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12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 OAKLAND DIVISION

16 CHRISTIAN SPONCHIADO and  
 17 COURTNEY DAVIS, on behalf of  
 themselves and all others similarly situated,  
 18  
 Plaintiffs,  
 19  
 v.  
 20 APPLE INC.,  
 21  
 Defendant.

Case No. 4:18-cv-07533-HSG

**STIPULATED PROTECTIVE  
 ORDER REGARDING THE  
 DISCLOSURE AND USE OF  
 DISCOVERY MATERIALS**

Judge: Hon. Haywood S. Gilliam, Jr.  
 FAC Filed: April 24, 2019

1 Plaintiffs Christian Sponchiado and Courtney Davis (“Plaintiffs”) and Defendant Apple  
2 Inc. (“Defendant”) anticipate that documents, testimony, or information containing or reflecting  
3 confidential, proprietary, trade secret, and/or commercially sensitive information are likely to  
4 be disclosed or produced during the course of discovery, initial disclosures, and supplemental  
5 disclosures in this case and request that the Court enter this Order setting forth the conditions  
6 for treating, obtaining, and using such information.  
7

8 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good  
9 cause for the following Agreed Protective Order Regarding the Disclosure and Use of  
10 Discovery Materials (“Order” or “Protective Order”).

11 1. **PURPOSES AND LIMITATIONS**

12 (a) Protected Material designated under the terms of this Protective Order shall  
13 be used by a Receiving Party solely for this case, and shall not be used directly or indirectly for  
14 any other purpose whatsoever.  
15

16 (b) The Parties acknowledge that this Order does not confer blanket  
17 protections on all disclosures during discovery, or in the course of making initial or supplemental  
18 disclosures under Rule 26(a). Designations under this Order shall be made with care and shall not  
19 be made absent a good faith belief that the designated material satisfies the criteria set forth  
20 below. If it comes to a Producing Party’s attention that designated material does not qualify for  
21 protection at all, or does not qualify for the level of protection initially asserted, the Producing  
22 Party must promptly notify all other Parties that it is withdrawing or changing the designation.  
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24 2. **DEFINITIONS**

25 (a) “Discovery Material” means all items or information, including from any  
26 non-party, regardless of the medium or manner generated, stored, or maintained (including,  
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1 among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or  
2 generated in connection with discovery or Rule 26(a) disclosures in this case.

3 (b) “Outside Counsel” means (i) outside counsel who appear on the pleadings  
4 as counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is  
5 reasonably necessary to disclose the information for this litigation.  
6

7 (c) “Party” means any party to this case, including all of its officers, directors,  
8 employees, consultants, retained experts, and outside counsel and their support staffs.

9 (d) “Producing Party” means any Party or non-party that discloses or produces  
10 any Discovery Material in this case.

11 (e) “Protected Material” means any Discovery Material that is designated as  
12 “CONFIDENTIAL,” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as provided for in  
13 this Order. Protected Material shall not include: (i) advertising materials that have been actually  
14 published or publicly disseminated; and (ii) materials that show on their face they have been  
15 disseminated to the public.  
16

17 (f) “Receiving Party” means any Party who receives Discovery Material from  
18 a Producing Party.

19 3. **COMPUTATION OF TIME**

20 The computation of any period of time prescribed or allowed by this Order shall be  
21 governed by the provisions for computing time set forth in Federal Rules of Civil Procedure 6.  
22

23 4. **SCOPE**

24 (a) The protections conferred by this Order cover not only Discovery Material  
25 governed by this Order as addressed herein, but also any information copied or extracted  
26 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
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1 conversations, or presentations by Parties or their counsel in court or in other settings that might  
2 reveal Protected Material.

3 (b) Nothing in this Protective Order shall prevent or restrict a Producing  
4 Party's own disclosure or use of its own Protected Material for any purpose, and nothing in this  
5 Order shall preclude any Producing Party from showing its Protected Material to an individual  
6 who prepared the Protected Material.  
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8 (c) Nothing in this Order shall be construed to prejudice any Party's right to  
9 use any Protected Material in court or in any court filing with the consent of the Producing Party  
10 or by order of the Court.

