

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

<p>ABDI NAZEMIAN, et al., Plaintiffs, v. NVIDIA CORPORATION, Defendant.</p> <hr/> <p>ANDRE DUBUS III, et al., Plaintiffs, vs. NVIDIA Corp., Defendant.</p>	<p>Case No. 24-cv-01454-JST Case No. 24-cv-02655-JST</p> <p>PROTECTIVE ORDER</p> <p>Re: ECF No. 73, 88, 89</p>
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Case No. 24-cv-01454-JST
Case No. 24-cv-02655-JST

PROTECTIVE ORDER

Re: ECF No. 73, 88, 89

The Court, having considered the parties’ proposals for a protective order in this case, hereby orders as follows:

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 14.4,

1 below, that this Stipulated Protective Order does not entitle them to file confidential information
2 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
3 that will be applied when a party seeks permission from the Court to file material under seal.

4 **1. DEFINITIONS**

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

7 2.2 **“CONFIDENTIAL” Information or Items**: information (regardless of how it is
8 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
9 of Civil Procedure 26(c).

10 2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House Counsel (as
11 well as their support staff).

12 2.4 **Designated House Counsel**: House Counsel who seek access to “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

14 2.5 **Designating Party**: a Party or Non-Party that designates information or items that
15 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
17 CODE”.

18 2.6 **Disclosure or Discovery Material**: all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among other things,
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 2.7 **Expert**: a person with specialized knowledge or experience in a matter pertinent to
23 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
24 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
25 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
26 of a Party’s competitor.

27 2.8 **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or**
28 **Items**: Information may be designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY” by the Producing Party if it contains extremely sensitive “Confidential Information or
2 Items,” disclosure of which to another Party or Non-Party would create a substantial risk of
3 serious harm that could not be avoided by less restrictive means.

4 2.9 **“HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:**

5 Information may be designated “**Highly Confidential – Source Code**” if it constitutes or
6 contains extremely sensitive “Confidential Information or Items” representing computer code, non-
7 public machine learning models, large language models, or associated comments and revision
8 histories, non-public or proprietary model Training Data, engineering specifications, build scripts
9 and configurations, proprietary model architecture information, trained model weight files,
10 hyperparameter configurations, or schematics that define or otherwise describe in detail the
11 formulas, algorithms or structure of software or hardware designs, disclosure of which to another
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
13 restrictive means.

14 2.10 **House Counsel:** attorneys who are employees of a Party to this action. House
15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16 2.11 **Non-Party:** any natural person, partnership, corporation, association, or other legal
17 entity not named as a Party to this action.

18 2.12 **Outside Counsel of Record:** attorneys who are not employees of a Party to this
19 action but are retained to represent or advise a Party to this action and have appeared in this action
20 on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

21 2.13 **Party:** any party to this action, including all of its officers, directors, employees,
22 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

23 2.14 **Producing Party:** a Party or Non-Party that produces Disclosure or Discovery
24 Material in this action.

25 2.15 **Professional Vendors:** persons or entities that provide litigation support services
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
27 organizing, storing, or retrieving ESI, documents, or data in any form or medium) and their
28 employees and subcontractors.

1 2.16 **Protected Material**: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
3 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

4 2.17 **Receiving Party**: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 2.18 **Source Code**: Source code is the human readable set of instructions written in a
7 programming language that defines the operations of a software application, including the
8 algorithms, model weights, model parameters, logic, and functions that shape the program’s
9 behavior.

10 2.19 **Training Data**: Training Data means any information or dataset in any form that is
11 used, processed, ingested, or referenced to develop, improve, refine, or validate machine learning
12 models or artificial intelligence systems, including but not limited to collections of text, images, or
13 other content used to train such systems to recognize patterns, generate outputs, or make
14 predictions. This includes both raw data and any preprocessed, transformed, or derivative versions
15 of such data used during the training process.

16 **2. SCOPE**

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

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3. DURATION

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

4. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

1 Designation in conformity with this Order requires:

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

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
11 it would like copied and produced. During the inspection and before the designation, all of the
12 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
14 copied and produced, the Producing Party must determine which documents, or portions thereof,
15 qualify for protection under this Order. Then, before producing the specified documents, the
16 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
18 CODE) to each page that contains Protected Material. If only a portion or portions of the material
19 on a page qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
21 portion, the level of protection being asserted.

22 (b) **for testimony given in deposition or in other pretrial or trial proceedings**, that the
23 Designating Party identify on the record, before the close of the deposition, hearing, or other
24 proceeding, all protected testimony and specify the level of protection being asserted. When it is
25 impractical to identify separately each portion of testimony that is entitled to protection and it
26 appears that substantial portions of the testimony may qualify for protection, the Designating Party
27 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
28 to have up to 21 days to identify the specific portions of the testimony as to which protection is

1 sought and to specify the level of protection being asserted. Only those portions of the testimony
2 that are appropriately designated for protection within the 21 days shall be covered by the
3 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
4 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
5 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.”

