

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IMAGINEAR, INC. and IMAGINE AR,	)	
INC.,	)	
	)	
Plaintiffs,	)	C.A. No. 24-1252-JDW
	)	
v.	)	
	)	
NIANTIC, INC.,	)	
	)	
Defendant.	)	

PROTECTIVE ORDER

Plaintiffs ImagineAR, Inc. and Imagine AR (collectively, “Plaintiffs”) and Defendant Niantic, Inc. (“Defendant”) stipulate, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, that the following Protective Order may be entered by the Court:

I. PROCEEDINGS AND INFORMATION GOVERNED

1. This Order (“Protective Order”) is made under Fed. R. Civ. P. 26(c). It governs any document, information, or other thing furnished by any party to any other party, and it includes any non-party who receives a subpoena in connection with this action, subject to the consent of that non-party to its application thereto. For purposes of this Protective Order only, any non-party that produces information subject hereto shall be considered a “party” as that term is used herein. The information protected includes, but is not limited to: answers to interrogatories; answers to requests for admission; responses to requests for production of documents; deposition transcripts and videotapes; deposition exhibits; results or documentation of inspection or testing under Federal Rule of Civil Procedure 34; and other writings or things produced, given or filed in this action that are designated by a party as “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” in accordance with the terms of this Protective

Order, as well as to any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information.

II. DESIGNATION AND MAINTENANCE OF INFORMATION

2. For purposes of this Protective Order, the “Highly Confidential - Outside Counsel’s Eyes Only” designation means that the document or thing contains extremely sensitive confidential information or items, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means. As nonlimiting examples, this includes nonpublic information related to (1) patent applications that are not yet published; (2) highly sensitive information regarding manufacturing specifications or procedures or technical information, including research and development, product testing, prototypes, and designs for unreleased products; (3) commercial or licensing agreements and communications; (4) information capable of being utilized for the preparation or prosecution of a patent application, that is not publicly known and is of technical or commercial advantage to its possessor the disclosure of which is likely to cause harm to the competitive position of the producing party; or (5) highly sensitive financial and economic information, including financial planning, financial performance, financial business plans, competitive strategies, and business relationships. “Highly Confidential - Outside Counsel’s Eyes Only” does not include, and this Protective Order does not apply to, information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

3. For purposes of this Protective Order, the “Highly Confidential - Source Code” designation means that the document or thing contains extremely sensitive confidential information or items representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the

algorithms or structure of software or hardware designs, disclosure of which to another party or non-party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

4. For purposes of this Protective Order, the “Confidential” designation means that the document or thing is comprised of commercial information that is not publicly known and is of technical or commercial advantage to its possessor, in accordance with Fed. R. Civ. P. 26(c)(1)(G), or other information required by law or agreement to be kept confidential and includes information that the producing party deems sensitive, which may include, but is not limited to, confidential research and development, financial, technical, marketing, product testing, or any other sensitive information for commercially sold products. “Confidential” does not include, and this Protective Order does not apply to, information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

5. Documents and things produced during the course of this litigation within the scope of paragraphs 2-4 above may be designated by the producing party as containing “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” information by placing on each page and each thing the applicable legend below:

HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL’S EYES ONLY

or

HIGHLY CONFIDENTIAL - SOURCE CODE

or

CONFIDENTIAL

A party may designate information disclosed at a deposition as “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” by requesting the

reporter to so designate the transcript or any portion of the transcript at the time of the deposition. If no such designation is made at the time of the deposition, any party will have fourteen (14) calendar days after receiving a finalized transcript or recording of the deposition to designate, to the other parties and to the court reporter, whether the transcript is to be designated as “Highly Confidential - Outside Counsel’s Eyes Only” or “Confidential.” If no such designation is made at the deposition or within this fourteen (14) calendar day period (during which period, the transcript must be treated as “Highly Confidential - Outside Counsel’s Eyes Only,” unless the disclosing party consents to less confidential treatment of the information), the entire deposition will be considered devoid of “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” information. It is the responsibility of counsel for each party to maintain materials containing “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” information in a secure manner and appropriately identified so as to allow access to such information only to such persons and under such terms as is permitted under this Protective Order.

