

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VERASONICS, INC., a Washington
corporation,

Plaintiff,

v.

SUPERSONIC IMAGINE, S.A., a
French société anonyme,

Defendant.

CASE NO. 2:17-cv-01764-TSZ

**JOINT STIPULATED
PROTECTIVE ORDER**

Plaintiff Verasonics, Inc. and Defendant SuperSonic Imagine, S.A. (each individually referred to herein as a “Party” and collectively as the “Parties”)¹ stipulate and agree to this protective order in the interest of efficiency and judicial economy, particularly in the interest of avoiding ancillary litigation of discovery issues relating to confidential commercial and/or proprietary information, and the procedures set forth herein for designating and protecting confidential commercial and/or proprietary information. The Parties stipulate to the following terms.

¹ As used herein the term “Non-Party” means any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of trade secret, confidential,
3 proprietary, or private information for which special protection may be warranted. Accordingly,
4 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
5 Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not
6 confer blanket protection on all disclosures or responses to discovery, the protection it affords
7 from public disclosure and use extends only to the limited information or items that are entitled
8 to confidential treatment under the applicable legal principles, and it does not presumptively
9 entitle parties to file confidential information under seal.

10 2. CONFIDENTIAL, HIGHLY CONFIDENTIAL—OUTSIDE COUNSEL ONLY, AND
11 HIGHLY CONFIDENTIAL—SOURCE CODE MATERIAL

12 Confidential Information may be designated “CONFIDENTIAL,” “HIGHLY
13 CONFIDENTIAL—OUTSIDE COUNSEL ONLY” or “HIGHLY CONFIDENTIAL—
14 SOURCE CODE” as described below.

15 (a) “CONFIDENTIAL” material shall include the following documents and tangible things
16 produced or otherwise exchanged: non-public design and technical information; non-public
17 competitive analyses; customer lists; marketing, accounting, sales, licensing, pricing, and
18 investment information; market projections and forecasts; strategic plans and financial
19 information; sensitive information concerning trade secrets; know-how; product research; design,
20 testing, development, functionality and manufacturing or other non-public research and
21 development information; personal and/or private identifying information (e.g., birthdates, bank
22 account numbers, social security numbers, home addresses); or information otherwise
23 maintained by a Party or Non-Party as confidential in the ordinary course of business.

24 (b) “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” material shall include the
25 following documents and tangible things produced or otherwise exchanged: extremely sensitive
26 CONFIDENTIAL material, the disclosure of which to another Party or Non-Party would create a

1 substantial risk of serious harm to the disclosing Party or Non-Party that could not be avoided by
2 less restrictive means.

3 (c) “HIGHLY CONFIDENTIAL—SOURCE CODE” or “SOURCE CODE” material shall
4 include CONFIDENTIAL non-public information representing computer code and associated
5 comments and revision histories that define or otherwise describe in detail the algorithms or
6 structure of computer programs or software designs. SOURCE CODE includes, without
7 limitation, human-readable programming language text that defines a computer program,
8 software, firmware, or electronic hardware description. SOURCE CODE also includes text files
9 containing computer code including but not limited to files containing code written in scripting
10 languages, “C,” “C+,” C#, assembly language, hardware description language (“HDL”),
11 VHDL, Verilog, and digital signal processor (“DSP”) programming languages, as well as
12 “.include files,” “make” files, link files, and other human-readable text files used in the
13 generation and/or building of software directly executed on a microprocessor, micro-controller,
14 or DSP. SOURCE CODE does not include binary executable files and object code files, nor
15 does it include tools such as compilers or linkers.

16 3. SCOPE

17 The protections conferred by this agreement cover not only CONFIDENTIAL, HIGHLY
18 CONFIDENTIAL – OUTSIDE COUNSEL ONLY, and HIGHLY CONFIDENTIAL—
19 SOURCE CODE material (as defined above), but also (1) any information copied or extracted
20 from such material; (2) all copies, excerpts, summaries, or compilations of such material; and (3)
21 any testimony, conversations, or presentations by the Parties, Non-Parties or their counsel that
22 might reveal such material. However, the protections conferred by this agreement do not cover
23 information that is in the public domain or becomes part of the public domain through trial or
24 otherwise provided that the Party or Non-Party making the public disclosure was under no
25 obligation, whether by contract, court order, or operation of law, to keep the information non-
26 public.