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

13 Transcripts containing Protected Material shall have an obvious legend on the title page
14 that the transcript contains Protected Material, and the title page shall be followed by a list of all
15 pages (including line numbers as appropriate) that have been designated as Protected Material and
16 the level of protection being asserted by the Designating Party. The Designating Party shall inform
17 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
18 21-day period for designation shall be treated during that period as if it had been designated
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
20 agreed. After the expiration of that period, the transcript shall be treated only as actually
21 designated.

22 (c) **for information produced in some form other than documentary and for any other**
23 **tangible items**, that the Producing Party affix in a prominent place on the exterior of the container
24 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
26 SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the
27 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the
28 level of protection being asserted.

1 5.3 **Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party’s
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
5 in accordance with the provisions of this Order.

6 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 **Timing of Challenges.** Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

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

27 6.3 **Judicial Intervention.** If the Parties cannot resolve a challenge without Court
28 intervention, the Designating Party shall file and serve a motion to retain confidentiality under

1 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
2 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
3 process will not resolve their dispute, whichever is earlier. Each such motion must be
4 accompanied by a competent declaration affirming that the movant has complied with the meet
5 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
6 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
7 shall automatically waive the confidentiality designation for each challenged designation. In
8 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
9 time if there is good cause for doing so, including a challenge to the designation of a deposition
10 transcript or any portions thereof. Any motion brought pursuant to this provision must be
11 accompanied by a competent declaration affirming that the movant has complied with the meet
12 and confer requirements imposed by the preceding paragraph.

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

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

21 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed
22 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
24 the categories of persons and under the conditions described in this Order. When the litigation has
25 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
26 DISPOSITION).

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

1 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
2 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

14 (d) the Court and its personnel;

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

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

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

26 7.3 **Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and**
27 **“HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.** Unless otherwise
28 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may

1 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

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

7 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
8 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,
9 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to
10 whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

11 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
12 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
13 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

14 (d) the Court and its personnel;

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

18 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
19 necessary and to whom disclosure will not create a substantial risk of serious harm to the
20 Designating Party. Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 Protected Material must be separately bound by the court reporter and may not be disclosed to
22 anyone except as permitted under this Stipulated Protective Order; and

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

25 **7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY**
26 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –**
27 **SOURCE CODE” Information or Items to Designated House Counsel or Experts.**

28

1 (a)(1) Unless otherwise ordered by the Court or agreed to in writing by the Designating
2 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has
3 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
4 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the
5 full name of the Designated House Counsel and the city and state of his or her residence, and (2)
6 describes the Designated House Counsel’s current and reasonably foreseeable future primary job
7 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may
8 become involved, in any competitive decision-making.

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

24 (b) A Party that discloses and provides the information specified in the preceding
25 respective paragraphs may disclose the subject Protected Material to the identified Designated

26 _____
27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
28 party, then the Expert should provide whatever information the Expert believes can be disclosed
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 House Counsel or Expert unless, within ten (10) days of the disclosure, the Party receives a
2 written objection from the Designating Party. Any such objection must set forth in detail the
3 grounds on which it is based.

4 (c) A Party that receives a timely written objection must meet and confer with the
5 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
6 agreement within seven days of the written objection. If no agreement is reached, the Designating
7 Party may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
8 Rule 79-5, if applicable) for a protective order. Any such motion must describe the circumstances
9 with specificity and set forth in detail the reasons why the disclosure to Designated House Counsel
10 or the Expert would result in a risk of harm that the provisions of this Order are insufficient to
11 protect against.. If the Designating Party does not file such a motion for a protective order within
12 7 days of its written objection, the Receiving Party may disclose information designated as
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
14 SOURCE CODE” to the identified expert(s).

15 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
16 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail
17 (under the safeguards proposed) outweighs the Receiving Party’s need to disclose the Protected
18 Material to its Designated House Counsel or Expert.

19 **7. PROSECUTION BAR**

20 Absent written consent from the Producing Party, any individual who receives access to
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
22 SOURCE CODE” information shall not be involved in the prosecution of patents or patent
23 applications relating to artificial intelligence, machine learning, neural networks, or large language
24 models including without limitation the patents asserted in this action and any patent or
25 application claiming priority to or otherwise related to the patents asserted in this action, before
26 any foreign or domestic agency, including the United States Patent and Trademark Office (“the
27 Patent Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly
28 drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. To

1 avoid any doubt, “prosecution” as used in this paragraph does not include representing a party
2 challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue
3 protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin
4 when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
5 CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and
6 shall end two (2) years after final termination of this action.

7 **8. SOURCE CODE**

8 (a) To the extent production of source code becomes necessary in this case, a Producing
9 Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” as provided
10 in Section 2.9.

11 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
12 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” information including the Prosecution Bar set forth in Paragraph 8,
14 and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and
16 7.4, with the exception of Designated House Counsel.