11 (d) This Order is without prejudice to the right of any Party to seek further or  
12 additional protection of any Discovery Material or to modify this Order in any way, including,  
13 without limitation, an order that certain matter not be produced at all.  
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15 5. **DURATION**

16 Even after the termination of this case, the confidentiality obligations imposed by  
17 this Order shall remain in effect until a Producing Party agrees otherwise in writing or a court  
18 order otherwise directs.

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

20 (a) **Basic Principles.** All Protected Material shall be used solely for this case  
21 or any related appellate proceeding, and not for any other purpose whatsoever, including without  
22 limitation any other litigation, patent prosecution or acquisition, patent reexamination or reissue  
23 proceedings, or any business or competitive purpose or function. Protected Material shall not be  
24 distributed, disclosed or made available to anyone except as expressly provided in this Order.  
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26 (b) **Legal Advice Based on Protected Material.** Nothing in this Protective  
27 Order shall be construed to prevent counsel from advising their clients with respect to this case  
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1 based in whole or in part upon Protected Materials, provided counsel does not disclose the  
2 Protected Material itself except as provided in this Order.

3 (c) Secure Storage, No Export. Protected Material must be stored and  
4 maintained by a Receiving Party at a location in the United States and in a secure manner that  
5 ensures that access is limited to the persons authorized under this Order. To ensure compliance  
6 with applicable United States Export Administration Regulations, Protected Material may not be  
7 exported outside the United States or released to any foreign national (even if within the United  
8 States).

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10 (d) Limitations. Nothing in this Order shall restrict in any way a Producing  
11 Party's use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any  
12 way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become  
13 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known  
14 to the Receiving Party independent of the Producing Party; (iii) previously produced, disclosed  
15 and/or provided by the Producing Party to the Receiving Party or a non-party without an  
16 obligation of confidentiality and not by inadvertence or mistake; (iv) with the consent of the  
17 Producing Party; or (v) pursuant to order of the Court.

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19 7. **DESIGNATING PROTECTED MATERIAL**

20 (a) Available Designations. Any Producing Party may designate Discovery  
21 Material it produces as "CONFIDENTIAL," or "CONFIDENTIAL - ATTORNEYS' EYES  
22 ONLY," provided that it meets the requirements for such designations as provided for herein.

23 (b) Written Discovery and Documents and Tangible Things. Written  
24 discovery, documents (which include "electronically stored information," as that phrase is used in  
25 Federal Rule of Procedure 34), and tangible things that meet the requirements for the  
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1 confidentiality designations listed in Paragraph 7(a) may be so designated by placing the  
2 appropriate designation on every page of the written material prior to production.

3 (c) Native Files. Where electronic files and documents are produced in native  
4 electronic format, such electronic files and documents shall be designated for protection under  
5 this Order by appending to the file names or designators information indicating whether the file  
6 contains “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material, or  
7 shall use any other reasonable method for so designating Protected Materials produced in  
8 electronic format.

