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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

HAPTIX SOLUTIONS LLC, a
California limited liability company,

Plaintiff,

v.

MICROSOFT CORPORATION, a
Washington corporation,

Defendant.

Case No. 8:24-cv-00428-JWH-JDE

PROTECTIVE ORDER

[Note Changes by the Court]

Based on the parties' Stipulation (Dkt. 25, 25-1) and for good cause shown, the Court finds and orders as follows.

1. DEFINITIONS

1.1 Party: any Party to this action, including all its officers, directors, employees, consultants, retained Experts, and Outside Counsel of Record (and their support staff).

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

1.3 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among

1 other things, testimony, transcripts, and tangible things), that are produced or generated
2 in disclosures or responses to discovery in this matter.

3 1.4 Producing Party: a Party or Non-Party that produces Disclosure or
4 Discovery Material in this action.

5 1.5 Protected Material: any Disclosure or Discovery Material that is
6 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” or
7 “Highly Confidential – Source Code” or “Protected Data.”

8 1.6 Designating Party: a Party, person or entity designating documents or
9 information as Protected Information under this Order.

10 1.7 Receiving Party: a Party, that receives Disclosure or Discovery Material
11 from a Producing Party.

12 1.8 Challenging Party: a Party or Non-Party that challenges the designation of
13 information or items under this Order.

14 1.9 Counsel (without qualifier): Outside Counsel of Record and In-house
15 Counsel (as well as their support staff).

16 1.10 In-house Counsel: licensed U.S. attorneys who are employees or officers
17 of a party to this action. In-house Counsel does not include Outside Counsel of Record
18 or any other outside counsel.

19 1.11 Outside Counsel of Record: attorneys (as well as their support staff) who
20 reside in the U.S., are members of a bar of a U.S. state, who are not employees of a
21 Party to this action but are retained to represent or advise a Party to this action and have
22 appeared in this action on behalf of that Party or are affiliated with a law firm which
23 has appeared on behalf of that Party.

24 1.12 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this action, (2) is not a past or current employee
27 of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated
28 to become an employee of a Party or of a Party’s competitor.

1 1.13 “CONFIDENTIAL” Information or Items: includes all non-public
2 information that the Designating Party reasonably believes should be protected from
3 public disclosure because such information (i) is proprietary to the Designating Party,
4 or other person e.g., a trade secret or other confidential research, development or
5 commercial information; or (ii) implicates an individual’s legitimate expectation of
6 privacy. All copies, abstracts, excerpts, analyses or other writings that contain, reflect,
7 reveal, suggest or otherwise disclose CONFIDENTIAL information shall also be
8 deemed CONFIDENTIAL information. Information originally designated as
9 CONFIDENTIAL information shall not retain that status after any ruling by the Court
10 denying such status to it.

11 1.14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 Information or Items: extremely sensitive “Confidential Information or Items,” that the
13 Designating Party reasonably believes contains highly sensitive business or personal
14 information, the disclosure of which to another Party or Non-Party would create a
15 substantial risk of significant competitive or commercial disadvantage to the
16 Designating Party that could not be avoided by less restrictive means, including
17 confidential information received from Non-Parties.

18 1.15 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
19 extremely sensitive “Confidential Information or Items” representing or containing
20 computer code (i.e., computer instructions and data definitions expressed in a form
21 suitable for input to an assembler, compiler, or other translator) and associated
22 comments and revision histories, formulas, engineering specifications or schematics
23 that define or otherwise describe in detail the algorithms or structure of software or
24 hardware designs, disclosure of which to another Party or Non-Party would create a
25 substantial risk of serious harm that could not be avoided by less restrictive means.

26 1.16 “Protected Data”: refers to any information that a Party or Non-Party
27 reasonably believes to be subject to federal, state or foreign Data Protection Laws or
28 other privacy obligations. Protected Data constitutes highly sensitive materials

1 requiring special protection. Examples of such Data Protection Laws include, without
2 limitation, The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (financial
3 information); The Health Insurance Portability and Accountability Act (“HIPAA”) and
4 the regulations thereunder, 45 CFR Part 160 and Subparts A and E of Part 164 (medical
5 information); Regulation (EU) 2016/679 Of the European Parliament and of the
6 Council of 27 April 2016 on the Protection of Natural Persons with Regard to the
7 Processing of Personal Data and on the Free Movement of Such Data, also known as
8 the General Data Protection Regulation (“GDPR”). Protected Data may be designated
9 and treated as HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

10 **2. SCOPE**

11 The protections conferred by this Stipulation and Order cover not only Protected
12 Material (as defined above), but also (1) any information copied or extracted from
13 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
14 Material; and (3) any testimony, conversations, or presentations by Parties or their
15 Counsel that might reveal Protected Material. Any use of Protected Material at trial
16 shall be governed by a separate agreement or order.

17 **3. DURATION AND TERMINATION**

18 3.1 This Order shall continue in effect after the termination of this action and
19 continue to be binding upon all persons to whom Protected Material is disclosed
20 hereunder unless a Designating Party agrees otherwise in writing or a court order directs
21 otherwise.

22 3.2 Within sixty (60) days after a Party’s case is terminated (including all
23 appeals), or such other time as the Designating Party agrees in writing, the Receiving
24 Party shall use commercially reasonable efforts to either return or destroy all
25 documents, objects and other materials produced as or designated as Protected Material,
26 including all reproductions, including but not limited to that given to experts and inside
27 counsel. Counsel responsible for the destruction shall certify to counsel for the
28 Designating Party that all such materials have been destroyed to the extent practicable.

