15 Attorneys for Plaintiff and Counter-Defendant
16 BASWARE, INC.

17 DATED: January 5, 2021

18 
19 _____
20 Tami S. Smason
21 Kathryn A. Shoemaker
22 Alyssa L. Titcher
23 Attorneys for Defendant and Counterclaimant
24 HOAG MEMORIAL HOSPITAL PRESBYTERIAN
25 (erroneously sued as HOAG MEMORIAL HOSPITAL
PRESBYTERIAN, INC.)

26 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

27 DATED: January 7, 2021

28 

Hon. Karen E. Scott
United States Magistrate Judge

ABEL LAW OFFICES, PC

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IRVINE, CA 92614
(949) 537-3490

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California on
[date] in the case of **Basware, Inc. v. Hoag Memorial Hospital Presbyterian, Inc. –**
8:20-cv-00403-KES I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with
the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

PROOF OF SERVICE

STATE OF CALIFORNIA, ORANGE COUNTY

I, Jeunie Magno, am employed in Orange County, State of California. I am over the age of 18 and not a party to the within action. My business address is 2601 Main Street, Suite 1200, CA 92614.

On January 6, 2021, I served the foregoing document(s) described as **STIPULATED PROTECTIVE ORDER** on the interested parties in this action addressed as follows:

Tami S. Smason
Megan Curran
Alyssa L. Titcher
Kate Shoemaker
FOLEY & LARDNER LLP
Email: tsmason@foley.com
mcurran@foley.com
atitcher@foley.com
kshoemaker@foley.com

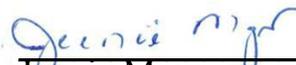
*Attorneys for Defendant
Hoag Memorial Hospital
Presbyterian*

By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

- BY PERSONAL SERVICE (CCP §1011):** I delivered such envelope(s) by hand to the addressee(s) as stated above.
- BY MAIL (CCP §1013(a)&(b)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at Irvine, California 92614 in the ordinary course of business.
- BY OVERNIGHT DELIVERY (CCP §1013(c)&(d)):** I am readily familiar with the firm's practice of collection and processing items for delivery with Overnight Delivery. Under that practice such envelope(s) is deposited at a facility regularly maintained by Overnight Delivery or delivered to an authorized courier or driver authorized by Overnight Delivery to receive such envelope(s), on the same day this declaration was executed, with delivery fees fully provided for at Irvine, California 92614 in the ordinary course of business.
- BY ELECTRONIC SERVICE** as follows: I caused such documents to be transmitted to the electronic mail address of the addressee listed, by use of electronic service address: jeunie@abelattorneys.com.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Dated: January 6, 2021



Jeunie Magno