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10 (d) Depositions and Testimony. Parties or testifying persons or entities may  
11 designate depositions and other testimony as “CONFIDENTIAL” or “CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY” by indicating on the record at the time the testimony is given or by  
13 sending written notice of how portions of the transcript of the testimony is designated within thirty  
14 (30) days of receipt of the transcript of the testimony. If no indication on the record is made, all  
15 information disclosed during a deposition shall be deemed “CONFIDENTIAL – ATTORNEYS’  
16 EYES ONLY” until 30 days after receipt of the transcript of the testimony. Any Protected  
17 Material that is used in the taking of a deposition shall remain subject to the provisions of this  
18 Protective Order, along with the transcript pages of the deposition testimony dealing with such  
19 Protected Material. In such cases the court reporter shall be informed of this Protective Order and  
20 shall be required to operate in a manner consistent with this Protective Order. In the event the  
21 deposition is videotaped, the original and all copies of the videotape shall be marked by the video  
22 technician to indicate that the contents of the videotape are subject to this Protective Order,  
23 substantially along the lines of “This videotape contains confidential testimony used in this case  
24 and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to  
25 the terms of the operative Protective Order in this matter or pursuant to written stipulation of  
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1 the parties.” Counsel for any Producing Party shall have the right to exclude from oral  
2 depositions, other than the deponent, deponent’s counsel, the reporter and videographer (if  
3 any), any person who is not authorized by this Protective Order to receive or access Protected  
4 Material based on the designation of such Protected Material. Such right of exclusion shall be  
5 applicable only during periods of examination or testimony regarding such Protected  
6 Material.  
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8 (e) Upward Designation of Information or Items Produced by Other Parties or  
9 Non-Parties. A Party may upward designate (i.e., change any documents or other material  
10 produced without a designation to a designation of “CONFIDENTIAL” or “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or change any Protected Material produced  
12 as “CONFIDENTIAL” to a designation of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
13 ONLY” any Disclosure or Discovery Material produced by any other Party or Non-Party,  
14 provided that said Disclosure or Discovery Material contains the upward Designating Party’s own  
15 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY information,  
16 or otherwise is entitled to protective treatment under Fed. R. Civ. P. 26(c). Upward designation  
17 shall be accomplished by providing written notice to all Parties identifying (by Bates number or  
18 other individually identifiable information) the Disclosure or Discovery Material to be  
19 redesignated within thirty (30) days of the Designating Party’s receipt of the production by the  
20 Producing Party. Failure to upward designate within thirty (30) days of the Designating Party’s  
21 receipt of the production, alone, will not prevent a Party from obtaining the agreement of all  
22 Parties to upward designate certain Disclosure or Discovery Material or from moving the Court  
23 for such relief. Any Party may object to the upward designation of Disclosure or Discovery  
24 Material pursuant to the procedures set forth herein regarding challenging designations.  
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1           8.       **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

2                   (a)       A Producing Party may designate Discovery Material as  
3 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, and/or commercially  
4 sensitive information.

5                   (b)       Unless otherwise ordered by the Court, Discovery Material designated as  
6 “CONFIDENTIAL” may be disclosed only to the following:  
7

8                           (i)       The Receiving Party’s Outside Counsel, such counsel’s immediate  
9 paralegals and staff, and any copying or clerical litigation support services working at the  
10 direction of such counsel, paralegals, and staff;

11                           (ii)       Not more than three (3) representatives of the Receiving Party who  
12 are officers or employees of the Receiving Party, who may be, but need not be, in-house counsel  
13 for the Receiving Party, as well as their immediate paralegals and staff, to whom disclosure is  
14 reasonably necessary for this case, provided that: each such person has agreed to be bound by  
15 the provisions of the Protective Order by signing a copy of Exhibit A;

16                           (iii)       Any outside expert or consultant retained by the Receiving Party to  
17 assist in this action, provided that disclosure is only to the extent necessary to perform such  
18 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions  
19 of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a  
20 current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at  
21 the time of retention to become an officer, director or employee of a Party or of a competitor of a  
22 Party; (c) such expert or consultant accesses the materials in the United States only, and does not  
23 transport them to or access them from any foreign jurisdiction; and (d) no unresolved objections  
24 to such disclosure exist after proper notice has been given as set forth in Paragraph 10 below;  
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1 (iv) Court reporters, stenographers and videographers retained to record  
2 testimony taken in this action;

3 (v) The Court, jury, and court personnel;

4 (vi) Graphics, translation, design, and/or trial consulting personnel,  
5 having first agreed to be bound by the provisions of the Protective Order by signing a copy of  
6 Exhibit A;

7 (vii) Mock jurors who have signed an undertaking or agreement agreeing  
8 not to publicly disclose Protected Material and to keep any information concerning Protected  
9 Material confidential;

10 (viii) Any mediator who is assigned to hear this matter, and his or her  
11 staff, subject to their agreement to maintain confidentiality to the same degree as required by this  
12 Protective Order; and

13 (ix) Any other person with the prior written consent of the Producing  
14 Party.