1 3.3 Notwithstanding the provision of 3.2, no person shall be required to delete
2 information that may reside on their respective electronic disaster recovery or archive
3 systems or information that may reside in electronic files which are not reasonably
4 accessible. Additionally, outside counsel for each Party may retain (a) copies of
5 pleadings, filings, transcripts, expert reports and exhibits (but not documents/materials
6 merely cited), affidavits, and correspondence containing material designated Protected
7 Material, (b) documents, things, copies and samples to the extent they include or reflect
8 receiving attorney’s work product, and (c) one copy of pleadings or other papers filed
9 with the Court or served in the course of litigation (and exhibits thereto), the
10 depositions, the deposition exhibits and the trial record, so long as this Order will
11 continue to govern any such retained materials.

12 **4. DESIGNATING PROTECTED MATERIAL**

13 4.1 Method of Designating Static Image Files. With respect to documents or
14 copies containing Protected Material produced as a static image, the Designating Party
15 shall mark the initial page and the page or pages on which Confidential Information
16 appears with the legend “CONFIDENTIAL” and the page or pages on which any Highly
17 Confidential Information or Protected Data appears as “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
19 as appropriate. If a party initially produces documents for inspection (e.g., because of
20 the volume of materials and to reduce unnecessary copying), in lieu of marking the
21 original of a document which contains Confidential Information, Highly Confidential
22 Information or Protected Data prior to such an inspection, counsel for the producing
23 Party may in writing designate documents or things being produced for inspection as
24 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or
25 HIGHLY CONFIDENTIAL – SOURCE CODE as appropriate, thereby making them
26 subject to this Order; however, copies of such documents thereafter provided must be
27 marked by the Designating Party, if appropriate, in accordance with this Order at the
28 time copies are formally produced. Tangible objects constituting or containing

1 Confidential Information or Highly Confidential Information may be designated
2 Confidential Information or Highly Confidential Information by affixing to the object
3 or its container, a label or tag marked “Confidential – Subject to Protective Order” or
4 “Highly Confidential – Attorneys Eyes Only – Subject to Protective Order” or “Highly
5 Confidential – Source Code – Subject to Protective Order” as appropriate.

6 4.2 Designating Native Files. With respect to documents containing Protected
7 Material produced in Native Format, the designating party shall include the appropriate
8 confidentiality designation in the filename.

9 4.3 With respect to all documents produced that contain Protected Material,
10 the Designating Party will also include in the Load File the appropriate designation that
11 includes the level of protection (e.g., “Confidential,” “Highly Confidential – Attorneys
12 Eyes Only,” or “Highly Confidential – Source Code”).

13 4.4 Designation and Counter-Designation of Third Party or other Party Files.
14 A Designating Party may designate, or counter designate with a higher designation,
15 information or items produced by another Party or non-party that contains or is derived
16 from the Designating Party’s own Protected Material. Designations or counter-
17 designations are subject to the restrictions set forth in the Order. Each Party that
18 designates or counter designates such information or items will be treated as the
19 Designating Party for purposes of this Order.

20 4.5 Correction of Inadvertent Failures to Designate. A Party or person
21 producing information in this litigation who produces or provides Protected Material
22 without designating it Protected Material as provided in this Order, may upon written
23 or on-the-record notification to the Receiving Party or parties designate the document,
24 thing, other discovery information, response or testimony as Protected Material in
25 accordance with the provisions of this Order. The Receiving Party or Parties shall treat
26 such documents, things, information, responses and testimony as Protected Material
27 from the date such notice is received in accordance with this Order. No Party shall be
28 deemed to have violated this Order if, prior to notification of any later designation, such

1 material has been disclosed or used in a manner inconsistent with the later designation.
2 Upon notice to the receiving Party of such failure to designate, the Receiving Party shall
3 reasonably cooperate to correct any disclosure to maintain the confidentiality of the
4 previously undesignated material, without prejudice. Within five (5) days of providing
5 written notice that a document or documents were not designated Protected Material
6 under this provision, the Designating Party must provide the Receiving Party with
7 replacement copies of such documents containing the proper designation. Upon receipt
8 of such replacement copies, the receiving party shall immediately destroy any copies of
9 the unmarked or incorrectly marked documents, things, information responses, or
10 testimony; except that the Receiving Party shall not be obliged to destroy any mis-
11 designated material that has become part of the record of this litigation.

12 4.6 Right to Seek Additional Protections. This Order is entered without
13 prejudice to the right of any Party to seek additional protections from the Court as may
14 be necessary under particular circumstances.

15 **5. CHALLENGING PROTECTED MATERIAL DESIGNATIONS**

16 5.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality subject to the operative Scheduling Order.

18 5.2 Meet and Confer. The Challenging Party shall initiate the dispute
19 resolution process by providing written notice of each designation it is challenging and
20 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
21 has been made, the written notice must recite that the challenge to a Protected Material
22 Designation is being made under the Protective Order. In the notice, the Challenging
23 Party must explain the basis for its belief that the designation was not proper. The
24 Designating Party must respond within 5 business days of receiving the notice to either
25 modify the designation as requested or explain why it believes the chosen designation
26 is appropriate. A Challenging Party may proceed to the next stage of the challenge if
27 the Designating Party fails to respond within the time limits above or after the
28

1 Designating Party has confirmed that it will maintain the challenge following a meet
2 and confer session that complies with Local Civil Rule 37-1.

