

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 IN RE VALVE ANTITRUST LITIGATION

No. 2:21-cv-00563-JCC

10 **STIPULATED SUPPLEMENTAL**
11 **PROTECTIVE ORDER**

12 **NOTE ON MOTION CALENDAR:**
13 **NOVEMBER 14, 2023**

14
15 WHEREAS, the protections set forth in the Stipulated Protective Order (“Protective
16 Order”) in the above-captioned case (“Litigation”), *see* Dkt. No. 95, apply and are available to
17 non-parties as well as parties; and

18 WHEREAS, prior to the disclosure in this matter of their confidential information, non-
19 parties Microsoft Corporation (“Microsoft”) and ZeniMax Media Inc. (“ZeniMax”) seek
20 protections in addition to those set forth in the Protective Order;

21 WHEREFORE, IT IS HEREBY ORDERED that “HIGHLY CONFIDENTIAL –
22 ATTORNEY’S EYES ONLY” documents or information disclosed or produced by non-parties
23 Microsoft or ZeniMax, or disclosed or produced by parties to the extent such documents or
24 information contain “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” material of
25 non-parties Microsoft or ZeniMax, shall be subject to the following provisions:
26

1 1.1 The definitions, terms and provisions contained in the Protective Order shall
2 be incorporated herein by reference as though fully set forth herein; provided, however, that in the
3 event of a conflict between any definition, term, or provision of this Supplemental Protective Order
4 and any definition, term, or provision of the Protective Order, this Supplemental Protective Order
5 shall control with respect to such conflict.

6 1.2 For purposes of production or use of information or items designated
7 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by non-parties Microsoft or
8 ZeniMax, the term “Expert” shall mean a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who: (1) has been retained by a party or its counsel to serve as an
10 expert witness or as a consultant in this action; (2) is not a past or current employee of a party, a
11 party’s competitor, or a competitor of the designating non-party; (3) at the time of retention, is not
12 anticipated to become an employee of a party, a party’s competitor, or a competitor of the
13 designating non-party; and (4) has signed the “Acknowledgment and Agreement to Be Bound”
14 (Exhibit A).

15 1.3 Unless otherwise ordered by the Court or permitted in writing by the party
16 or non-party designating such material, all information or items designated as “HIGHLY
17 CONFIDENTIAL – ATTORNEY’S EYES ONLY” by non-parties Microsoft or ZeniMax shall
18 not be disclosed to any person except: (1) Experts (as defined in this Order) to whom disclosure is
19 reasonably necessary for this litigation; and (2) those listed in subparagraphs (a), (d), (e), (g) and
20 (h) of paragraph 4.2 of the Protective Order.

21 1.4 Notwithstanding the foregoing paragraph, information or items designated
22 as “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by non-parties Microsoft or
23 ZeniMax may also be disclosed to a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a party or its counsel to serve as an expert
25 witness or as a consultant in this action and who is a past or current employee of a competitor of a
26 party, a party’s competitor, or a competitor of the designating non-party or anticipated to become

one, provided that before such disclosure, the person shall be identified to the designating non-party (the “Notice”) along with the name of the company in which the person has been or currently is an employee or anticipates becoming an employee, and shall also sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

(a) A party that provides the Notice to the designating non-party pursuant to Paragraph 1.4 may disclose the subject of the protected material to the identified expert or consultant unless, within seven (7) calendar days of delivering the Notice, the party receives a written objection from the designating non-party. Any such objection must set forth in detail the grounds on which it is based.

(b) A party that receives a timely written objection must meet and confer with the designating non-party to try to resolve the matter by agreement within seven (7) calendar days of the written objection. If no agreement is reached, the party seeking to prevent the disclosure to the expert or consultant may, if necessary, file a motion in accordance with the Local Civil Rules to prevent disclosure. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the expert or consultant should be prohibited, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. The burden to demonstrate why disclosure should be prohibited shall rest with the designating non-party.

2. Unless otherwise ordered by the Court or expressly permitted by the designating non-party, no party may file with the Court, or introduce any information or item of non-parties Microsoft or ZeniMax that has been designated “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” at trial in a manner that will result in disclosure to persons other than: (1) Experts (as defined in this Order); (2) persons described in paragraph 1.4 above; and (3) those listed in subparagraphs (a), (d), (e), (g) and (h) of paragraph 4.2 of the Protective Order. In the event a Party seeks to file with the Court, or introduce any information or item of Non-Parties Microsoft or ZemiMax designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at trial in

1 a manner that will result in disclosure to persons other than (1) Experts (as defined in this Order),
2 (2) persons described in paragraph 1.4 above, and (3) those listed in subparagraphs (a), (d), (e), (g)
3 and (h) of paragraph 4.2 of the Protective Order, the Party shall promptly notify in writing the
4 designating non-party so that the provisions of paragraphs 4.4 and 5.2(b) of the Protective Order
5 may be carried out. The Parties recognize that the purpose of this provision is to provide a
6 reasonable opportunity to object to the disclosure of information or items designated “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at trial to persons other than Experts (as
8 defined in this Order) and those specified in Paragraph 4.3 of the Protective Order (Dkt. 95), and
9 agree to provide the notice described in this paragraph with reasonable notice such that the non-
10 party may raise any objection.

11 3. Any time a non-party produced document is disclosed in a deposition, whether marked
12 as an exhibit or not, the non-party will be notified and then will have the 40 days in 5.2(b) of the
13 original order to designate that portion of the transcript as CONFIDENTIAL or HIGHLY
14 CONFIDENTIAL.