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17 9. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –**  
18 **ATTORNEYS’ EYES ONLY”**

19 (a) A Producing Party may designate Discovery Material as  
20 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is  
21 extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that  
22 the disclosure of such Discovery Material is likely to cause economic harm or significant  
23 competitive disadvantage to the Producing Party. The Parties agree that the following  
24 information, if non-public, shall be presumed to merit the “CONFIDENTIAL – ATTORNEYS’  
25 EYES ONLY” designation: trade secrets, pricing information, financial data, sales information,  
26 sales or marketing forecasts or plans, business plans, sales or marketing strategy, product  
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1 development information, engineering documents, testing documents, employee information, and  
2 other non-public information of similar competitive and business sensitivity.

3 (b) Unless otherwise ordered by the Court, Discovery Material designated as  
4 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

5 (i) The Receiving Party’s Outside Counsel, provided that such Outside  
6 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*,  
7 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party, and such  
8 Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation support  
9 services working at the direction of such counsel, paralegals, and staff;

10 (ii) With respect to Discovery Material produced by the Plaintiff, not  
11 more than three (3) in-house counsel of the Receiving Party, as well as their immediate paralegals  
12 and staff to whom disclosure is reasonably necessary for this case, provided that each such person  
13 has agreed to be bound by the provisions of the Protective Order by signing a copy of  
14 Exhibit A;

15 (iii) Any outside expert or consultant retained by the Receiving Party to  
16 assist in this action, provided that disclosure is only to the extent necessary to perform such  
17 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions  
18 of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a  
19 current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at  
20 the time of retention to become an officer, director, or employee of a Party or of a competitor of a  
21 Party; (c) such expert or consultant is not involved in competitive decision-making, as defined by  
22 *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a  
23 competitor of a Party; (d) such expert or consultant accesses the materials in the United States  
24 only, and does not transport them to or access them from any foreign jurisdiction; and (e) no  
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1 unresolved objections to such disclosure exist after proper notice has been given as set forth in  
2 Paragraph 10 below;

3 (iv) Court reporters, stenographers and videographers retained to record  
4 testimony taken in this action;

5 (v) The Court, jury, and court personnel;

6 (vi) Graphics, translation, design, and/or trial consulting personnel,  
7 having first agreed to be bound by the provisions of the Protective Order by signing a copy of  
8 Exhibit A;

9 (vii) Any mediator who is assigned to hear this matter, and his or her  
10 staff, subject to their agreement to maintain confidentiality to the same degree as required by this  
11 Protective Order; and  
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13 (viii) Any other person with the prior written consent of the Producing  
14 Party.  
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16 (c) In addition, a Party may disclose arguments and materials derived from  
17 Discovery Material designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to mock  
18 jurors who have signed an undertaking or agreement agreeing not to publicly disclose Protected  
19 Material and to keep any information concerning Protected Material confidential. A Party may  
20 not disclose to mock jurors any original, as-produced materials or information (including, for  
21 example, documents, deposition testimony, or interrogatory responses) produced by another Party  
22 designated as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”  
23

24 10. **NOTICE OF DISCLOSURE:**

25 (a) Prior to Plaintiffs disclosing any Apple Protected Material to any outside  
26 expert or consultant described in Paragraphs 8(b)(iii) or 9(b)(iii), (referenced below as “Person”),  
27 Plaintiffs shall provide Apple with written notice that includes:  
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- 1 (i) the name of the Person;
- 2 (ii) an up-to-date curriculum vitae of the Person;
- 3 (iii) the present employer and title of the Person;
- 4 (iv) an identification of all of the Person's past and current employment and consulting
- 5 relationships, including direct relationships and relationships through entities owned
- 6 or controlled by the Person, including but not limited to an identification of any
- 7 individual or entity with or for whom the person is employed or to whom the person
- 8 provides consulting services relating to the design, development, operation, or
- 9 patenting of smartphones or smartphone technology, or relating to the acquisition of
- 10 intellectual property assets relating to smartphones or smartphone technology;
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- 12 (v) an identification of all pending patent applications on which the Person is named as an
- 13 inventor, in which the Person has any ownership interest, or as to which the Person
- 14 has had or anticipates in the future any involvement in advising on, consulting on,
- 15 preparing, prosecuting, drafting, editing, amending, or otherwise affecting the scope
- 16 of the claims; and
- 17
- 18 (vi) a list of the cases in which the Person has testified at deposition or trial within the last
- 19 five (5) years.
- 20