3 5.3 Judicial Intervention. If the Parties cannot resolve a challenge after a good
4 faith effort to resolve the issues informally, the Challenging Party shall proceed under
5 Local Civil Rule 37-2, et seq. to challenge the designation via a joint stipulation. The
6 burden of persuasion in any such challenge proceeding shall be on the Designating
7 Party. Frivolous challenges or frivolous designations and those made for an improper
8 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)
9 may expose the Challenging Party or the Producing Party to sanctions. The Parties shall
10 continue to afford the material in question the level of protection to which it is entitled
11 under the Producing Party’s designation until the court rules on the challenge.

12 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 6.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a Non-Party in connection with this case
15 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
16 Material may be disclosed only to the categories of persons and under the conditions
17 described in this Order. When the litigation has been terminated, a Receiving Party
18 must comply with the provisions of Section 3 above. Protected Material must be stored
19 and maintained by a Receiving Party at a location and in a secure manner that
20 reasonably ensures that access is limited to the persons authorized under this Order.

21 6.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
23 may disclose any information or item designated “CONFIDENTIAL” only to:

24 6.2.1 The Receiving Party’s Outside Counsel in this action, as well as
25 employees of said Outside Counsel to whom it is reasonably necessary to disclose the
26 information for this litigation;

27 6.2.2 In-house Counsel and their support staff of the Receiving Party to
28 whom disclosure is reasonably necessary for this litigation;

1 6.2.3 No more than three officers, directors, or employees (excluding In-
2 house Counsel and their support staff) of the Receiving Party to whom disclosure is
3 reasonably necessary for this litigation and who have signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A);

5 6.2.4 Experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 6.2.5 The court and its personnel;

9 6.2.6 Court reporters and their staff, professional jury or trial consultants,
10 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
11 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A);

13 6.2.7 During their depositions, witnesses in the action to whom disclosure
14 is reasonably necessary , unless otherwise agreed by the Designating Party or ordered
15 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
16 reveal Protected Material must be separately bound by the court reporter and may not
17 be disclosed to anyone except as permitted under this Stipulated Protective Order;

18 6.2.8 The author or recipient of a document containing the information or
19 a custodian or other person who otherwise possessed or knew the information; and

20 6.2.9 Other persons whom the Designating Party agrees in writing may
21 view the information.

22 6.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.

24 Unless otherwise ordered by the court or permitted in writing by the Designating Party,
25 a Receiving Party may disclose any information or item designated “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
27 – SOURCE CODE” only to certain groups of individuals defined below, and all such
28 designated information or items shall be maintained securely within the United States

1 of America, and may not be accessed by any entity or individual outside of the United
2 States of America. Such material may be accessed by:

3 6.3.1 The Receiving Party's Outside Counsel in this action, as well as
4 employees of said Outside Counsel to whom it is reasonably necessary to disclose the
5 information for this litigation;

6 6.3.2 In-House Counsel of the Receiving Party (and their support staff) to
7 whom disclosure is reasonably necessary for this litigation, except that such In-House
8 Counsel (and their support staff) shall not have access to any information or item
9 designated "HIGHLY CONFIDENTIAL – SOURCE CODE" absent agreement of the
10 Parties;

11 6.3.3 Experts of the Receiving Party (1) to whom disclosure is reasonably
12 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement
13 to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph
14 6.4.2, below, have been followed;

15 6.3.4 The court and its personnel;

16 6.3.5 Court reporters and their staff, professional jury or trial consultants,
17 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
18 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
19 (Exhibit A);

20 6.3.6 The author or recipient of a document containing the information or
21 a custodian or other person who otherwise possessed or knew the information; and

22 6.3.7 Other persons whom the Designating Party agrees in writing may
23 view the information.

24 6.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
26 SOURCE CODE" Information or Items to Experts.

27 6.4.1 Unless otherwise ordered by the court or agreed to in writing by the
28 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order)

1 any information or item that has been designated “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
3 pursuant to paragraph 6.3.3 first must make a written request to the Designating Party
4 that (1) sets forth the full name of the Expert and the city and state of his or her primary
5 residence, (2) attaches a copy of the Expert’s current resume, (3) identifies the Expert’s
6 current employer(s), (4) identifies each person or entity from whom the Expert has
7 received compensation or funding for work in his or her areas of expertise or to whom
8 the Expert has provided professional services, including in connection with a litigation,
9 at any time during the preceding five years, and (5) identifies (by name and number of
10 the case, filing date, and location of court) any litigation in connection with which the
11 Expert has testified, including through a declaration, report, or testimony at a deposition
12 or trial, during the preceding five years. If the Expert is under a confidentiality
13 obligation not to disclose any work or services performed in the past five years, the
14 written disclosure under subsection (5) must include: whether such services or funding
15 were outside the field of the Designating Party’s technology at issue in the case and
16 whether such work or services concerned any party to this case or its predecessors or
17 successors (merged, acquired or otherwise), parents, divisions, subsidiaries, associated
18 organizations, joint ventures, and affiliates thereof.