III. INADVERTENT FAILURE TO DESIGNATE

6. Except as set forth in paragraphs 2-4, the inadvertent failure to designate or withhold any information as confidential will not be deemed to waive a later claim as to its confidential nature, or to stop the producing party from later designating such information as confidential at a later time. Any notice concerning the designation or re-designation of a document or thing shall be made within a reasonable time after discovery of inadvertent disclosure and shall be made in writing and state with particularity that such information contains “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” information. The information must be treated by the receiving party as “Highly Confidential -

Outside Counsel's Eyes Only," "Highly Confidential - Source Code," or "Confidential" (as indicated by the producing party) from the time the receiving party is notified in writing of the change in the designation. Also, upon receipt of such notice, and upon receipt of a properly labeled document or thing within the scope of paragraph 5 above, the receiving party or parties shall promptly return to the producing party's counsel or destroy each unmarked or improperly marked document or thing (and any copies that may have been made). The receiving party or parties shall, to the extent reasonably possible, cooperate in restoring the appropriate level of confidentiality of such inadvertently produced document or thing.

7. If a party through inadvertence produces or provides discovery that it believes is subject to a claim of privilege, work product immunity, or is otherwise protected from disclosure, the producing party may give prompt written notice to the receiving party or parties that the discovery is subject to a claim of privilege, work product immunity, or other protection from disclosure and request that the discovery be returned to the producing party. The receiving party or parties shall destroy or return to the producing party such inadvertently produced discovery, and all copies and derivations within five (5) business days of receiving a written request for the return of the information. Return of the discovery by the receiving party shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of privilege, work product immunity, or other protection from disclosure, nor shall it foreclose any party from moving the Court for an order that such document or thing has been improperly designated or should be discoverable and usable in this action for reasons other than a waiver caused by the inadvertent production or providing of discovery. If such a motion is made, the burden of proof to show that a document or thing is entitled to a claim of privilege, work product immunity, or is otherwise protected from disclosure shall be on the producing party.

IV. PROCEDURE FOR OBJECTION TO DESIGNATION

8. At any time prior to the final pretrial conference in this action, any party may object in good faith to the designation or re-designation of any “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” information by providing counsel for the producing party with written notice of the reasons for its objection. The producing party shall within ten (10) business days after receiving such written notice, advise the objecting party, in writing, of the basis for its designation. Within five (5) business days thereafter, the parties shall confer in a good faith effort to resolve the matter. Failing such resolution, the receiving party shall then have ten (10) business days from that conference (the “Motion Period”) to apply to the Court for relief or the objection is waived. The producing party retains the burden of establishing that the information was properly designated.

V. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

9. Information designated as “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” may only be used for purposes of preparation, trial, and appeal of this action. No “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” information may be used under any circumstances for any other proceeding, for prosecuting any patent application, for patent licensing, or for any other business, competitive, or other purpose.

10. Subject to paragraph 12 below, “Highly Confidential - Outside Counsel’s Eyes Only” and “Highly Confidential - Source Code” information may be disclosed by the receiving party only to the following individuals, provided that such individuals are informed of and have agreed in writing to the terms of this Protective Order prior to the disclosure to them of the “Highly Confidential - Outside Counsel’s Eyes Only” or “Highly Confidential - Source Code” information:

(a) outside counsel for the receiving party in this action; (b) supporting personnel employed by outside counsel (a), such as paralegals, legal secretaries, data entry clerks, legal clerks, private photocopying services; (c) experts or consultants and their necessary support staff; (d) any persons requested by counsel to furnish services such as document coding, image scanning, mock trial, jury profiling, translation services, court reporting services, demonstrative exhibit preparation, or the creation of any computer-database from documents; and (e) those individuals designated in paragraph 14.

11. Subject to paragraph 12 below, “Confidential” information may be disclosed by the receiving party only to the individuals identified in paragraph 10 and 15 and one corporate designee of each party. A corporate designee identified pursuant to this paragraph shall: 1) be informed of the terms of the Protective Order, as modified herein, prior to the disclosure of the “Confidential” information; and 2) sign the confidentiality agreement at Exhibit A of the Protective Order. Prior to the disclosure of “Confidential” information to any corporate designee, counsel for the receiving party shall serve the executed confidentiality agreement of the corporate designee on counsel for the producing party.