1 4. ACCESS TO AND USE OF CONFIDENTIAL, HIGHLY CONFIDENTIAL –
2 OUTSIDE COUNSEL ONLY, AND HIGHLY CONFIDENTIAL—SOURCE CODE
3 MATERIAL

4 4.1 Basic Principles. A receiving Party may use CONFIDENTIAL, HIGHLY
5 CONFIDENTIAL—OUTSIDE COUNSEL ONLY, and HIGHLY CONFIDENTIAL—
6 SOURCE CODE material (collectively “PROTECTED MATERIALS”) that is disclosed or
7 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. PROTECTED MATERIALS may be disclosed
9 only to the categories of persons and under the conditions described in this agreement.
10 PROTECTED MATERIALS must be stored and maintained by a receiving Party at a location
11 and in a secure manner consistent with all provisions of this agreement that ensures that access is
12 limited to the persons authorized under this agreement.

13 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the designating Party or Non-Party, a receiving
15 Party may disclose “CONFIDENTIAL” material only to:

16 (a) the receiving Party’s outside counsel of record in this action, as well as
17 employees of counsel to whom it is reasonably necessary to disclose the information for this
18 litigation, including, but not limited to, contract review attorneys, law clerks, paralegals, and
19 legal secretaries;

20 (b) the officers, directors, and employees (including in-house counsel) of the
21 receiving Party to whom disclosure is reasonably necessary for this litigation;

22 (c) experts and consultants to whom disclosure is reasonably necessary for
23 this litigation, provided that before access to any PROTECTED MATERIALS is given: (1) the
24 outside consultant or expert completes and signs the “Acknowledgment and Agreement to Be
25 Bound” (Exhibit A), and (2) the Party proposing to disclose PROTECTED MATERIALS to an
26 outside expert or consultant complies with the procedures outlined in Paragraph 4.4;

1 (d) the court, court personnel, court reporters, videographers and their staff;

2 (e) copy, document management, electronic discovery or imaging services, or
3 graphics or design services professionals retained by outside counsel to assist in the management
4 and duplication of confidential material, provided that outside counsel for the Party retaining the
5 copy, document management, electronic discovery, imaging or graphics or design services
6 professionals instructs the service not to disclose any confidential material to third parties and to
7 immediately return all originals and copies of any confidential material upon completion of the
8 service;

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
11 (Exhibit A), unless otherwise agreed by the designating Party or Non-Party or ordered by the
12 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal designated
13 material must be separately bound by the court reporter and may not be disclosed to anyone
14 except as permitted under this agreement;

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

17 (h) trial and jury consultants, including, but not limited to, mock jurors who
18 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

19 (i) any mediator retained by the Parties or appointed by the Court in this
20 action and employees of such mediator who are assisting in the conduct of the mediation.

21 4.3 Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” and
22 “HIGHLY CONFIDENTIAL—SOURCE CODE” Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the designating Party or Non-Party, a receiving
24 Party may disclose “HIGHLY CONFIDENTIAL—OUTSIDE COUNSEL ONLY” material
25 only to those persons identified in Section 4.2 (a, c-i) and “HIGHLY CONFIDENTIAL—
26 SOURCE CODE” material only to those persons identified in Section 4.2 (a, c, d, f, g and i).

1 4.4 Challenging Expert or Consultant

2 (a) Prior to the disclosure of PROTECTED MATERIALS to an expert or consultant,
3 the Party proposing to provide PROTECTED MATERIALS to the expert or consultant (*i.e.*, the
4 receiving Party) shall, provide the producing Party or Non-Party with: (i) a current curriculum
5 vitae for the expert or consultant, which shall include (a) the expert or consultant's name and
6 address, (b) a description of past and present employers by whom the expert or consultant has
7 been employed, (c) a description of persons or entities by whom the expert has been engaged in
8 any consulting or expert engagements within the last five (5) years, as well as a general
9 description of the nature of such engagements, and (d) and a listing of cases in which the expert
10 or consultant has testified as an expert at trial or by deposition within the preceding five (5)
11 years; and (ii) a completed "Acknowledgment and Agreement to Be Bound" (Exhibit A) signed
12 by the proposed expert or consultant.