19 6.4.1.1 A Party that makes a request and provides the
20 information specified in the preceding respective paragraphs may disclose the subject
21 Protected Material to the Expert unless, within 14 days of delivering the request, the
22 Party receives a written objection from the Designating Party. Any such objection must
23 set forth in detail the grounds on which it is based.

24 6.4.1.2 A Party that receives a timely written objection must
25 meet and confer with the Designating Party (through direct voice to voice dialogue) to
26 try to resolve the matter by agreement within seven days of the written objection. If no
27 agreement is reached, the Party seeking to make the disclosure to the Expert may file a
28 motion or other document in compliance with the court’s procedures seeking

1 permission from the court to do so. Any such motion must describe the circumstances
2 with specificity, set forth in detail the reasons why the disclosure to the Expert is
3 reasonably necessary, assess the risk of harm that the disclosure would entail, and
4 suggest any additional means that could be used to reduce that risk. In addition, any
5 such motion must be accompanied by a competent declaration describing the parties'
6 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet
7 and confer discussions) and setting forth the reasons advanced by the Designating Party
8 for its refusal to approve the disclosure.

9 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
10 burden of proving that the risk of harm that the disclosure would entail (under the
11 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
12 Material to its Designated In-house Counsel or Expert.

13 6.5 Source Code

14 6.5.1 To the extent production of source code becomes necessary in this
15 case, a Producing Party may designate source code as "HIGHLY CONFIDENTIAL -
16 SOURCE CODE" if it comprises or includes confidential, proprietary or trade secret
17 source code.

18 6.5.2 Protected Material designated as "HIGHLY CONFIDENTIAL -
19 SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY
20 CONFIDENTIAL - ATTORNEYS' EYES ONLY" information, and, may be disclosed
21 only to the individuals to whom "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
22 ONLY" information may be disclosed, as set forth in Paragraphs 6.3 through 6.3.7.

23 6.5.3 Any source code produced in discovery shall be made available for
24 inspection on a computer in a format and environment allowing it to be reasonably
25 reviewed and searched during normal business hours (9 a.m. to 5 p.m. local time) or at
26 other mutually agreeable times, at an office of the Producing Party's counsel of record
27 or other mutually agreed upon location. The source code made available for inspection
28 shall be provided on a secured computer in a secured room without Internet access or

1 network access to other computers, and the Receiving Party shall not copy, remove, or
2 otherwise transfer any portion of the source code onto any recordable media or
3 recordable device. The Producing Party may visually monitor the activities of the
4 Receiving Party's representatives during any source code review, but only to ensure
5 that there is no unauthorized recording, copying, or transmission of the source code.
6 Electronic devices including cell phones and laptops, and other devices capable of
7 copying, photographing, or recording, are not permitted to be brought by reviewers or
8 representatives of the Receiving Party into the source code review room. Notes may
9 only be taken in bound notebooks that prominently contain a legend on the cover
10 identifying the case name, number, contact information of the note taker, and the phrase
11 "HIGHLY CONFIDENTIAL – SOURCE CODE."

12 6.5.4 A list of names of persons who will review Source Code Material
13 on the standalone computer will be provided to the Producing Party in conjunction with
14 any written notice requesting inspection. Prior to the first inspection of any Source Code
15 Material made available by the Producing Party after the code is available for
16 inspection, the Receiving Party shall provide five business days' notice that it wishes to
17 inspect Source Code Material. The Receiving Party shall provide three business days'
18 notice prior to any additional inspections. Requests for access may span multiple
19 consecutive days for the same notice. Any requests shall include the information
20 reasonably needed to access the building and comply with its security requirements,
21 including the names of the reviewers and expected times of arrival. To the extent
22 practical and reasonable, the Parties agree to accommodate requests for inspection on a
23 shorter timeframe, if the needs of the case and case schedule require more immediate
24 access by the Receiving Party to the Source Code Material. Similarly, the Receiving
25 Party shall make good faith efforts to reasonably accommodate scheduling limitations
26 identified by the Producing Party.

27 6.5.5 During any source code review session, the Receiving Party may
28 print portions of source code as PDF files to be saved in a designated folder created by

1 the Producing Party on the Source Code Computer. The Receiving Party may print to
2 PDF such portions only to the extent necessary for the preparation of court filings,
3 pleadings, expert reports, or other papers, or for deposition or trial. The Receiving Party
4 may print to PDF up to 150 PDF pages of source code, of which no more than 15 PDF
5 pages may comprise contiguous code. In no event shall source code be printed for the
6 purpose of reviewing source code in the first instance outside of the Source Code
7 Computer and attendant protections. If the Receiving Party reasonably believes in good
8 faith that it is necessary to print more PDF pages of Source Code Material than allowed
9 by these limits, the parties shall promptly meet and confer to resolve the issue. Upon
10 request by the Receiving Party, the Producing Party shall print the identified PDF source
11 code pages on colored paper bearing the designation “HIGHLY CONFIDENTIAL –
12 SOURCE CODE” and Bates numbers. Within three business days of a request for such
13 production, the hard copy printed PDF pages will be sent for delivery upon signature
14 via courier, FedEx, or similar overnight carrier service to the Receiving Party. To the
15 extent a Receiving Party conducts source code review across multiple consecutive days,
16 a request for production should be made only at the conclusion of each consecutive day
17 session.

