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4 UNITED STATES DISTRICT COURT
5 CENTRAL DISTRICT OF CALIFORNIA

6
7 VENKEE COMMUNICATIONS, LLC,

8 Plaintiff,

9 v.

10 UBIQUITI NETWORKS INC.,

11 Defendant.

Case No. 8:21-CV-01009-PSG (DFMx)

~~PROPOSED~~ STIPULATED PROTECTIVE
ORDER

12
13 1. PURPOSES AND LIMITATIONS

14 Disclosure and discovery activity in this action are likely to involve production of
15 confidential, proprietary, or private information for which special protection from public
16 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
17 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
18 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
19 all disclosures or responses to discovery and that the protection it affords from public disclosure
20 and use extends only to the limited information or items that are entitled to confidential treatment
21 under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4,
22 below, that this Stipulated Protective Order does not entitle them to file confidential information
23 under seal. Civil Local Rule 79-5 sets forth the procedures that must be followed and the
24 materials that will be applied when a party seeks permission from the court to file material under
25 seal.

26 2. DEFINITIONS

27 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
28 items under this Order.

1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
2 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
3 26(c).

4 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
5 their support staff).

6 2.4 Designating Party: a Party or Non-Party that designates information or items that it
7 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

9 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
10 manner in which it is generated, stored, or maintained (including, among other things, testimony,
11 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in
12 this matter.

13 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
14 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
15 in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time
16 of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

17 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
18 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
19 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

20 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
21 sensitive “Confidential Information or Items” representing computer code and associated comments and
22 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in
23 detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or
24 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
25 means.

26 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel does
27 not include Outside Counsel of Record or any other outside counsel.

28 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity

1 not named as a Party to this action.

2 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but
3 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
4 party or are affiliated with a law firm which has appeared on behalf of that party.

5 2.12 Party: any party to this action, including all of its officers, directors, employees,
6 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
8 this action.

9 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
10 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
11 retrieving data in any form or medium) and their employees and subcontractors.

12 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
13 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as “HIGHLY
14 CONFIDENTIAL – SOURCE CODE.”

15 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
16 Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only Protected Material (as
19 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
20 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
22 conferred by this Stipulation and Order do not cover the following information: (a) any information that is
23 in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain
24 after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order,
25 including becoming part of the public record through trial or otherwise; and (b) any information known to
26 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a
27 source who obtained the information lawfully and under no obligation of confidentiality to the Designating
28 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

1 4. DURATION

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

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
10 Party that designates information or items for protection under this Order must take care to limit any such
11 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to
12 do so, the Designating Party must designate for protection only those parts of material, documents, items,
13 or oral or written communications that qualify – so that other portions of the material, documents, items, or
14 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
15 Order.

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

20 If it comes to a Designating Party's attention that information or items that it designated for
21 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,
22 that Designating Party must promptly notify all other parties that it is withdrawing the mistaken
23 designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
25 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

26 Material that qualifies for protection under this Order must be clearly so designated before the
27 material is disclosed or produced.

28 Designation in conformity with this Order requires:

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

8 A Party or Non-Party that makes original documents or materials available for inspection need not
9 designate them for protection until after the inspecting Party has indicated which material it would like
10 copied and produced. During the inspection and before the designation, all of the material made available
11 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
12 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
13 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
14 producing the specified documents, the Producing Party must affix the appropriate legend
15 (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
16 CONFIDENTIAL – SOURCE CODE) to each page that contains Protected Material. If only a portion or
17 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
18 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
19 portion, the level of protection being asserted.

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating
21 Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected
22 testimony and specify the level of protection being asserted. When it is impractical to identify separately
23 each portion of testimony that is entitled to protection and it appears that substantial portions of the
24 testimony may qualify for protection, the Designating Party may invoke on the record (before the
25 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific
26 portions of the testimony as to which protection is sought and to specify the level of protection being
27 asserted. Only those portions of the testimony that are appropriately designated for protection within the 21
28 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating

1 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
2 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY.”

4 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other
5 proceeding to include Protected Material so that the other parties can ensure that only authorized
6 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present
7 at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its
8 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Transcripts containing Protected Material shall have an obvious legend on the title page that the
10 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
11 line numbers as appropriate) that have been designated as Protected Material and the level of protection
12 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
13 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
14 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript
16 shall be treated only as actually designated.