21 Further, Plaintiffs shall provide such other information regarding the Person's professional

22 activities reasonably requested by Apple for it to evaluate whether good cause exists to object to

23 the disclosure of Protected Material to the outside expert or consultant. During the pendency of

24 and for a period of two (2) years after the final resolution of this action, including all appeals,

25 Plaintiffs shall immediately provide written notice of any change with respect to the Person's

26 involvement in the design, development, operation or patenting of smartphones or smartphone

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1 technology, or the acquisition of intellectual property assets relating to smartphones or smartphone  
2 technology.

3 (b) Within fourteen (14) days of receipt of the disclosure of the Person, Apple  
4 may object in writing to the Person for good cause. In the absence of an objection at the end of the  
5 fourteen (14) day period, the Person shall be deemed approved under this Protective Order. There  
6 shall be no disclosure of Protected Material to the Person prior to expiration of this fourteen (14)  
7 day period. If Apple objects to disclosure to the Person within such fourteen (14) day period, the  
8 Parties shall meet and confer via telephone or in person within seven (7) days following the  
9 objection and attempt in good faith to resolve the dispute on an informal basis. If the dispute is not  
10 resolved, Apple will have seven (7) days from the date of the meet and confer to seek relief from  
11 the Court. If relief is not sought from the Court within that time, the objection shall be deemed  
12 withdrawn. If relief is sought, designated materials shall not be disclosed to the Person in question  
13 until the Court resolves the objection.

14 (c) For purposes of this section, “good cause” shall include an objectively  
15 reasonable concern that the Person will, advertently or inadvertently, use or disclose Discovery  
16 Materials in a way or ways that are inconsistent with the provisions contained in this Order.

17 (d) Prior to receiving any Protected Material under this Order, the Person must  
18 execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit A hereto) and serve  
19 it on all Parties.

20 (e) An initial failure to object to a Person under this Paragraph 12 shall not  
21 preclude Apple from later objecting to continued access by that Person for good cause. If an  
22 objection is made, the Parties shall meet and confer via telephone or in person within seven (7)  
23 days following the objection and attempt in good faith to resolve the dispute informally. If the  
24 dispute is not resolved, Apple will have seven (7) days from the date of the meet and confer to seek  
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1 relief from the Court. The designated Person may continue to have access to information that was  
2 provided to such Person prior to the date of the objection. If a later objection is made, no further  
3 Protected Material shall be disclosed to the Person until the Court resolves the matter or Apple  
4 withdraws its objection. Notwithstanding the foregoing, if Apple fails to move for a protective  
5 order within seven (7) business days after the meet and confer, further Protected Material may  
6 thereafter be provided to the Person.  
7

8 11. **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

9 (a) A Party shall not be obligated to challenge the propriety of any designation  
10 of Discovery Material under this Order at the time the designation is made, and a failure to do so  
11 shall not preclude a subsequent challenge thereto.

12 (b) Any challenge to a designation of Discovery Material under this Order  
13 shall be written, shall be served on outside counsel for the Producing Party, shall particularly  
14 identify the documents or information that the Receiving Party contends should be differently  
15 designated, and shall state the grounds for the objection. Thereafter, further protection of such  
16 material shall be resolved in accordance with the following procedures:

17 (i) The objecting Party shall have the burden of conferring either in  
18 person, in writing, or by telephone with the Producing Party claiming protection (as well as any  
19 other interested party) in a good faith effort to resolve the dispute. The Producing Party shall  
20 have the burden of justifying the disputed designation;