12. Further, prior to disclosing “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” information to a receiving party’s proposed expert or consultant, the receiving party shall disclose such person in writing to the producing party and provide to the producing party a signed Confidentiality Agreement in the form attached as Exhibit A. In the case of a proposed expert or consultant, the receiving party shall also provide to the producing party the resume or curriculum vitae of the proposed expert or consultant, the expert or consultant’s business affiliation, and any current and past consulting relationships in the industry. The producing party will thereafter have five (5) business days from receipt of the

Confidentiality Agreement to object to any proposed expert or consultant. The objection must be made for good cause and in writing, stating with particularity the reasons for the objection. Failure to object within five (5) business days constitutes approval. If the parties are unable to resolve any objection, the receiving party may apply to the presiding judge to resolve the matter. There will be no disclosure to any proposed expert or consultant during the five (5) business day objection period, unless that period is waived by the producing party, or if any objection is made, until the parties have resolved the objection, or the presiding judge has ruled upon any resultant motion.

13. Counsel is responsible for the adherence by third-party vendors to the terms and conditions of this Protective Order.

14. “Highly Confidential - Outside Counsel’s Eyes Only” or “Highly Confidential - Source Code” information may be disclosed to a person who is not already allowed access to such information under this Protective Order if:

- (a) the information was previously received or authored by the person or was authored or received by a director, officer, employee or agent of the company for which the person is testifying as a designee under Fed. R. Civ. P. 30(b)(6);
- (b) the designating party is the person or is a party for whom the person is a director, officer, employee, consultant or agent; or
- (c) counsel for the party designating the material agrees that the material may be disclosed to the person.

In the event of disclosure under this paragraph, only the person and persons to whom disclosure of “Highly Confidential - Outside Counsel’s Eyes Only” or “Highly Confidential - Source Code” information may be made under this Protective Order and who are bound by this Protective Order, may be present during the disclosure or discussion of “Highly Confidential - Outside Counsel’s

Eyes Only” or “Highly Confidential - Source Code” information. Disclosure of material pursuant to this paragraph does not constitute a waiver of the confidential status of the material so disclosed.

15. “Confidential” information may be disclosed to a person who is not already allowed access to such information under this Protective Order if:

- (a) the information was previously received or authored by the person or was authored or received by a director, officer, employee or agent of the company for which the person is testifying as a designee under Fed. R. Civ. P. 30(b)(6);
- (b) the designating party is the person or is a party for whom the person is a director, officer, employee, consultant or agent; or
- (c) counsel for the party designating the material agrees that the material may be disclosed to the person.

In the event of disclosure under this paragraph, only the person and persons to whom disclosure of “Confidential” information may be made under this Protective Order and who are bound by this Protective Order, may be present during the disclosure or discussion of “Confidential” information. Disclosure of material pursuant to this paragraph does not constitute a waiver of the confidential status of the material so disclosed.

16. If a receiving party learns that, by inadvertence or otherwise, it has disclosed information designated by a producing party as “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” to any person or in any circumstance not authorized under this Order to receive such information, the receiving party must, as soon as is practicable: (a) notify in writing the producing party of the unauthorized disclosure; (b) use its best efforts to retrieve all copies of the protected materials; and (c) inform the person or persons to whom unauthorized disclosures were made, to the extent the person or persons are

identifiable, of all the terms of this Order. To the extent any person not authorized under this Order to receive “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential” information receives, by inadvertence or otherwise, information designated by a producing party as “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” or “Confidential,” counsel is responsible for ensuring such person’s adherence to the terms and conditions of this Protective Order.

VI. SOURCE CODE

17. Any source code produced in discovery shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, between 8:00 am and 6:00 pm local time on business days or at other mutually agreeable times, at an office of the producing party’s counsel or another mutually agreed upon location. A party requesting access to inspect another party’s source code materials must provide notice to the producing party at least seven (7) days prior to the requested inspection. The parties agree to cooperate in good faith to make source code available for inspection outside of normal business hours or upon less than seven (7) days notice as necessary.

18. The source code shall be made available for inspection on a secured computer in a secured room without Internet access or network access to other computers. The producing party shall provide the receiving party with information explaining how to start, log on to, and operate the computer(s) in order to access the produced source code and shall produce the source code in computer searchable format. The producing party shall install reasonably available commercial tools that are sufficient for viewing and searching the code produced, on the platform produced, if such tools exist, are presently used in the ordinary course of the producing party’s business, and do not require payment of additional license fees. The receiving party may request that additional

software tools be installed on the computer to assist the receiving party's review of the source code. The receiving party shall be responsible for providing the tools or licenses to the tools that it wishes to use to the producing party at least seven (7) days prior to the first date on which access to the source code computer is sought so that the producing party may install such tools on the computer.

