

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

<p>CISCO SYSTEMS, INC., et al. Plaintiffs, v. SHEIKH, et al. Defendants.</p> <hr/> <p>ADVANCED DIGITAL SOLUTIONS INTERNATIONAL, INC., Third-Party Plaintiff, v. RAHI SYSTEMS, INC., et al. Third-Party Defendants.</p>

Case No. 4:18-CV-07602-YGR
STIPULATED PROTECTIVE ORDER
RE: CONFIDENTIAL INFORMATION
As Modified by the Court

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal;

1 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
2 applied when a party seeks permission from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
7 generated, stored or maintained) or tangible things that are not publicly known and are of technical
8 or commercial advantage to its owner, including trade secret, financial, proprietary, competitive,
9 commercially sensitive information (e.g., Party or Non-Party’s customers and related purchasing and
10 sales information), or other information required by law or agreement to be kept confidential, and
11 information that qualifies for protection under Federal Rule of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
13 as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information or items that it
15 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

16 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
17 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
18 transcripts, and tangible things), that are produced or generated in disclosures or responses to
19 discovery in this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
21 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
22 consultant in this action.

23 2.7 House Counsel: attorneys who are employees of a party to this action. House
24 Counsel does not include Outside Counsel of Record or any other outside counsel.

25 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
26 entity not named as a Party to this action.

27 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
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1 but are retained to represent or advise a party to this action and have appeared in this action on
2 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

3 2.10 Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts and professional vendors, and Outside Counsel of Record (and their
5 support staffs).

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
7 Material in this action.

8 2.12 Professional Vendors: persons or entities that provide litigation support services
9 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
10 storing, or retrieving data in any form or medium) and their employees and subcontractors.

11 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
12 “CONFIDENTIAL.”

13 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
14 Producing Party.

15 3. SCOPE

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

1 4. DURATION

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

8 5. DESIGNATING PROTECTED MATERIAL

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

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

20 If it comes to a Designating Party’s attention that information or items that it designated for
21 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
22 that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Any Party or Non-Party may designate as
24 Confidential any document or response to discovery which that Party or Non-Party considers in good
25 faith to contain “CONFIDENTIAL” information. Except as otherwise provided in this Order (see,
26 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
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1 Discovery Material that qualifies for protection under this Order must be clearly so designated
2 before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
6 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion
7 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
20 Designating Party identify on the record, before the close of the deposition, hearing, or other
21 proceeding, all protected testimony any Party or Non-Party may identify on the record, before the
22 close of the deposition, all protected information disclosed during the deposition. In addition, any
23 Party or Non-Party may elect to designate portions of the transcript as “CONFIDENTIAL” within 14
24 calendar days from the delivery of the deposition transcript. Such designations shall be
25 communicated in writing to all Parties. Only those portions of the testimony that are appropriately
26 designated for protection within this 14 day period shall be covered by the provisions of this
27 Stipulated Protective Order. Until the expiration of this 14 day period, the entire transcript shall be
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1 treated as “CONFIDENTIAL” information. The use of a document as an exhibit at a deposition shall
2 not in any way affect its designation as “CONFIDENTIAL”

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

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

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
17 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
18 confidentiality designation by electing not to mount a challenge promptly after the original
19 designation is disclosed.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
21 by providing written notice of each designation it is challenging and describing the basis for each
22 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
23 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
24 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
25 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
26 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
27 Party must explain the basis for its belief that the confidentiality designation was not proper and
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1 must give the Designating Party an opportunity to review the designated material, to reconsider the
2 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
3 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
4 has engaged in this meet and confer process first or establishes that the Designating Party is
5 unwilling to participate in the meet and confer process in a timely manner.

6 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without court
7 intervention, the parties shall follow the Court’s Standing Order in Civil Cases regarding Discovery
8 and Discovery Motions. The parties may file a joint letter brief regarding retaining confidentiality
9 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the
10 meet and confer process will not resolve their dispute, whichever is earlier. Failure by a Designating
11 Party to file such discovery dispute letter within the applicable 21- or 14-day period (set forth above)
12 with the Court shall automatically waive the confidentiality designation for each challenged
13 designation. If, after submitting a joint letter brief, the Court allows that a motion may be filed, any
14 such motion must be accompanied by a competent declaration affirming that the movant has
15 complied with the meet and confer requirements imposed in the preceding paragraph. The Court,
16 in its discretion, may elect to transfer the discovery matter to a Magistrate Judge.