13 If an expert or consultant is precluded by virtue of a non-disclosure agreement from
14 disclosing either the existence or nature of a prior consulting or expert engagement or the
15 identity of the entity for which the engagement was or is being performed, then the expert or
16 consultant shall state that certain information is being withheld on that basis and shall
17 supplement his/her disclosure with such additional information as he/she believes would be
18 helpful to the Parties and/or the producing Non-Party and the Court in determining whether any
19 undisclosed consulting relationship would create a likelihood that the expert or consultant would
20 have a conflict of interest in the engagement for this litigation, or should otherwise be precluded
21 from acting as an expert or consultant in this litigation.

22 (b) Within seven (7) business days after the producing Party or Non-Party's receipt of
23 the information described in paragraph 4.4(a) and the signed undertaking in the form of Exhibit
24 A, the producing Party or Non-Party may object in writing (including via email) to the proposed
25 expert or consultant. A Party or Non-Party objecting to disclosure of PROTECTED
26 MATERIALS to an expert or consultant shall state with particularity the ground(s) of the

1 objection. Absent written agreement of the Parties and/or Non-Party (as applicable), no
2 PROTECTED MATERIALS may be disclosed to such expert or consultant until after the
3 expiration of seven (7) business days for the producing Party to object or while the producing
4 Party's objection is pending. Failure to object in writing to a proposed expert or consultant
5 within seven (7) business days after receipt of the information described in paragraph 4.4(a) will
6 be deemed a waiver of any objection to the proposed expert or consultant, provided, however,
7 that failure to object to an expert or consultant shall not preclude a Party or Non-Party from later
8 objecting to continued access to the Party or Non-Party's PROTECTED MATERIALS by that
9 expert or consultant where facts suggesting a basis for objection could not have been discovered
10 by the objecting Party or Non-Party, or their counsel, exercising due diligence, within the period
11 for making a timely objection. If a later objection is made, no further PROTECTED
12 MATERIALS shall be disclosed to the expert or consultant until the matter is resolved by the
13 Court or agreement of the parties.

14 (c) If the producing Party or Non-Party objects to the proposed expert or consultant,
15 the producing Party or Non-Party and the receiving Party shall meet and confer in good faith in
16 an attempt to resolve their dispute without resort to the Court. If the dispute remains unresolved
17 seven (7) business days following the producing Party or Non-Party's communication of its
18 objection, then the receiving Party shall have seven (7) business days to file a motion pursuant to
19 L.R. 7 seeking a ruling from the Court as to the merits of the producing Party or Non-Party's
20 objection. Pending a ruling by the Court, the proposed expert or consultant shall not have access
21 to the producing Party or Non-Party's PROTECTED MATERIALS. Failure to seek a ruling
22 from the Court as described above will be deemed a waiver of the receiving Party's request for
23 the proposed expert or consultant to access PROTECTED MATERIALS.

24 4.5 Prosecution Activity, Prosecution Bar

25 Outside Counsel of a receiving Party who reviews any producing Party or Non-Party's
26 HIGHLY CONFIDENTIAL—OUTSIDE COUNSEL ONLY or HIGHLY CONFIDENTIAL—

1 SOURCE CODE materials shall not directly or indirectly draft or amend claims (or provide
2 advice or counsel concerning the drafting or amending of claims) of any patent or patent
3 application in the field of ultrasound technology for a period commencing upon review of such
4 information and ending one (1) year following the final resolution of this litigation including all
5 appeals. These prohibitions (i) are personal to the person reviewing HIGHLY
6 CONFIDENTIAL—OUTSIDE COUNSEL ONLY or HIGHLY CONFIDENTIAL—SOURCE
7 CODE material in this litigation and shall not be imputed to any other person or entity and (ii)
8 shall not be triggered by an attorney’s reviewing or otherwise learning the substance of his or her
9 client’s own information. Nothing in this paragraph or Stipulated Protective Order shall be
10 construed as preventing any attorney from challenging or defending the validity or enforceability
11 of any patent, including without limitation in proceedings in court or *inter partes* review, post-
12 grant review, reexamination, reissue, or any other administrative proceedings in the United
13 States or foreign patent offices.

14 4.6 Filing PROTECTED MATERIALS. Before filing PROTECTED MATERIALS
15 or discussing or referencing such material in court filings, the filing party shall confer with the
16 designating Party or Non-Party to determine whether the designating Party or Non-Party will
17 remove the designation, whether the document can be redacted, or whether a motion to seal or
18 stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that
19 must be followed and the standards that will be applied when a Party seeks permission from the
20 court to file material under seal.