19. The receiving party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device. The receiving party shall be entitled to take notes (electronic or non-electronic) relating to the source code but may not copy the source code into such notes. To the extent the receiving party desires to take notes electronically, the producing party shall provide a note-taking computer (e.g., a computer, which is distinct from the standalone computer, that is not linked to any network, including a local area network, an intranet or the Internet, and has image making functionality of any type disabled, including but not limited to camera or video functionality) ("note-taking computer") with a current, widely used word processing program for the receiving party's use in taking such notes. The "note-taking computer" shall be used for the sole purpose of note-taking and shall be retained by the producing party. Such notes shall be transferred to a removable disk or drive provided by the producing party for the receiving party to retain, and the computer cleared of such notes. The note-taking computer shall have no features which would hinder the complete clearing of the receiving party's notes after such notes have been transferred. Any such notes shall not include copies or reproductions of portions of the source code; however, the notes may contain filenames, directory names, module names, class names, parameter names, variable names, function names, method names, or procedure names.

20. Using the software available on the source code computer, the receiving party shall create PDFs of the printed copies the receiving party is requesting and save them to a folder on the desktop of the source code computer named “Print Requests” with a subfolder identifying the date of the request. The PDFs file names must include identifying information including the file path and file name. Alternatively, the receiving party may identify the source code file paths and file names of the printed copies the receiving party is requesting. The producing party may monitor the activities of the receiving party’s representatives during any source code review, but only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

21. The receiving party may request paper copies of limited portions of source code (containing no more than 10 consecutive pages and no more than 300 pages of source code) that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other than electronically as set forth in paragraph 17 in the first instance. To the extent a receiving party believes it needs additional pages beyond these limits, and upon a showing of good cause by the receiving party, the parties will negotiate in good faith as to whether to allow printing of additional pages. Any request for printed source code material shall be served via an email request identifying the subfolders of the “Print Requests” folder that the receiving party is requesting or the source code file paths and file names of the printed copies the receiving party is requesting. Within three (3) business days of such request, the producing party shall provide one copy of all such source code material in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” If the request is served after 6:00 p.m. Pacific Time, it shall be deemed served the following business day. The producing party shall not print or

add markings, including watermarks, to the requested source code material in a manner that obscures or otherwise makes the printed source code material difficult to read.

22. The receiving party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form, including the name of each individual, the bates range(s) of source code materials provided to that individual, and the date on which the materials were provided to that individual. The receiving party shall maintain all paper copies of any printed portions of the source code in a secured, locked area. The receiving party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. The receiving party shall only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition shall be retrieved by the producing party at the end of each day and must not be given to or left with a court reporter or any other unauthorized individual.

VII. NON-PARTY INFORMATION

23. The existence of this Protective Order must be disclosed to any person producing documents, tangible things, or testimony in this action who may reasonably be expected to desire confidential treatment for such documents, tangible things or testimony. Any such person may designate documents, tangible things, or testimony confidential pursuant to this Protective Order.

VIII. FILING DOCUMENTS WITH THE COURT

24. If any party wishes to submit "Highly Confidential Outside - Counsel Eyes Only," "Highly Confidential - Source Code," or "Confidential" information to the Court, the submission must be filed under seal in conformance with the Court's rules and procedures. Materials filed

under seal must include a cover page bearing the title of this matter, an indication of the nature of the contents of such sealed filing, the words “HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL’S EYES ONLY SUBJECT TO PROTECTIVE ORDER,” “HIGHLY CONFIDENTIAL - SOURCE CODE SUBJECT TO PROTECTIVE ORDER,” or “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER,” as applicable.

