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HYPERMEDIA NAVIGATION, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

HYPERMEDIA NAVIGATION LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 4:18-cv-00670-HSG
**STIPULATED ~~PROPOSED~~
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

1 This Order does not confer blanket protections on all disclosures or responses to discovery and the
2 protection it affords from public disclosure and use extends only to the limited information or
3 items that are entitled to confidential treatment under the applicable legal principles. As set forth
4 in Section 14.4 below, this Protective Order does not entitle the Parties to file confidential
5 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
6 the standards that will be applied when a party seeks permission from the court to file material
7 under seal.

8 2. DEFINITIONS

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
12 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
13 of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
15 well as their support staff).

16 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

18 2.5 Designating Party: a Party or Non-Party that designates information or items that it
19 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
21 CODE.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless of the
23 medium or manner in which it is generated, stored, or maintained (including, among other things,
24 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
25 responses to discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
27 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
28 a consultant in this action, (2) is not a past or current employee of a Party or of a Party's

1 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
2 of a Party's competitor.

3 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
4 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
5 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
6 less restrictive means, as well as information that a Party or Non-Party reasonably believes to be
7 subject to federal, state or foreign Data Protection Laws or other privacy obligations. Examples of
8 such Data Protection Laws include, without limitation, The Gramm-Leach-Bliley Act, 15 U.S.C. §
9 6801 et seq. (financial information); The Health Insurance Portability and Accountability Act
10 (“HIPAA”) and the regulations thereunder, 45 CFR Part 160 and Subparts A and E of Part 164
11 (medical information); Regulation (EU) 2016/679 Of the European Parliament and of the Council
12 of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal
13 Data and on the Free Movement of Such Data, also known as the General Data Protection
14 Regulation (“GDPR”). To the extent productions of these types of data may require additional
15 safeguards pursuant to Federal, State or foreign statutes, regulations or privacy obligations, the
16 parties will meet and confer to implement these safeguards if and when needed.

17 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
18 sensitive “Confidential Information or Items” representing computer code and associated
19 comments and revision histories, formulas, engineering specifications, or schematics that define or
20 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure
21 of which to another Party or Non-Party would create a substantial risk of serious harm that could
22 not be avoided by less restrictive means.

23 2.10 House Counsel: attorneys who are employees of a party to this action, as well as
24 their secretaries and paralegal assistants. House Counsel does not include Outside Counsel of
25 Record or any other outside counsel.

26 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
27 entity not named as a Party to this action.

28

1 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
2 action but are retained to represent or advise a party to this action and have appeared in this action
3 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

4 2.13 Party: any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
7 Material in this action.

8 2.15 Professional Vendors: persons or entities that provide litigation support services
9 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
10 organizing, storing, or retrieving data in any form or medium) and their employees and
11 subcontractors.

12 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
13 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
14 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

15 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
16 Producing Party.

17 3. SCOPE

18 The protections conferred by this Order cover not only Protected Material (as defined
19 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
20 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
21 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
22 protections conferred by this Order do not cover the following information: (a) any information
23 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the
24 public domain after its disclosure to a Receiving Party as a result of publication not involving a
25 violation of this Order, including becoming part of the public record through trial or otherwise;
26 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
27 Receiving Party after the disclosure from a source who obtained the information lawfully and
28

1 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
2 trial shall be governed by a separate agreement or order.

3 4. DURATION

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

11 5. DESIGNATING PROTECTED MATERIAL

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

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
28 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

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