17 In addition, the parties may file a joint letter brief regarding a challenge to a confidentiality
18 designation at any time if there is good cause for doing so, including a challenge to the designation
19 of a deposition transcript or any portions thereof. If, after submitting a joint letter brief, the Court
20 allows that a motion may be filed, any motion brought pursuant to this provision must be
21 accompanied by a competent declaration affirming that the movant has complied with the meet and
22 confer requirements imposed by the preceding paragraph. The Court, in its discretion, may elect to
23 refer the discovery matter to a Magistrate Judge.

24 The burden of persuasion in any such challenge proceeding shall be on the Designating
25 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
27 Unless the Designating Party has waived the confidentiality designation by failing to file a letter
28 brief to retain confidentiality as described above, all parties shall continue to afford the material in
question the level of protection to which it is entitled under the Producing Party’s designation until

1 the court rules on the challenge.

2 7. ACCESS TO AND USE OF PROTECTED MATERIAL

3 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
4 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
5 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
6 the categories of persons and under the conditions described in this Order. When the litigation has
7 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

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

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

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

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

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

24 (d) the court and its personnel;

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

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

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

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

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

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

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served with the subpoena
24 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
25 before a determination by the court from which the subpoena or order issued, unless the Party has
26 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
27 expense of seeking protection in that court of its confidential material – and nothing in these
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1 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
2 disobey a lawful directive from another court.

3 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
4 LITIGATION

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

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

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

15 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
16 this litigation, the relevant discovery request(s), and a reasonably specific description of the
17 information requested; and

18 (3) make the information requested available for inspection by the Non-Party.

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

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
8 MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
10 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
11 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
12 modify whatever procedure may be established in an e-discovery order that provides for production
13 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
14 parties reach an agreement on the effect of disclosure of a communication or information covered by
15 the attorney-client privilege or work product protection, the parties may incorporate their agreement
16 in the stipulated protective order submitted to the court.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
19 its modification by the court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
21 no Party waives any right it otherwise would have to object to disclosing or producing any
22 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
23 Party waives any right to object on any ground to use in evidence of any of the material covered by
24 this Protective Order.

25 12.3 Filing Protected Material. Without written permission from the Designating Party or a
26 court order secured after appropriate notice to all interested persons, a Party may not file in the
27 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
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Cisco Systems, Inc. and Cisco Technology, Inc.

DATED: September 6, 2019

/s/ Brad Stuckey
Brad Stuckey
Robinson Di Lando APLC
Attorneys for Defendants Zahid “Donny” Hassan
Sheikh and IT Devices Online, Inc.

DATED: September 6, 2019

/s/ Andrew Parkhurst
Andrew Parkhurst
McManis Faulkner LLP
Attorneys for Defendants Advanced Digital
Solutions International, Inc. and PureFutureTech,
LLC and Third-Party Plaintiff Advanced Digital
Solutions International, Inc.

DATED: September 6, 2019

/s/ Sam J. Polverino
Sam J. Polverino
Law Offices of Sam J. Polverino
Attorneys for Defendant Jessica Little

DATED: September 6, 2019

/s/ John C. Kirke
John C. Kirke
Donahue Fitzgerald LLP
Attorneys for Third-Party Defendants Rahi
Systems, Inc.; Pure Future Technology, Inc.;
Masood Minhas; Nauman Karamat; Nabia Uddin;
Karoline Banzon; and Kaelyn Nguyen

Attestation

I hereby attest pursuant to Civil Local Rule 5-1(i)(3) that concurrence in the electronic filing of this document has been obtained from the other signatories above.

DATED: September 6, 2019

SIDEMAN & BANCROFT LLP

By: /s/ Anna P. Chang
Anna P. Chang
Attorneys for Plaintiffs
Cisco Systems, Inc. and Cisco Technology,
Inc.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: September 10, 2019



The Honorable Yvonne Gonzalez Rogers
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of *Cisco Systems, Inc., et al. v. Sheikh, et al.*, Case No.
7 4:18-CV-07602-YGR. I agree to comply with and to be bound by all the terms of this Stipulated
8 Protective Order and I understand and acknowledge that failure to so comply could expose me to
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
10 any manner any information or item that is subject to this Stipulated Protective Order to any person
11 or entity except in strict compliance with the provisions of this Order.

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

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____