Pursuant to the Court’s Policies and Procedures, except in emergency situations, a party may not file a document under seal (or redact necessary and/or substantive information) without first obtaining leave of the Court, which can be sought by filing a motion for leave to file under seal (as described below), and attaching (under seal) the materials the party wishes to file under seal. No party may file a document under seal without a contemporaneous motion to seal that meets the standards of *In re Avandia Marketing, Sales Practices & Products Liability Litigation*, 924 F.3d 662 (3d Cir. 2019). A party who seeks leave to file material under seal (the “Filing Party”) must do the following:

(a) Procedure for a filing with only the Filing Party’s own confidential material under seal. A Filing Party who seeks to file material under seal that only contains the Filing Party’s own confidential information must **(1)** contemporaneously file a motion for leave to file the material under seal supported by a declaration providing support for the motion and attaching as an exhibit, or as exhibits, the material the Filing Party wishes to file under seal, **(2)** file a public version of the filing, redacting any material the Filing Party is seeking leave to file under seal, **(3)** serve the other parties with any sealed attachments to the motion for leave to file under seal, and **(4)** within four days of receiving a ruling on the Filing Party’s motion for leave to file under seal, make the appropriate under seal or public filings based on the Court’s ruling on the motion for leave to file under seal.

(b) Procedure for a filing containing material designated by parties other than the Filing Party as Protected Material under this Order. A Filing Party who seeks to make a filing that contains material designated by another party (including third parties) as protected material under this Order must follow the procedures in this paragraph. If the filing is subject to a deadline, **(1)** file a joint stipulation (for which the Filing Party need not obtain prior approval from the Court) extending the deadline for the filing by 7 days (which extension will not affect any other deadlines, including the deadline to respond to the filing which will be calculated as though the filing were made on the date the joint stipulation is filed); and **(2)** on the original filing deadline, serve the other party with a full set of the filings (the content of which will not change between this point in time and their ultimate filing absent agreement of the parties), except that in the case of material designated as protected material by third parties, providing the third party only the material the Filing Party seeks to file under seal so designated by the third party.

If the filing is not subject to a deadline, the Filing Party shall comply with (2) above, and the date of service will be used to calculate subsequent deadlines such as the response deadline.

Regardless of whether the filing is subject to a deadline, **(3)** within 3 days of step (2) above, meet and confer in good faith with the party or parties who designated the material in question as protected material under this Order to identify any information that should be filed under seal; **(4)** within seven (7) days of step (2), file a joint motion for leave to file under seal the material the parties determine should be filed under seal, supported by a declaration providing support for the motion from each party seeking to file material under seal and attaching as an exhibit, or as exhibits, the material the parties are seeking to file under seal; **(5)** within seven (7) days of step (2), file a public version of the filing, redacting any material the parties are seeking leave to file under seal; and **(6)** within four days of receiving a ruling on the joint motion for leave to file under

seal, make the appropriate under seal or public filings based on the Court's ruling on the joint motion for leave to file under seal.

(c) Procedure for expedited filings. If the Filing Party's submission requires expedited treatment (for example for an urgent discovery motion), the parties will meet and confer in good faith and take all reasonable efforts to follow the procedures above in subsection (ii) except that the joint motion for leave to file under seal will be filed within three (3) days (or less if the circumstances require) of the Filing Party filing the joint stipulation.

In all instances in which a Filing Party is granted leave to file material under seal, redacted versions of sealed documents must be filed publicly unless the redactions would be so extensive as to render the document unreadable. The Filing Party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend "FILED UNDER SEAL PURSUANT TO COURT ORDER" on the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order.

IX. NO PREJUDICE

25. Producing or receiving "Highly Confidential - Outside Counsel's Eyes Only," "Highly Confidential - Source Code," or "Confidential" information or otherwise complying with the terms of this Protective Order, will not (a) operate as an admission by any party that any particular "Highly Confidential - Outside Counsel's Eyes Only," "Highly Confidential - Source Code," or "Confidential" information contains or reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice the rights of a party to object to the production of information or material that the party does not consider to be within the scope of discovery; (c) prejudice the rights of a party to seek a determination by the presiding judge that particular materials be produced; (d) prejudice the rights of a party to apply to the presiding judge

for further protective orders; or (e) prevent the parties from agreeing in writing to alter or waive the provisions or protections provided for in this Protective Order with respect to any particular information or material.

X. CONCLUSION OF LITIGATION

26. Within sixty (60) calendar days after final judgment in this action, including the exhaustion of all appeals, or within sixty (60) calendar days after dismissal pursuant to a settlement agreement, each party or other person subject to the terms of this Protective Order shall destroy or return to the producing party all materials and documents containing “Highly Confidential - Outside Counsel’s Eyes Only,” “Highly Confidential - Source Code,” and “Confidential” information, and certify to the producing party that this destruction or return has been done. However, outside counsel for any party is entitled to retain all court papers, trial transcripts, exhibits, and attorney work product, including containing information provided pursuant to this Protective Order, provided that any such materials are maintained and protected in accordance with the terms of this Protective Order.