21 5. DESIGNATING PROTECTED MATERIALS

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
23 or Non-Party that designates information or items for protection under this agreement must take
24 care to limit any such designation to specific material that qualifies under the appropriate
25 standards. The designating Party or Non-Party must designate for protection only those parts of
26 material, documents, items, or oral or written communications that qualify, so that other portions

1 of the material, documents, items, or communications for which protection is not warranted are
2 not swept unjustifiably within the ambit of this agreement.

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

7 If it comes to a designating Party or Non-Party's attention that information or items that it
8 designated for protection do not qualify for protection, the designating Party or Non-Party must
9 promptly notify all other Parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, *e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or
12 discovery material that qualifies for protection under this agreement must be clearly so
13 designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents
15 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), the designating party must affix the words "CONFIDENTIAL," "HIGHLY
17 CONFIDENTIAL—OUTSIDE COUNSEL ONLY," or "HIGHLY CONFIDENTIAL—
18 SOURCE CODE" to each page that contains designated material.

19 (b) Testimony given in deposition or in other pretrial proceedings: the Parties
20 and any participating Non-Parties must identify on the record, during the deposition or other
21 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
22 testimony after reviewing the transcript. Any Party or Non-Party may, within fifteen (15) days
23 after receiving the transcript of the deposition or other pretrial proceeding, designate portions of
24 the transcript, or exhibits thereto, as CONFIDENTIAL, HIGHLY CONFIDENTIAL—
25 OUTSIDE COUNSEL ONLY, or HIGHLY CONFIDENTIAL—SOURCE CODE. Until such
26 time as this fifteen (15) day period has expired, the entirety of the deposition transcript shall be

1 presumptively treated by the receiving Party as having been designated by the producing Party or
2 Non-Party as HIGHLY CONFIDENTIAL—OUTSIDE COUNSEL ONLY. If a Party or Non-
3 Party desires to protect PROTECTED MATERIALS at trial, the issue should be addressed
4 during the pre-trial conference.

5 (c) Other tangible items: the producing party must affix in a prominent place
6 on the exterior of the container or containers in which the information or item is stored the words
7 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL—OUTSIDE COUNSEL ONLY,” or
8 “HIGHLY CONFIDENTIAL—SOURCE CODE. If only a portion or portions of the
9 information or item warrant protection, the producing Party or Non-Party, to the extent
10 practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
12 designate qualified information or items does not, standing alone, waive the designating Party or
13 Non-Party’s right to secure protection under this agreement for such material. Upon timely
14 correction of a designation, the receiving Party must make reasonable efforts to ensure that the
15 material is treated in accordance with the provisions of this agreement.

16 6. CHALLENGING DESIGNATIONS

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

23 6.2 Meet and Confer. The Parties and/or Non-Party must make every attempt to
24 resolve any dispute regarding designations without court involvement. Any motion regarding
25 designations or for a protective order must include a certification, in the motion or in a
26 declaration or affidavit, that the movant has engaged in a good faith meet and confer conference

1 with other affected parties in an effort to resolve the dispute without court action. The
2 certification must list the date, manner, and participants to the conference. A good faith effort to
3 confer requires a face-to-face meeting or a telephone conference.

4 6.3 Judicial Intervention. If the Parties and/or Non-Party cannot resolve a challenge
5 without court intervention, the designating Party or Non-Party may file and serve a motion to
6 retain the designation under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if
7 applicable). The burden of persuasion in any such motion shall be on the designating Party or
8 Non-Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or
9 impose unnecessary expenses and burdens on other parties) may expose the challenging Party to
10 sanctions. All Parties shall continue to maintain the material in question as CONFIDENTIAL,
11 HIGHLY CONFIDENTIAL—OUTSIDE COUNSEL ONLY, or HIGHLY CONFIDENTIAL—
12 SOURCE CODE as designated until the court rules on the challenge.

13 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
14 LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation that compels
16 disclosure of any PROTECTED MATERIALS that party must:

17 (a) promptly notify the designating Party or Non-Party in writing and include
18 a copy of the subpoena or court order;

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

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the designating Party or Non-Party whose PROTECTED MATERIALS may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 PROTECTED MATERIALS to any person or in any circumstance not authorized under this

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

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

9 When a producing Party or Non-Party gives notice to receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other protection, the
11 obligations of the receiving Parties are those set forth in Federal Rule of Civil Procedure
12 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
13 an e-discovery order or agreement that provides for production without prior privilege review.
14 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth
15 herein.