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

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
24 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
25 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
26 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
27 Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation
4 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
5 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
6 designation by electing not to mount a challenge promptly after the original designation is disclosed.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
8 providing written notice of each designation it is challenging and describing the basis for each challenge.
9 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
10 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
11 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
12 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14
13 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
14 belief that the confidentiality designation was not proper and must give the Designating Party an
15 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
16 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
17 the next stage of the challenge process only if it has engaged in this meet and confer process first or
18 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
19 manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
21 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
22 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
23 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
24 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the
25 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure
26 by the Designating Party to make such a motion including the required declaration within 21 days (or 14
27 days, if applicable) shall automatically waive the confidentiality designation for each challenged
28 designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation

1 at any time if there is good cause for doing so, including a challenge to the designation of a deposition
2 transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
3 competent declaration affirming that the movant has complied with the meet and confer requirements
4 imposed by the preceding paragraph.

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

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

18 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
19 manner¹ that ensures that access is limited to the persons authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
21 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
22 item designated "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said
24 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation
25 and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit

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28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected
Material in password-protected form.

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

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

(d) the court and its personnel;

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

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), **unless otherwise agreed by the Designating Party or ordered by the court**. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

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

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this

1 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as
2 to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

3 (c) the court and its personnel;

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

7 (e) the author or recipient of a document containing the information or a custodian or other person
8 who otherwise possessed or knew the information.

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

12 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party
13 that seeks to disclose to an Expert (as defined in this Order) any information or item that has been
14 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
15 – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party
16 that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
17 or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks
18 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
19 her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
20 employer(s), (5) identifies each person or entity from whom the Expert has received compensation or
21 funding for work in his 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 years,² and (6) identifies (by
23 name and number of the case, filing date, and location of court) any litigation in connection with which the
24 Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or

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27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the
28 Expert 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 trial, during the preceding five years.

2 (b) A Party that makes a request and provides the information specified in the preceding respective
3 paragraphs may disclose the subject Protected Material to the identified Expert unless, within 14 days of
4 delivering the request, the Party receives a written objection from the Designating Party. Any such
5 objection must set forth in detail the grounds on which it is based.

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

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

20 8. PROSECUTION BAR

21 Absent written consent from the Defendant, any individual associated with Plaintiff who receives
22 access to Defendant's technical information regarding its products that Defendant has designated as
23 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
24 CODE" information shall not be involved in the prosecution of patents or patent applications relating to
25 wireless mesh communication networks as described in the patent asserted in this action, before any foreign
26 or domestic agency, including the United States Patent and Trademark Office ("the Patent Office").³ To avoid
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28 ³ It may be appropriate under certain circumstances to require Outside Counsel who receive access to "HIGHLY

1 any doubt, the restrictions of this paragraph shall not apply to those persons who accessed or reviewed only
2 financial or business information designated by Defendant as “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. For purposes of this paragraph,
4 “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope
5 or maintenance of patent claims.⁴ To avoid any doubt, “prosecution” as used in this paragraph does not
6 include representing a party challenging a patent before a domestic or foreign agency (including, but not
7 limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall
8 begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
9 CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and shall end
10 two (2) years after final termination of this action.

11 9. SOURCE CODE

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

15 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall
16 be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to
18 the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may
19 be disclosed, as set forth in Paragraphs 7.2, 7.3, and 7.4.

20 (c) Any source code produced in discovery shall be made available for inspection, in a format
21 allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually
22 agreeable times, at an office of the Producing Party’s counsel, its vendors, or other mutually agreed upon
23 location. The source code shall be made available for inspection on a secured computer in a secured room
24 without Internet access or network access to other computers, and the Receiving Party shall not copy,
25 remove, or otherwise transfer any portion of the source code onto any recordable media or recordable
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28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information to implement an “Ethical Wall.”

⁴ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 device. The Producing Party will not connect the secure computer to a physical printer. Any requests for
2 production of Source Code Material will be made by printing to a PDF and placed in dated folders on the
3 secure computer for collection, review and production following the last day of the scheduled review. The
4 Producing Party may visually monitor the activities of the Receiving Party's representatives during any
5 source code review, but only to ensure that there is no unauthorized recording, copying, or transmission of
6 the source code. No electronic devices are permitted in the Secure Room, including laptops, floppy drives,
7 zip drives, cellular telephones, personal digital assistants, tablets, smartwatches, cameras, voice recorders,
8 telephone jacks or other hardware. Handwritten notes relating to the source code may be taken only in
9 spiral or otherwise permanently bound notebooks. However, the source code may not be copied into notes
10 taken by the Receiving Party or a representative thereof. Notwithstanding this provision, file name and
11 location (i.e., directory path), as well as names of functions, data structures, or the like, may be copied into
12 notes taken by the Receiving Party or a representative thereof. The Producing Party may visually monitor
13 the activities of the Receiving Party's representatives during any review, but only to ensure that no
14 unauthorized electronic records of the source code and no information concerning the source code are being
15 transmitted in violation of these restrictions.