XI. OTHER PROCEEDINGS

27. By entering this Protective Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party’s information designated “Confidential,” “Highly Confidential - Source Code,” or “Highly Confidential - Outside Counsel’s Eyes Only” pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

XII. REMEDIES

28. Any party may petition the presiding judge for good cause shown if the party desires relief from a term or condition of this Protective Order.

XIII. NO WAIVER

29. Nothing in this Protective Order shall prejudice the right of either party to object to the production of any document or part thereof upon any appropriate ground, including any applicable privilege, and nothing herein shall be construed as a waiver of such rights. Moreover, nothing in this Protective Order shall prejudice the right of either party to object to the admissibility at trial of any information or other evidentiary material on any appropriate ground, and nothing herein shall be construed as a waiver of such right.

30. Entering into, agreeing to, and/or complying with the terms of this Protective Order shall not: (i) operate as an admission by any party that any particular information contains or reflects currently valuable trade secrets or protected proprietary or commercial information; or (ii) operate as an admission by any party that any particular information is, or is not, relevant to this action.

XIV. PARTIES' OWN INFORMATION

31. Nothing in this Protective Order shall limit a producing party's use of its own documents, things, or information unless otherwise ordered by the Court. Nor shall anything in this Protective Order prevent a producing party from disclosing its "Highly Confidential - Outside Counsel's Eyes Only," "Highly Confidential - Source Code," or "Confidential" information to any person. Such disclosures shall not affect any designation of such documents as "Highly Confidential - Outside Counsel's Eyes Only," "Highly Confidential - Source Code," or

“Confidential” information pursuant to the terms of this Protective Order so long as the disclosure is made in a manner reasonably calculated to maintain the confidentiality of the information.

XV. PROSECUTION BAR

32. To the extent material designated as “Highly Confidential - Outside Counsel’s Eyes Only” or “Highly Confidential - Source Code” includes information relating to the design or functionality of a party’s current or future augmented or virtual reality products, mobile videogame products, mobile application software, mobile gaming products, video gaming products, computer vision products, and/or location-centric products, the following additional restrictions apply unless the producing and receiving parties agree otherwise in writing:

Any attorney and any other person who receives, obtains, or becomes informed about, in whole or in part, the substance of another party’s material designated “Highly Confidential - Outside Counsel’s Eyes Only” or “Highly Confidential - Source Code” pursuant to this order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patents or patent applications relating to augmented or virtual reality products, mobile videogame products, or mobile application software, including without limitation the patents asserted in this action and any application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office. For purposes of this provision, “prosecution” means involvement in or advising regarding drafting or amending patent claims. For the avoidance of doubt, this provision does not preclude an attorney or patent agent from representing a party either challenging or defending a patent before a domestic or foreign agency, including but not limited to reissue, reexamination, *inter partes* review, or other post grant administrative proceedings, but this provision would preclude such attorney or

patent agent from drafting or advising directly or indirectly on any amendment to a claim of the patent being challenged in such proceedings.

33. This Prosecution Bar shall begin when access to another party's material is first received by the affected individual and shall end two years after final termination of this action, including any appeals. Notwithstanding the immediately preceding sentence, in the event outside counsel who reviewed designated material withdraws from representation, this Prosecution Bar shall end for that outside counsel two years after final termination of this action, including any appeals, or two years after the date of withdrawal, whichever comes first. To ensure compliance with the purpose of this provision, each party shall create an "Ethical Wall" between those persons with access to designated materials and any individuals who prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application relating to augmented or virtual reality products.

Dated: June 3, 2025

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IT IS SO ORDERED.

Signed this 4th day of June, 2025.

/s/ Joshua D. Wolson

UNITED STATES DISTRICT JUDGE

EXHIBIT A

CORPORATE DESIGNEE, EXPERT WITNESS, AND CONSULTANT
ADHERENCE TO PROTECTIVE ORDER

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) entered in the following case: *ImagineAR, Inc. and Imagine AR, Inc. v. Niantic, Inc.*, C.A. No. 24-1252-JLH (D. Del.). Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: _____

Present occupation/job description:

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]