18 6.5.6 The Receiving Party shall be permitted to make no more than 3
19 additional hard copies of any Source Code PDF files produced pursuant to 6.5.5. Each
20 of these additional copies shall be designated and clearly labeled “HIGHLY
21 CONFIDENTIAL – SOURCE CODE,” and the Receiving Party shall maintain a log of
22 all such copies, which it must produce to the Producing Party upon request. No other
23 copies of source code shall be made unless otherwise allowed herein;

24 6.5.7 Any Receiving Party’s outside counsel or Experts who obtain source
25 code material pursuant to the provisions herein, shall be responsible for the security of
26 said material and ensure that it is always maintained in a secured and locked area.

27 6.5.8 The Producing Party may challenge the amount of source code
28 requested in hard copy form pursuant to the dispute resolution procedure and

1 timeframes set forth in Section 5 above, whereby the Producing Party is the
2 “Challenging Party” the and Receiving Party is the “Designating Party” for purposes of
3 dispute resolution.

4 6.5.9 The Receiving Party shall maintain a record of any individual who
5 has inspected any portion of the source code in electronic or paper form. The Receiving
6 Party shall maintain derivative materials created using source code, such as any notes
7 of an Expert, in a secured, locked area. The Receiving Party shall only make additional
8 electronic or paper copies if such additional copies are (1) necessary to prepare court
9 filings, pleadings, or other papers (including a testifying Expert’s expert report), (2)
10 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any
11 paper copies used during a deposition shall be retrieved by the Producing Party at the
12 end of each day and may not be given to or left with a court reporter or any other person.

13 6.5.10 To the extent the Receiving Party requests additional source code
14 review tools beyond those the Producing Party shall pre-install to permit reasonable
15 review of its source code, the Receiving Party shall make the request at least 7 days
16 prior to the date such tools are requested to be available, and the Receiving Party shall
17 provide any necessary licenses. The Receiving Party shall not erase, load, install,
18 compile, or otherwise modify any program, or request that the Producing Party do so,
19 on the Source Code Computer without first submitting a written request and obtaining
20 the Producing Party’s agreement in writing.

21 6.5.11 Images or copies of source code shall not be included in
22 correspondence between the parties.

23 6.5.12 Upon final disposition of this action, the Producing Party may
24 request service of: (1) the record of all paper copies of source code made by the
25 Receiving Party; (2) the record of individuals who inspected any portion of the source
26 code; and (3) a certification in writing that all copies of source code, including any
27 materials containing source code information including source code reviewer or expert
28 witness notes, were destroyed..

1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
2 **IN OTHER LITIGATION**

3 7.1 If a Party is served with a subpoena or a court order issued in other
4 litigation that compels disclosure of any information or items designated in this action
5 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE,” that Party must:

7 7.1.1 Promptly notify in writing the Designating Party. Such notification
8 shall include a copy of the subpoena or court order;

9 7.1.2 Promptly notify in writing the Party who caused the subpoena or
10 order to issue in the other litigation that some or all of the material covered by the
11 subpoena or order is subject to this Protective Order. Such notification shall include a
12 copy of this Stipulated Protective Order; and

13 7.1.3 Cooperate with respect to all reasonable procedures sought to be
14 pursued by the Designating Party whose Protected Material may be affected.

15 7.2 If the Designating Party timely seeks a protective order, the Party served
16 with the subpoena or court order shall not produce any information designated in this
17 action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination
19 by the court from which the subpoena or order issued, unless the Party has obtained the
20 Designating Party’s permission. The Designating Party shall bear the burden and
21 expense of seeking protection in that court of its confidential material – and nothing in
22 these provisions should be construed as authorizing or encouraging a Receiving Party
23 in this action to disobey a lawful directive from another court.

24 **8. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
25 **PRODUCED IN THIS LITIGATION**

26 8.1 The terms of this Order are applicable to information produced by a Non-
27 Party in this action and designated as “CONFIDENTIAL,” “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL

1 – SOURCE CODE.” Such information produced by Non-Parties in connection with this
2 litigation is protected by the remedies and relief provided by this Order. Nothing in
3 these provisions should be construed as prohibiting a Non-Party from seeking additional
4 protections.

5 8.2 In the event that a Party is required, by a valid discovery request, to
6 produce a Non-Party’s Protected Material in its possession, and the Party is subject to
7 an agreement with the Non-Party not to produce the Non-Party’s protected material,
8 then the Party shall:

9 8.2.1 Promptly notify in writing the Requesting Party and the Non-Party
10 that some or all of the information requested is subject to a confidentiality agreement
11 with a Non-Party;

12 8.2.2 Promptly provide the Non-Party with a copy of the Protective Order
13 in this litigation, the relevant discovery request(s), and a reasonably specific description
14 of the information requested; and

15 8.2.3 Make the information requested available for inspection by the Non-
16 Party.

17 8.3 If the Non-Party fails to object or seek a protective order from this court
18 within 14 days of receiving the notice and accompanying information, the Producing
19 Party may produce the Non-Party’s confidential information responsive to the discovery
20 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
21 produce any information in its possession or control that is subject to the confidentiality
22 agreement with the Non-Party before a determination by the court. Absent a court order
23 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
24 in this court of its Protected Material.