21 (ii) Failing agreement, the Receiving Party may bring a motion to the  
22 Court for a ruling that the Discovery Material in question is not entitled to the status and  
23 protection of the Producing Party's designation. The Parties' entry into this Order shall not  
24 preclude or prejudice either Party from arguing for or against any designation, establish any  
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1 presumption that a particular designation is valid, or alter the burden of proof that would  
2 otherwise apply in a dispute over discovery or disclosure of information;

3 (iii) Notwithstanding any challenge to a designation, the Discovery  
4 Material in question shall continue to be treated as designated under this Order until one of the  
5 following occurs: (a) the Party who designated the Discovery Material in question withdraws such  
6 designation in writing; or (b) the Court rules that the Discovery Material in question is not  
7 entitled to the designation.  
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10 12. **SUBPOENAS OR COURT ORDERS**

11 (a) If at any time Protected Material is subpoenaed by any court, arbitral,  
12 administrative, or legislative body, the Party to whom the subpoena or other request is directed  
13 shall immediately give prompt written notice thereof to every Party who has produced such  
14 Discovery Material and to its counsel and shall provide each such Party with an opportunity to  
15 move for a protective order regarding the production of Protected Materials implicated by the  
16 subpoena.  
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18 13. **FILING PROTECTED MATERIAL**

19 (a) Absent written permission from the Producing Party or a court Order  
20 secured after appropriate notice to all interested persons, a Receiving Party may not file or  
21 disclose in the public record any Protected Material.

22 (b) A party that seeks to file under seal with the Court any brief, document or  
23 materials that are designated as Protected Material under this Order must comply with Civil Local  
24 Rule 79-5.  
25

26 14. **INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

27 (a) The inadvertent production by a Party of Discovery Material subject to the  
28 attorney-client privilege, work-product protection, or any other applicable privilege or protection,

1 despite the Producing Party's reasonable efforts to prescreen such Discovery Material prior to  
2 production, will not waive the applicable privilege and/or protection if a request for return of such  
3 inadvertently produced Discovery Material is made promptly after the Producing Party learns of  
4 its inadvertent production.

5  
6 (b) Upon a request from any Producing Party who has inadvertently produced  
7 Discovery Material that it believes is privileged and/or protected, each Receiving Party shall  
8 immediately return such Protected Material or Discovery Material and all copies to the Producing  
9 Party, except for any pages containing privileged markings by the Receiving Party which shall  
10 instead be destroyed and certified as such by the Receiving Party to the Producing Party.

11 (c) Nothing herein shall prevent the Receiving Party from preparing a record for  
12 its own use containing the date, author, addresses, and topic of the inadvertently produced  
13 Discovery Material and such other information as is reasonably necessary to identify the Discovery  
14 Material and describe its nature to the Court in any motion to compel production of the Discovery  
15 Material and describe its nature to the Court in any motion to compel production of the Discovery  
16 Material.

17 15. **INADVERTENT FAILURE TO DESIGNATE PROPERLY**

18 (a) The inadvertent failure by a Producing Party to designate Discovery  
19 Material as Protected Material with one of the designations provided for under this Order shall  
20 not waive any such designation provided that the Producing Party notifies all Receiving Parties  
21 that such Discovery Material is protected under one of the categories of this Order within fourteen  
22 (14) days of the Producing Party learning of the inadvertent failure to designate. The Producing  
23 Party shall reproduce the Protected Material with the correct confidentiality designation within  
24 seven (7) days upon its notification to the Receiving Parties. Upon receiving the Protected  
25 Material with the correct confidentiality designation, the Receiving Parties shall return or securely  
26 destroy, at the Producing Party's option, all Discovery Material that was not designated properly.  
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1 (b) A Receiving Party shall not be in breach of this Order for any use of such  
2 Discovery Material before the Receiving Party receives such notice that such Discovery Material  
3 is protected under one of the categories of this Order, unless an objectively reasonable person  
4 would have realized that the Discovery Material should have been appropriately designated with a  
5 confidentiality designation under this Order. Once a Receiving Party has received notification of  
6 the correct confidentiality designation for the Protected Material with the correct confidentiality  
7 designation, the Receiving Party shall treat such Discovery Material at the appropriately designated  
8 level pursuant to the terms of this Order.