16 Any inadvertently produced material so produced and subject to a claim of privilege or a
17 claim of work product subsequently made shall immediately be returned to the producing Party
18 and/or expunged and in either event such material shall not be introduced into evidence in this
19 proceeding or any other proceeding by any person without the consent of the producing Party or
20 by Order of the Court.

21
22 10. TERMINATION AND RETURN OF DOCUMENTS

23 Within 60 days after the termination of this action, including all appeals, each receiving
24 party must return all PROTECTED MATERIALS to the producing party, including all copies,
25 extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods
26 of destruction.

1 Notwithstanding this provision, outside counsel of record are entitled to retain one
2 archival copy of all documents filed with the court, trial, deposition, and hearing transcripts,
3 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
4 consultant and expert work product, even if such materials contain PROTECTED MATERIALS.

5 The obligations imposed by this agreement shall remain in effect until a designating Party
6 or Non-Party agrees otherwise in writing or a court orders otherwise.

7 11. PRODUCTION OF HIGHLY CONFIDENTIAL—SOURCE CODE

8 11.1 Access. Any SOURCE CODE produced in discovery shall be made available for
9 inspection during the discovery period in a format allowing it to be reasonably reviewed and
10 searched, during normal business hours (which for the purposes of this paragraph shall be
11 9:00am through 5:00pm local time) or at other mutually agreeable times, at a mutually agreed
12 upon U.S. office of the producing Party or Non-Party's outside counsel of record or another
13 mutually agreed upon location. The SOURCE CODE shall be made available for inspection on a
14 secured, stand-alone computer ("SOURCE CODE Computer") in a secured room without
15 Internet access or network access to other computers, and the receiving Party shall not copy,
16 remove or otherwise transfer any portion of the SOURCE CODE onto any recordable media or
17 recordable device. The producing Party or Non-Party may visually monitor the activities of the
18 receiving Party's representatives during any SOURCE CODE review, but only to ensure that
19 there is no unauthorized recording, copying, or transmission of the SOURCE CODE; this
20 provision does not entitle the producing Party or Non-Party's representative to visually monitor
21 the portions of the SOURCE code the receiving Party's representatives choose to review. The
22 producing Party or Non-Party, at its sole discretion, may choose to waive any or all of the default
23 requirements in this section 11 for its own convenience.
24
25
26

1 The producing Party or Non-Party shall provide the receiving Party with information
2 explaining how to start, log on to, and operate the SOURCE CODE computer in order to access
3 the produced SOURCE CODE on the SOURCE CODE computer.

4 11.2 Software Search Tools. The receiving Party may request that the producing Party
5 or Non-Party install software tools on the SOURCE CODE computer to aid in viewing,
6 searching and analyzing the SOURCE CODE, which request shall not be unreasonably denied.
7 Absent agreement of the Parties and/or Non-Party (as applicable) otherwise, the receiving Party
8 shall provide any such software tools that it wishes to use to the producing Party or Non-Party at
9 least ten (10) business days in advance of the receiving Party's review so that the producing
10 Party or Non-Party may install the tools on the SOURCE CODE computer. The receiving Party
11 shall bear the costs of purchasing or licensing any software tool it requests the producing Party or
12 Non-Party to install on the SOURCE CODE computer. To the extent a producing Party or Non-
13 Party objects to the use of a software tool requested by the receiving Party, the producing Party
14 or Non-Party and the receiving Party shall meet and confer in good faith in an effort to resolve
15 the producing Party or Non-Party's objection. The producing Party or Non-Party must state with
16 particularity its objection to the receiving Party's use of the requested software tool. If, after ten
17 (10) business days, the parties are unable to resolve the producing Party or Non-Party's
18 objection, the receiving Party may seek relief from the Court.

21 11.4 Records. Each time a receiving Party's representative accesses the SOURCE
22 CODE Computer, the producing Party or Non-Party may require such person to complete a
23 SOURCE CODE review log identifying: (1) the person's name; (2) the date and time access
24 began; and (3) the date and time access ended.
25
26

1 11.5 No Modifications. No person other than the producing Party or Non-Party may
2 alter, dismantle, disassemble or modify the SOURCE CODE computer in any way, or attempt to
3 circumvent any security feature of the SOURCE CODE computer. In order to verify that its
4 SOURCE CODE has not later been altered, the producing party may benchmark the materials to
5 confirm that the materials have not been altered before and after they are provided but shall not
6 install any keystroke or other monitoring software on the SOURCE CODE computer.