25 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 9.1 If a Receiving Party learns that, by inadvertence or otherwise, it has
27 disclosed or made available Protected Material to any person or in any circumstance not
28 authorized under this Stipulated Protective Order, the Receiving Party must

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

6 **10. INADVERTENT PRODUCTION OF PRIVILEGED DOCUMENTS –**
7 **CLAWBACK**

8 10.1 Pursuant to Federal Rule of Evidence 502(d) and the Court’s order at Dkt.
9 24, the inadvertent production of any attorney-client privileged or work product
10 protected documents or data (“Inadvertently Produced Privileged Material”) is not a
11 waiver in the pending case or in any other federal, state, or other proceeding. A Party
12 or person claiming privilege or other protections for an Inadvertently Produced
13 Privileged Document shall notify any and all Receiving Parties that received the
14 documents and provide sufficient information to the Receiving Party regarding the
15 asserted privilege(s), in the form of a privilege log pursuant to Rule 26(b)(5) of the
16 Federal Rules of Civil Procedure. Alternatively, if a Receiving Party discovers a
17 document that it believes to be an Inadvertently Produced Privileged Document, the
18 Receiving Party will promptly notify the Designating Party of what it believes to be the
19 Inadvertently Produced Privileged Document (no Receiving Party will be found in
20 violation of this Order for failing to identify an Inadvertently Produced Privileged
21 Document). After discovering or being notified of an Inadvertently Produced
22 document, any Receiving Party must not use or disclose the Inadvertently Produced
23 Privileged Document in any way until the claim is resolved and must take reasonable
24 steps to retrieve the document if the Receiving Party disclosed it before being notified
25 of or discovering the inadvertent production. In addition, within (5) days of discovering
26 or being notified, any Receiving Party must return, or if it is not possible to return,
27 destroy the specified document and any copies. The Designating Party must retain a
28 copy of the document until the resolution or termination of this Case. A Party may

1 move the Court for an order compelling production of the document, but such Party
2 may not assert as a ground for entering such an order the mere fact of inadvertent
3 production.

4 10.2 Nothing in this order overrides any attorney's ethical responsibilities to
5 refrain from examining or disclosing materials that the attorney knows or reasonably
6 should know to be privileged and to inform the Disclosing Party that such materials
7 have been produced.

8 10.3 This Order is not intended to impose on a party a waiver of its right to
9 review its documents for privilege or any other reason (including to identify non-
10 responsive documents) and the existence of this Order cannot be used to compel a party
11 to produce documents without review. Moreover, this Order does not mean that the
12 cost of review should not be considered in whether any particular discovery is
13 disproportionate (i.e. that the marginal benefit of the discovery is not as great as the cost
14 of said discovery including review).

15 **11. FILING PROTECTED MATERIAL**

16 11.1 This Order does not entitle the parties to file material under seal. Rather,
17 Local Civil Rule 79-5, et seq., sets forth the procedures that must be followed and the
18 standards that will be applied when a party seeks permission from the court to file
19 material under seal. There is a strong presumption that the public has a right of access
20 to judicial proceedings and records in civil cases. In connection with non-dispositive
21 motions, good cause must be shown to support a filing under seal. See Kamakana v.
22 City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen.
23 Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony
24 Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
25 require good cause showing), and a specific showing of good cause or compelling
26 reasons with proper evidentiary support and legal justification, must be made with
27 respect to Protected Material that a party seeks to file under seal. The mere designation
28 of material as Protected Material under this Order does not, without the submission of

1 competent evidence establishing that the material sought to be filed under seal qualifies
2 as confidential, privileged, or otherwise protectable, constitute good cause. Further, if
3 a party requests sealing related to a dispositive motion or trial, then compelling reasons,
4 not only good cause, for the sealing must be shown, and the relief sought shall be
5 narrowly tailored to serve the specific interest to be protected. See Pintos v. Pacific
6 Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). The Parties are directed to Local
7 Rule 79-5, et seq., for the procedures to request leave to file under seal material
8 designated by another party as protected under a protective order.

9 **12. USE AND CONTROL OF PROTECTED MATERIAL**

10 12.1 All information as Protected Material to this Order and disclosed in this
11 litigation shall be used by a recipient thereof solely for the purposes of this litigation
12 and not for any business or competitive purposes or used in any other legal proceeding,
13 except as permitted by a court order, or as agreed by the parties. It shall be the duty of
14 each Party and each individual having notice of this Order to comply with this Order
15 from the time of such notice. At any time, a Party may move the Court to modify this
16 or any other provision of this Order upon a showing of good cause.

17 12.2 The restrictions and obligations set forth herein relating to information
18 designated as Protected Material, shall not apply to any information which:

19 12.2.1 The Parties (and, if another person produced Protected Material,
20 such person) agree or the Court rules, is already public knowledge or was improperly
21 designated by the Designating Party because it does not satisfy the definition of
22 Protected Material set forth in this Order;

23 12.2.2 Has become public knowledge other than as a result of disclosure
24 by a Receiving Party, or its employees or agents in violation of this Order;

25 12.2.3 Has come or shall come into a Receiving Party's legitimate
26 possession independently of the Designating Party; or

27 12.2.4 Has been independently developed by or for the Party without use
28 of, or reference to, the other Party's Protected Material, which shall remain Protected.