16 (d) At least seven (7) business days in advance of the date upon which the Receiving
17 Party wishes to use the source code computer, the Receiving Party shall identify and additional licensed
18 software tools it wishes to have installed and available for use on the source code computers, and provide a
19 properly licensed copy of the software it requests to be installed. Any costs associated with acquiring licenses
20 to request software tools shall be borne by the Receiving Party. In the event that there are issues concerning
21 the installation or use of such tool, the Parties, and their technical staff, shall meet and confer promptly to
22 resolve such issues.

23 (e) The Producing Party will collect any electronically printed versions of the source
24 code created in Adobe, and Bates number, copy, and label them "HIGHLY CONFIDENTIAL - SOURCE
25 CODE." Within five (5) business days, the Producing Party must either (a) deliver 1 set of such pages to one
26 office of the Receiving Party's Counsel of Record or (b) provide notice that the printed portions are excessive
27 or were not requested for a permitted purpose, A reasonable request will be presumed to extend for no more
28 than 25 contiguous pages and for no more than 300 total printed pages. These limits may be increased by

1 agreement of the Parties or on a showing of need.

2 (f) The Receiving Party may request paper copies of limited portions of source code that are
3 reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for
4 deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other
5 than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all
6 such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL -
7 SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy
8 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
9 Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes
10 of dispute resolution.

11 (e) The Receiving Party shall maintain a record of any individual who has inspected any
12 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies
13 of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create
14 any electronic or other images of the paper copies and shall not convert any of the information contained in
15 the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if
16 such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a
17 testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the
18 preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing Party
19 at the end of each day and must not be given to or left with a court reporter or any other unauthorized
20 individual.

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22 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
26 that Party must:

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

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

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
5 Party whose Protected Material may be affected.⁵

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

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

16 (a) The terms of this Order are applicable to information produced by a Non-Party in this
17 action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such information produced by Non-Parties
19 in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in
20 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

26 _____
27 ⁵ 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 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
2 this litigation, the relevant discovery request(s), and a reasonably specific description of the information
3 requested; and

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

5 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
6 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's
7 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
8 order, the Receiving Party shall not produce any information in its possession or control that is subject to
9 the confidentiality agreement with the Non-Party before a determination by the court.⁶ Absent a court order
10 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its
11 Protected Material.

12 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
21 MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
23 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
24 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
25 whatever procedure may be established in an e-discovery order that provides for production without prior
26 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an

27 _____

28 ⁶ 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 agreement on the effect of disclosure of a communication or information covered by the attorney-client
2 privilege or work product protection, the parties may incorporate their agreement in the stipulated
3 protective order submitted to the court.

4 14. MISCELLANEOUS

5 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
6 modification by the court in the future.

7 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
8 Party waives any right it otherwise would have to object to disclosing or producing any information or item
9 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
10 object on any ground to use in evidence of any of the material covered by this Protective Order.

11 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and
12 regulations relating to the export of technical data contained in such Protected Material, including the
13 release of such technical data to foreign persons or nationals in the United States or elsewhere. The
14 Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving
15 Party shall take measures necessary to ensure compliance.

16 14.4 Filing Protected Material. Without written permission from the Designating Party or a
17 court order secured after appropriate notice to all interested persons, a Party may not file in the public
18 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
19 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
20 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule
21 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is
22 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving
23 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5 is denied by the
24 court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
25 Rule 79-5 unless otherwise instructed by the court.

26 15. FINAL DISPOSITION

27 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving
28 Party must return all Protected Material to the Producing Party or destroy such material. As used in this

1 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other
2 format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned
3 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the
4 same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category,
5 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
6 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
7 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
8 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
9 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
10 consultant and expert work product, even if such materials contain Protected Material. Any such archival
11 copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4 (DURATION).

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 DATED: _____
15 Attorneys for Plaintiff

16 DATED: _____
17 Attorneys for Defendant

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 DATED: April 26, 2022
20 _____
21 Douglas F. McCormick
22 United States Magistrate Judge
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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 *Venkee Communications, LLC v. Ubiquiti Networks, Inc.*, Case No.
8:21-cv-01009-PSG (DFMx). 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: _____
[printed name]

Signature: _____
[signature]