10 16. **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

11 (a) In the event of a disclosure of any Discovery Material pursuant to this  
12 Order to any person or persons not authorized to receive such disclosure under this Protective  
13 Order, the Party responsible for having made such disclosure, and each Party with knowledge  
14 thereof, shall immediately notify counsel for the Producing Party whose Discovery Material has  
15 been disclosed and provide to such counsel all known relevant information concerning the nature  
16 and circumstances of the disclosure. The responsible disclosing Party shall also promptly take all  
17 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that no  
18 further or greater unauthorized disclosure and/or use thereof is made

21 (b) Unauthorized or inadvertent disclosure does not change the status of  
22 Discovery Material or waive the right to hold the disclosed document or information as Protected.

23 17. **FINAL DISPOSITION**

24 (a) Not later than ninety (90) days after the Final Disposition of this case, each  
25 Party shall return all Discovery Material of a Producing Party to the respective outside counsel of  
26 the Producing Party or securely destroy or delete such Material, at the option of the Producing  
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1 Party. For purposes of this Order, “Final Disposition” occurs after an order, mandate, or  
2 dismissal finally terminating the above-captioned action with prejudice, including all appeals.

3 (b) All Parties that have received any such Discovery Material shall certify in  
4 writing that all such materials have been returned to the respective outside counsel of the  
5 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,  
6 outside counsel may retain one set of pleadings, correspondence and attorney and consultant work  
7 product (but not document productions) for archival purposes, but must return any pleadings,  
8 correspondence, and consultant work product that contain Source Code.  
9

10 18. **DISCOVERY FROM EXPERTS OR CONSULTANTS**

11 (a) Testifying and consulting experts shall not be subject to discovery with respect to  
12 any draft of his or her report(s) in this case. Draft reports, notes, or outlines for draft reports  
13 developed and drafted by the expert and/or his or her staff are also exempt from discovery.  
14

15 (b) Discovery of materials provided to testifying experts shall be limited to those  
16 materials, facts, consulting expert opinions, and other matters actually relied upon by the  
17 testifying expert in forming his or her final report, trial, or deposition testimony or any opinion in  
18 this case. No discovery can be taken from any non-testifying expert except to the extent that such  
19 non-testifying expert has provided information, opinions, or other materials to a testifying expert  
20 relied upon by that testifying expert in forming his or her final report(s), trial, and/or deposition  
21 testimony or any opinion in this case.  
22

23 (c) No conversations or communications between counsel and any testifying or consulting  
24 expert will be subject to discovery unless the conversations or communications are relied upon by  
25 such experts in formulating opinions that are presented in reports or trial or deposition testimony  
26 in this case.  
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1 (d) Materials, communications, and other information exempt from discovery under  
2 the foregoing Paragraphs 18 (a)–(c) shall be treated as attorney-work product for the purposes of  
3 this litigation and Order.

4 19. **MISCELLANEOUS**

5 (a) Right to Further Relief. Nothing in this Order abridges the right of any  
6 person to seek its modification by the Court in the future. By stipulating to this Order, the Parties  
7 do not waive the right to argue that certain material may require additional or different  
8 confidentiality protections than those set forth herein.

9 (b) Termination of Matter and Retention of Jurisdiction. The Parties agree that  
10 the terms of this Protective Order shall survive and remain in effect after the Final Determination  
11 of the above-captioned matter. The Court shall retain jurisdiction after Final Determination of  
12 this matter to hear and resolve any disputes arising out of this Protective Order.

13 (c) Successors. This Order shall be binding upon the Parties hereto, their  
14 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal  
15 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and  
16 experts, and any persons or organizations over which they have direct control.