1 12.3 Nothing in this Order limits any Receiving Party's rights to use in briefs
2 or at trial or in any proceeding in this litigation, Protected Material of a Designating
3 Party, subject to the provisions in Section 6 above. Nor shall this Order prevent counsel
4 from examining a witness to determine whether he or she has knowledge of the subject
5 matter comprising Protected Material, so long as such examination shall be in a manner
6 that does not disclose the details of the Protected Material.

7 **13. SECURITY AND DATA BREACH**

8 13.1 Any person in possession of another Party's Protected Material shall
9 exercise the same care with regard to the storage, custody, or use of such Protected
10 Material as they would apply to their own material of the same or comparable
11 sensitivity, but no less than the reasonable precautions set forth in Section 13.2 below.

12 13.2 Receiving Parties must take reasonable precautions to protect Protected
13 Material from loss, misuse and unauthorized access, disclosure, alteration and
14 destruction. Such measures shall include:

15 13.2.1 Reasonably preventing unauthorized persons from gaining access
16 to Protected Material. In the case of Protected Material maintained in electronic format
17 this includes storing the data in a secure litigation support site(s) that applies standard
18 industry practices regarding data security, including but not limited to application of
19 access control rights to those entitled to access Protected Material under this Order
20 (physical access control);

21 13.2.2 Reasonably ensuring that Protected Material downloaded from a
22 litigation support site(s) in electronic format is stored only on device(s) (e.g. laptop,
23 tablet, smartphone, thumb drive, portable thumb drive) that are password protected
24 and/or encrypted with access limited to persons entitled to access Protected Material
25 under this Order. If the user is unable to password protect and/or encrypt the device,
26 then Protected Material shall be password protected and/or encrypted at the file level.

27 13.2.3 Reasonably preventing Protected Material from being used without
28 authorization (logical access control) including, but not limited to, the use of passwords;

1 13.2.4 Reasonably ensuring that persons entitled to use Protected Material
2 gain access only to such Protected Material as they are entitled to access in accordance
3 with their access rights, and that, in the course of processing or use and after storage,
4 Protected Material cannot be read, copied, modified or deleted without authorization
5 (data access control);

6 13.2.5 Reasonably ensuring that the Protected Material cannot be read,
7 copied, modified or deleted without authorization during electronic transmission,
8 transport or storage on storage media, and that the target entities for any transfer of
9 Protected Material by means of data transmission facilities can be established and
10 verified (data transfer control);

11 13.2.6 Reasonably ensuring that the Protected Material is processed solely
12 in accordance with instructions from Counsel or Receiving Party (control of
13 instructions).

14 13.3 If a Receiving Party learns that, by inadvertence or otherwise, it has
15 disclosed the Protected Material to any person or in any circumstance not authorized
16 under this Order, the Receiving Party must as soon as is practicable:

17 13.3.1 Notify in writing the Designating Party of the unauthorized
18 disclosure;

19 13.3.2 Use its best efforts to retrieve all copies of the Protected Materials;
20 and

21 13.3.3 Inform the person or persons to whom unauthorized disclosures
22 were made, to the extent the person or persons are identifiable, of all the terms of this
23 Order and have the person or persons execute the “Acknowledgment and Agreement to
24 Be Bound” form annexed hereto as Exhibit A.

25 **14. DEPOSITIONS**

26 14.1 All deposition testimony shall be treated as containing Highly Confidential
27 Information and subject to this Order until a time (30) calendar days following receipt
28 of the certified transcript by counsel for the Plaintiffs and Defendants and, in the event

1 of a third-party witness, counsel for the third party. In the event that any Party wishes
2 testimony or information disclosed at a deposition to be treated as Protected Material
3 thereafter, that Party shall designate such testimony or information as Protected
4 Material by either notifying the other Party in writing, within thirty (30) calendar days
5 following receipt of the certified transcript, or designating during the deposition the
6 transcript or portions thereof as Protected Material, and specifying whether the
7 information is to be treated as “Confidential,” “Highly Confidential – Attorneys Eyes
8 Only,” or “Highly Confidential – Source Code.” Documents and things already
9 designated as Protected Material which are used as exhibits shall remain as such. Any
10 party may designate the deposition testimony of any third party as confidential and the
11 provisions of this Section may be invoked.

12 14.2 If a Party seeks to question a witness at a deposition about Protected
13 Material that the witness has not previously seen and is not otherwise authorized to
14 access under this Order, the Party who wishes to disclose the Protected Material must
15 first seek permission to do so from the Designating Party. Such permission shall not be
16 unreasonably denied and may be conditioned on the witness signing the
17 Acknowledgement and Agreement to Be Bound (Exhibit A). If permission is denied,
18 the parties must immediately engage in a Local Rule 37-1 meet and confer session on
19 the record at the deposition. If, after meeting and conferring on the record, the
20 Designating Party states an intention to seek such a protective order on the issue, the
21 witness may not be shown the Protected Material and the deposition will continue as to
22 all other matters, with the deposition to remain open upon conclusion until the issue of
23 access to the Protected Material is fully briefed under Local Rule 37-2, et seq., and a
24 ruling issued. The moving party’s portion of the Local Rule 37-2 Joint Stipulation for
25 such a protective order shall be sent to the opposing party within 5 days from the date
26 of the deposition or the challenge is waived and the deposition may be reopened to allow
27 questioning on the Protected Material, at the objecting Designating Party’s expense. On
28 any such motion for a protective order, the Designating Party must explain why such

1 disclosure is not warranted subject to the terms of this Order and the witness's execution
2 of the Acknowledgement and Agreement to Be Bound (Exhibit A). The party opposing
3 such motion must explain the reasonable need for the witness to be shown the Protected
4 Material. If the moving party does not prevail on the requested protective order, such
5 moving party will be responsible to pay, in addition to the reasonable expenses
6 including attorney's fees outlined in Fed. R. Civ. P. 37(a)(5), all costs associated with
7 reopening the deposition, including court reporter fees and, if the witness is an expert,
8 additional expert fees, subject to Fed. R. Civ. P. 37(a)(5)(B).