17 (c) A Party that designated Protected Material as “HIGHLY CONFIDENTIAL –
18 SOURCE CODE” may restrict the production to the following procedure. The designated material
19 shall be made available for inspection, in a format allowing it to be reasonably reviewed and
20 searched, during normal business hours or at other mutually agreeable times, at an office of the
21 Producing Party’s counsel or another mutually agreed upon location. Access to source code shall be
22 provided, at the Producing Party’s election, (1) on a secured computer having disk encryption and
23 password protection in a secured room without Internet access or network access to other computers,
24 such that all persons entering the secured room containing the source code are subject to reasonable
25 security measures to ensure they are not carrying any prohibited items before they will be given
26 access to the secured room; or (2) on a networked computer configured to connect (via a Virtual
27 Private Network or Virtual Network Computing connection) to a source code review environment
28 hosted on a remote server maintained by the Producing Party. Both the (1) secured computer and

1 (2) the networked computer are referenced herein as “Source Code Computer.” Use or possession
2 of any input/output device (e.g., USB memory stick, mobile phone or tablet, camera or any camera-
3 enabled device, CD, floppy disk, portable hard drive, laptop, or any device that can access the
4 Internet or any other network or external system, etc.) is prohibited while accessing the Source Code
5 Computer. The Receiving Party shall not copy, remove, or otherwise transfer any portion of the
6 source code onto any recordable media or recordable device. The Source Code Computer will be
7 made available for inspection upon reasonable notice to the Producing Party, which shall not be less
8 than 10 business days in advance of the initial requested inspection. Following the initial inspection,
9 the Receiving Party must give notice at least 48 hours in advance of additional review. The
10 Producing Party may visually monitor the activities of the Receiving Party’s representatives during
11 any source code review, but only to ensure that there is no unauthorized recording, copying, or
12 transmission of the source code.

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

22 (e) The Receiving Party shall maintain a record of any individual who has inspected any
23 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
24 copies of any printed portions of the source code in a secured, locked area. The Receiving Party
25 shall not create any electronic or other images of the paper copies and shall not convert any of the
26 information contained in the paper copies into any electronic format. The Receiving Party shall only
27 make additional paper copies if such additional copies are (1) necessary to prepare court filings,
28 pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for

1 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during
2 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given
3 to or left with a court reporter or any other unauthorized individual.

4 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
5 **OTHER LITIGATION**

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

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

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

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
16 Designating Party whose Protected Material may be affected.²

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

25
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27 _____
28 ² The purpose of imposing these duties is to alert the interested parties to the existence of this
Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
confidentiality interests in the court from which the subpoena or order issued.

1 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
2 **THIS LITIGATION**

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

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

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

15 2. promptly provide the Non-Party with a copy of the Stipulated Protective
16 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
17 the 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
24 by the Court.³ Absent a court order to the contrary, the Non-Party shall bear the burden and
25 expense of seeking protection in this Court of its Protected Material.

26
27 _____
28 ³ The purpose of this provision is to alert the interested parties to the existence of confidentiality
rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this Court.

1 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

9 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery order
15 that provides for production without prior privilege review. Pursuant to agreement of the parties,
16 the inadvertent production of material subject to a claim of privilege or other protection shall not
17 constitute a waiver of that privilege or other protection under Federal Rule of Evidence 502(d).

18 **13. MISCELLANEOUS**

19 14.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to
20 seek its modification by the Court in the future.

21 14.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective
22 Order no Party waives any right it otherwise would have to object to disclosing or producing any
23 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
24 Party waives any right to object on any ground to use in evidence of any of the material covered
25 by this Protective Order.

26 14.3 **Export Control.** Disclosure of Protected Material shall be subject to all applicable
27 laws and regulations relating to the export of technical data contained in such Protected Material,
28 including the release of such technical data to foreign persons or nationals in the United States or

1 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
2 data, and the Receiving Party shall take measures necessary to ensure compliance.

3 14.4 **Filing Protected Material.** Without written permission from the Designating Party
4 or a court order secured after appropriate notice to all interested persons, a Party may not file in
5 the public record in this action any Protected Material. A Party that seeks to file under seal any
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
7 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
8 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
9 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
10 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
11 Material under seal pursuant to Civil Local Rule 79-5 is denied by the Court, then the Receiving
12 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5 unless
13 otherwise instructed by the Court.

14 **14. FINAL DISPOSITION**

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

15. **CLAWBACK & RULE 502(D) ORDER**

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

IT IS SO ORDERED.

Dated: January 8, 2025



JON S. TIGAR
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Northern District of California on
_____ [date] in the cases of *Nazemian v. NVIDIA Inc.*, 4:24-cv-01454-JST (N.D. Cal.)
and/or *Dubus v. NVIDIA Inc.*, 4:24-cv-02655-JST (N.D. Cal.). I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]