17 (d) Right to Assert Other Objections. By stipulating to the entry of this  
18 Protective Order, no Party waives any right it otherwise would have to object to disclosing or  
19 producing any information or item. Similarly, no Party waives any right to object on any ground  
20 to use in evidence of any of the material covered by this Protective Order. This Order shall not  
21 constitute a waiver of the right of any Party to claim in this action or otherwise that any  
22 Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not  
23 admissible in evidence in this action or any other proceeding.  
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1 (e) Burdens of Proof. Notwithstanding anything to the contrary above,  
2 nothing in this Protective Order shall be construed to change the burdens of proof or legal  
3 standards applicable in disputes regarding whether particular Discovery Material is confidential,  
4 which level of confidentiality is appropriate, whether disclosure should be restricted, and if so,  
5 what restrictions should apply.  
6

7 (f) Modification by Court. This Order is subject to further court order based  
8 upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the  
9 interests of justice. The United States District Court for the Northern District of California is  
10 responsible for the interpretation and enforcement of this Order. All disputes concerning Protected  
11 Material, however designated, produced under the protection of this Order shall be resolved by the  
12 United States District Court for the Northern District of California.  
13

14 (g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change  
15 in any way the discovery provisions, including the requirements for and scope of expert discovery,  
16 in accordance with the Federal Rules of Civil Procedure, the Local Rules for the United States  
17 District Court for the Northern District of California, and the Court's own orders. Identification of  
18 any individual pursuant to this Protective Order does not make that individual available for  
19 deposition or any other form of discovery outside of the restrictions and procedures of the Federal  
20 Rules of Civil Procedure, the Local Rules for the United States District Court for the Northern  
21 District of California, or the Court's own orders.  
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Dated: May 4, 2020

TIFFANY CHEUNG  
MORRISON & FOERSTER LLP

By: /s/ Tiffany Cheung  
TIFFANY CHEUNG

Attorneys for Defendant  
APPLE INC.

Dated: May 4, 2020

C.K. LEE  
LEE LITIGATION GROUP, PLLC

DAVID ALAN MAKMAN  
THE LAW OFFICES OF DAVID A.  
MAKMAN

By: /s/ C.K. Lee  
C.K. LEE

Attorneys for Plaintiffs CHRISTIAN  
SPONCHIADO AND COURTNEY  
DAVIS

~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 5/6/2020

Haywood S. Gilliam, Jr.  
Honorable Haywood S. Gilliam, Jr.  
United States District Court

1 EXHIBIT A

2 GENERAL ACKNOWLEDGMENT OF CONFIDENTIALITY AND AGREEMENT TO  
3 BE BOUND BY PROTECTIVE ORDER

4  
5 I, \_\_\_\_\_ [print or type full name], of  
6 \_\_\_\_\_ [print or type full address], acknowledge  
7 and declare that I have read in its entirety and understand the Stipulated Protective Order  
8 (“Order”) in *Christian Sponchiado and Courtney Davis v. Apple Inc.*, United States District  
9 Court for the Northern District of California, Civil Action No. 4:18-cv-07533-HSG.

10  
11 Having read the and understood the terms of the Order, I agree to comply with and be  
12 bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose  
13 of any proceeding to enforce the terms of the Order. I understand and acknowledge that  
14 failure to so comply could expose me to sanctions and punishment in the nature of contempt.  
15 I solemnly promise that I will not disclose in any manner any information or item that is  
16 subject to the Order to any person or entity except in strict compliance with the provisions of  
17 the Order.

18  
19 I will access and review Protected Material that may be provided to me solely for the  
20 purpose of my role in assisting with prosecuting, defending, or attempting to settle this  
21 litigation or to comply with judicial process or any applicable statute or regulation and for no  
22 other purpose whatsoever. I further agree not to disclose any Protected Material except as  
23 allowed by the terms of the Order. I will only make such copies of or notes concerning the  
24 Protected Material as are necessary to assist with prosecuting, defending, or attempting to  
25 settle this litigation or to comply with judicial process or any applicable statute or regulation  
26 in connection with this action. Upon final determination of this action, I shall promptly and  
27 securely destroy or delete all Protected Material provided to me as well as any hard and  
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electronic copies, abstracts, derivations, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. I understand that my obligations pertaining to the Protected Material continue even after the conclusion of the action.

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

Name of individual: \_\_\_\_\_

Present occupation/job description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Company or Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]