9 14.3 If counsel believes that any question or questions that will be put to a
10 witness at deposition in this action will disclose material designated Protected Material,
11 or if material designated Protected Material will be used as an exhibit at such a
12 deposition, counsel shall, advise opposing counsel of same in the course of the
13 deposition, and the deposition (or protected portions thereof), shall be conducted in the
14 presence of persons entitled under the terms of this Order to access the Protected
15 Material at issue.

16 **15. NO WAIVER OF RIGHT TO APPROPRIATELY WITHHOLD OR**
17 **REDACT**

18 15.1 Notwithstanding the provisions of this Order, Parties may redact from any
19 document, whether designated Protected Material or not, any information containing
20 privileged material, or any other data protected from disclosure by State, Federal or
21 foreign regulations.

22 15.2 The parties agree that productions of Protected Data Information may
23 require additional safeguards pursuant to Federal, State or foreign statutes, regulations
24 or privacy obligations and will meet and confer to implement these safeguards if and
25 when needed.

26 **16. AMENDMENT**

27 16.1 This Order may be amended with respect to (a) specific documents or
28 items of Protected Material or (b) persons to whom Protected Material may be

1 disclosed, by Court order. This Order shall remain in force and effect indefinitely until
2 modified, superseded or terminated by order of this Court.

3 **17. MISCELLANEOUS**

4 17.1 Absent written consent from the Producing Party, an individual who on
5 behalf of Plaintiff receives access to HIGHLY CONFIDENTIAL – SOURCE CODE
6 material or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY material
7 containing technical information regarding the design or operation of a Producing
8 Party's current or future products (together, "Prosecution Bar Material") shall not be
9 involved in the prosecution of patents or patent applications relating to electronic stylus
10 design and operation before any foreign or domestic agency, including the U.S. Patent
11 and Trademark Office. For purposes of this paragraph, "Prosecution" includes directly
12 or indirectly drafting, amending, advising, or otherwise affecting the scope or
13 maintenance of patent claims in original prosecution or reissue proceedings.
14 "Prosecution" as used in this paragraph does not include representing a party
15 challenging or defending a patent in any contested proceeding before a domestic or
16 foreign agency (including, but not limited to, a reissue protest, interference, post grant
17 review, *ex parte*, or *inter partes* reexamination or review), provided that any individual
18 who reviews or otherwise gains knowledge of Prosecution Bar Material shall not be
19 involved, either directly or indirectly, in amending claims without seeking and
20 obtaining permission to do so from this Court upon motion under Local Civil Rule 37.
21 This Prosecution Bar shall begin when the affected individual first reviews or otherwise
22 gains knowledge and shall end one (1) year after final termination of this action.

23 17.2 Nothing herein shall prevent any Party or non-party from seeking
24 additional relief from the Court not specified in this Order, or from applying to the Court
25 for further or additional Orders.

26 17.3 Nothing contained in this Order shall be construed to restrain a Party or
27 third party from using or disclosing its own Protected Material as it deems appropriate.
28 Nothing in this Order shall be construed to require production of any Protected Material

1 deemed by counsel for the Party or third party possessing such material to be privileged
2 or otherwise immune from discovery. This shall not preclude any Party from moving
3 the Court for an order compelling production or disclosure of such material.


4 17.4 All notices required by any sections of this Order are to be made by e-mail
5 to counsel representing the noticed Party. The date by which a Party receiving notice
6 shall respond or otherwise take action shall be computed from the date of receipt of the
7 notice. For any notice required under this Order, notice received after close of business
8 shall be deemed received on the following business day.

9 17.5 Nothing in this Order shall bar or otherwise restrict counsel from rendering
10 advice to his or her client with respect to the Litigation and, in the course thereof, relying
11 in a general way upon his or her examination of the Protected Material produced or
12 exchanged in the Litigation; provided, however, that in rendering such advice and in
13 otherwise communicating with a person not entitled to view any Protected Material, the
14 attorney shall not disclose the contents of Protected Material produced by any other
15 Party or non-party.

16 17.6 The headings herein are provided only for the convenience of the parties,
17 and are not intended to define or limit the scope of the express terms of this Order.

18 For good cause shown, IT IS SO ORDERED

19
20 DATED: July 26, 2024


21 JOHN D. EARLY
22 United States Magistrate Judge
23
24
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Central District of
7 California in the case of *Haptix Solutions LLC v. Microsoft Corporation*, 8:24-cv-
8 00428-JWH-JDE. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to
12 this Stipulated Protective Order to any person or entity except in strict compliance with
13 the provisions of this Order.

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

18
19 Date: _____

20 City and State where sworn and signed: _____

21
22 Printed name: _____

23 Signature: _____