7 11.5 Notice. Absent agreement of the Parties and/or Non-Party (as applicable), the
8 receiving Party shall notify the producing Party or Non-Party at least ten (10) business days in
9 advance of a request to review the SOURCE CODE and shall identify the individual(s) that will
10 be reviewing the SOURCE CODE.

11 11.6 Copies. Absent an order from the Court or written agreement of the producing Party
12 or Non-Party, and except as provided herein, no representative of the receiving Party shall make any
13 copies of the producing Party or Non-Party's SOURCE CODE, whether physical, electronic, or
14 otherwise, other than volatile copies necessarily made in the normal course of accessing the
15 SOURCE CODE on the SOURCE CODE computers. No outside electronic devices, including but
16 not limited to computers, laptops, tablets, storage devices (including but not limited to flash drives,
17 floppy drives, portable hard drives, and zip drives), cellular phones, portable printers, or devices
18 with camera functionalities shall be permitted in the same room as the SOURCE CODE computer.

19 The receiving Party's outside counsel of record and/or experts and consultants authorized
20 under this Joint Stipulated Protective Order to access the producing Party or Non-Party's SOURCE
21 CODE shall be entitled to take notes on paper relating to the SOURCE CODE, but may not copy
22 verbatim lines of the source code into the notes. All such notes shall bear the legend HIGHLY
23 CONFIDENTIAL—SOURCE CODE.
24
25
26

1 11.7 SOURCE CODE Printouts. The receiving Party may request that the producing
2 Party or Non-Party produce a reasonable number of printouts of SOURCE CODE material, each
3 page of which shall be designated with an appropriate BATES stamp and clearly labeled
4 “HIGHLY CONFIDENTIAL—SOURCE CODE.” The producing Party or Non-Party shall
5 provide two (2) copies of such requested printouts to the receiving Party’s outside counsel of
6 record within ten (10) business days of receiving the receiving Party’s request. If the producing
7 Party or Non-Party believes that the amount of code in the aggregate which the receiving Party
8 wishes to have printed during the duration of this litigation becomes excessive or overly
9 burdensome, the producing Party or Non-Party must meet and confer with the receiving Party in
10 an effort to resolve the producing Party or Non-Party’s objection. If, after ten (10) business days,
11 the parties are unable to resolve the producing Party or Non-Party’s objection, the receiving
12 Party or Non-Party may seek relief from the Court.

14 11.8 Handling of Paper Copies of SOURCE CODE. The receiving Party may not place
15 printed copies of SOURCE CODE in the custody of other persons except for those designated
16 under Section 4.3 of this Stipulated Protective Order. Except as otherwise provided herein, the
17 receiving Party may not create, use, access or receive electronic images, photographic images, or
18 any other images, of the SOURCE CODE made from the paper copy; the paper copy may not be
19 converted into an electronic document; and the paper copy may not be scanned.

21 The receiving Party’s outside counsel of record shall maintain a log of all copies of the
22 producing Party or Non-Party’s SOURCE CODE provided to any person. The log shall include the
23 name of any recipient or reviewer of the copy, and the date and page numbers provided. Provided,
24 however, that creating such log shall not be deemed to waive attorney-client privilege, work
25 product, or any other privilege or immunity that may attach to information contained in the log.
26

1 Any paper copies of the producing Party or Non-Party's SOURCE CODE shall be stored
2 or viewed by the receiving Party only at (a) the secure offices of outside counsel of record for the
3 receiving Party; (b) the secure site where any deposition is taken; (c) any intermediate secure
4 location necessary to transport the SOURCE CODE to a hearing, trial or deposition; (d) the secure
5 office of the receiving Party's experts or consultants authorized to view such SOURCE CODE; or
6 (e) the location of any hearing or trial in this matter.
7

8 The receiving Party's outside counsel of record and authorized experts and consultants
9 shall maintain and store paper copies of the producing Party or Non-Party's SOURCE CODE in
10 their custody at their offices in a manner that prevents duplication of or unauthorized access to the
11 source code, by storing the source code in a secure, locked room, cabinet or container at all times
12 when it is not in use.