15 4. For avoidance of doubt, the rights and obligations in paragraph 4.4 of the Protective Order
16 apply equally to the filing of non-parties Microsoft’s and ZeniMax’s designated confidential material
17 or information and items designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

18
19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED this 14th day of November, 2023.

21
22 s/ David Golden

23 Alicia Cobb, WSBA #48685
24 QUINN EMANUEL URQUHART &
25 SULLIVAN, LLP
26 1109 First Avenue, Suite 210
Seattle, Washington 98101
Telephone (206) 905-7000
Fax (206) 905-7100
aliciacobb@quinnemanuel.com

Stephanie L. Jensen, WSBA #42042
WILSON SONSINI GOODRICH & ROSATI
P.C.
701 Fifth Avenue, Suite 5100
Seattle, WA 98104-7036
Telephone (206) 883-2500
Fax (206) 883-2699
sjensen@wsgr.com

STIPULATED SUPPLEMENTAL PROTECTIVE
ORDER

(No. 2:21-cv-00563-JCC) —4

164126907

Steig D. Olson (*pro hac vice*)
David LeRay (*pro hac vice*)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue
New York, New York 10010
Telephone (212) 849-7231
Fax (212) 849-7100
steigolson@quinnemanuel.com

Adam Wolfson (*pro hac vice*)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, California 90017
Telephone (213) 443-3285
Fax (213) 443-3100
adamwolfson@quinnemanuel.com

Charles Stevens (*pro hac vice*)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
50 California St., 22nd Floor
San Francisco, CA 94111
Telephone (415) 875-6600
Fax (415) 875-6700
charliestevens@quinnemanuel.com

Interim Co-Lead Counsel

David Golden (*pro hac vice*)
CONSTANTINE CANNON LLP
1001 Pennsylvania Ave., 22nd Floor
Washington, D.C. 20004
Telephone (202) 204-4527
Fax (202) 204-3501
dgolden@constantinecannon.com

A. Owen Glist (*pro hac vice*)
Ankur Kapoor (*pro hac vice*)
Jeffrey I. Shinder (*pro hac vice*)
CONSTANTINE CANNON LLP
335 Madison Avenue, 9th Floor
New York, NY 10017

Kenneth R. O'Rourke (*pro hac vice*)
Allison B. Smith (*pro hac vice*)
WILSON SONSINI GOODRICH &
ROSATI, P.C.
1700 K Street, NW, Suite 500
Washington, DC 20006
Telephone (202) 973-8800
Fax (202) 973-8899
korourke@wsgr.com
allison.smith@wsgr.com

W. Joseph Bruckner (*pro hac vice*)
Joseph C. Bourne (*pro hac vice*)
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue S, Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900
Fax: (612) 339-0981
wjbruckner@locklaw.com
jcbourne@locklaw.com

Interim Co-Lead Counsel

s/ Eric A. Lindberg
Gavin W. Skok, WSBA #29766
FOX ROTHSCHILD LLP
1001 Fourth Avenue, Suite 4400
Seattle, WA 98154
Telephone: (206) 624-3600
Fax: (206) 389-1708
gskok@foxrothschild.com

Kristen Ward Broz
FOX ROTHSCHILD LLP
2020 K. St. NW, Ste. 500
Washington, DC 20006
Telephone (202) 794-1220

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164126907

Telephone (212) 350-2700
Fax (212) 350-2701
oglist@constantinecannon.com

Interim Co-Lead Counsel

Kenneth J. Rubin (*pro hac vice*)
Timothy B. McGranor (*pro hac vice*)
Kara M. Mundy (*pro hac vice*)
VORYS, SATER, SEYMOUR AND PEASE
LLP
52 East Gay Street
Columbus, Ohio 43215
Telephone (614) 464-6400
Fax (614) 719-4796
kjrubin@vorys.com
tbmcgranor@vorys.com
kmmundy@vorys.com

Thomas N. McCormick (*pro hac vice*)
VORYS, SATER, SEYMOUR AND PEASE
LLP
4675 MacArthur Court, Suite 700
Newport Beach, California 92660
Phone (949) 526-7903 | Fax (949) 383-2384
tnmccormick@vorys.com

Executive Committee Members

s/ Cara Wallace
Cara Wallace, WSBA No. 50111
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
Telephone (206) 359-8000
cwallace@perkinscoie.com

Attorneys for Microsoft Corporation

Fax (202) 461-3102
kbroz@foxrothschild.com

Charles B. Casper (*pro hac vice*)
MONTGOMERY McCRACKEN WALKER
& RHOADS LLP
1735 Market Street, 21st Floor
Philadelphia, PA 19103
Telephone (215) 772-1500
ccasper@mmwr.com

Blake Marks-Dias, WSBA No. 28169
Eric A. Lindberg, WSBA No. 43593
CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, WA 98104
(206) 625-8600 Phone
(206) 625-0900 Fax
bmarksdias@corrchronin.com
elindberg@corrchronin.com

Attorneys for Defendant Valve Corporation

s/ Cara Wallace
Cara Wallace, WSBA No. 50111
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
Telephone (206) 359-8000
cwallace@perkinscoie.com

Attorneys for ZeniMax Media, Inc.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

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8 DATED this 15th day of November 2023.

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12 John C. Coughenour
13 UNITED STATES DISTRICT JUDGE
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