13 11.9 Transportation and Use of HIGHLY CONFIDENTIAL—SOURCE CODE. The
14 receiving Party's outside counsel of record and authorized experts and consultants may transfer
15 printouts of the producing Party or Non-Party's SOURCE CODE only where necessary to a
16 hearing, trial, deposition, or any intermediate location reasonably necessary to transport the
17 printouts (e.g., a hotel prior to a Court proceeding or deposition). Only outside counsel of record
18 or authorized experts and consultants may transport the SOURCE CODE outside of their offices.
19 The SOURCE CODE must remain with the receiving Party's outside counsel of record or
20 authorized experts and consultants during transport. Alternatively, the receiving Party may ship
21 the producing Party or Non-Party's SOURCE CODE by a recognized overnight courier service,
22 such as UPS or Federal Express, provided a tracking record is maintained by the receiving Party.
23 Except as expressly provided herein, the receiving Party may make no further hard copies of the
24
25
26

1 producing Party or Non-Party's SOURCE CODE, and such SOURCE CODE shall not be
2 transferred into any electronic format or onto any electronic media except that:

3 (a) For depositions, upon election by the receiving Party, it may make three
4 additional copies of the printed SOURCE CODE for use at depositions, and only such printed
5 copies may be used at the depositions and any hearing or trial in this litigation. Further, to the
6 extent that the receiving Party requests hard copy printouts of SOURCE CODE within ten (10)
7 days prior to the deposition, the receiving Party may request copies of such SOURCE CODE be
8 provided at the deposition by the producing Party or Non-Party.
9

10 (b) The receiving Party may include excerpts of SOURCE CODE in a pleading
11 exhibit, expert report, discovery document, deposition transcript, other document, or any drafts of
12 these documents ("SOURCE CODE DOCUMENTS") only as is reasonably necessary and shall
13 include only such excerpts as are reasonably necessary for the purpose used. To the extent
14 portions of SOURCE CODE are quoted in a SOURCE CODE DOCUMENT, either (i) the entire
15 document will be stamped HIGHLY CONFIDENTIAL—SOURCE CODE or (ii) those pages
16 containing quoted SOURCE CODE will be separately bound and stamped HIGHLY
17 CONFIDENTIAL—SOURCE CODE.
18

19 (c) Electronic copies of SOURCE CODE may only be made to be included in
20 documents which, pursuant to the Court's rules, procedures, and order(s) may be filed or served
21 electronically. Only the necessary amount of electronic copies to effectuate such filing or service
22 may be stored on any receiving Party's server, hard drive, or other electronic storage device at
23 any given time.
24

25 (d) The receiving Party shall provide notice at least ten (10) business days in
26 advance of any deposition to the producing Party or Non-Party if the receiving party wishes to

1 use a searchable electronic copy of the SOURCE CODE during a deposition of an expert,
2 30(b)(6), or other fact witnesses who would otherwise be permitted access to such SOURCE
3 CODE. For purposes of this paragraph, the producing Party or Non-Party shall be required to make
4 only one searchable electronic copy of the SOURCE CODE available on a stand-alone computer
5 available at a location agreeable to the producing Party or Non-Party under this provision.

6 (e) Nothing in this Order shall be construed to limit how a producing Party or
7 Non-Party may maintain its own material designated as HIGHLY CONFIDENTIAL—SOURCE
8 CODE.
9

10 11.10 Nothing herein shall be deemed a waiver of any Party or Non-Party's right to
11 object to the production of SOURCE CODE.

12 12. Submission of this Order shall not be a basis for an exercise of jurisdiction or
13 venue by this Court over a party. Nothing in this Order, or the submission of this Order by the
14 Parties, shall constitute a waiver of any objection and/or defense by a Party as to improper
15 service, jurisdiction and/or or venue.
16

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

18 PACIFICA LAW GROUP LLP

MILLER NASH GRAHAM & DUNN LLP

19 s/ Kymberly K. Evanson

s/ Brian W. Esler

20 Paul J. Lawrence, WSBA #13557
21 Kymberly K. Evanson, WSBA #39973

Brian W. Esler, WSBA #22168
Kellen A. Hade, WSBA #44535

22 WALTERS WILSON LLP
23 Erica D. Wilson (*Admitted Pro Hac Vice*)
Eric S. Walters (*Admitted Pro Hac Vice*)

Attorneys for Defendant
SuperSonic Imagine, S.A.

24 Attorneys for Plaintiff Verasonics, Inc.
25
26

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *Verasonics, Inc. v. SuperSonic Imagine, S.A.*, No. 2:17-cv-1764-TSZ-MAT. I agree to
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

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

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____

20
21
22
23
24
25
26