IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PERCEPTIVE AUTOMATA, LLC,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 2:25-cv-742-JRG
	)	
TESLA, INC.,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	
	)	

JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER
WITH ONE DISPUTED PROVISION

Plaintiff Perceptive Automata LLC ("Perceptive") and Defendant Tesla, Inc. ("Tesla") file this joint motion for entry of the protective order attached as Exhibit 1. The parties disagree on one issue that concerns the use of AI and is found in Section 27 of Exhibit 1.

Perceptive's proposed version of Section 27 is:

> Neither the Receiving Party nor the Producing Party may upload to, share with, or otherwise use DESIGNATED MATERIAL on any generative artificial intelligence (GenAI) or large language model (LLM) tools or platforms including any third-party, public or internal tools unless such tools keep such data private and do not use it for training purposes.

Tesla's proposed version of Section 27 is:

> The Receiving Party may not upload to, share with, or otherwise use DESIGNATED MATERIAL of the Producing Party on any generative artificial intelligence (GenAI) or large language model (LLM) tools or platforms including any third-party, public or internal tools unless the Producing Party, in its sole discretion, approves the use of such tool.

The Parties' positions on this disputed provision are set forth below.

A. Perceptive's Position

Any restrictions on the use of AI tools should apply equally to both parties. A blanket prohibition on AI is unnecessarily restrictive, particularly because many modern software tools,

such as Adobe Acrobat, now characterize themselves as "Generative AI." *See* https://helpx.adobe.com/creative-cloud/apps/generative-ai/generative-ai-overview.html. Plaintiff seeks to avoid a situation in which merely viewing a PDF could be construed as violating the Protective Order. For that reason, the critical inquiry should not be whether software uses AI, but whether the tool provides adequate control over, and protection of, uploaded data. The proposed requirement that such tools keep data private and refrain from using it for training ensures that only the parties may access or use DESIGNATED MATERIAL.

These protections also reflect the reality that secure generative AI and LLM tools are acceptable and necessary in modern legal practice—indeed, opposing counsel publicly touts its use of such tools. *See* https://prezi.com/p/echuo_ehzn2d/baker-botts-ai-capabilities/. The fact that Defendant wishes to use its own DESIGNATED MATERIAL with these tools confirms that the tools do not pose an inherent risk in and of themselves. Defendant's proposal, however, would impose a one-sided restriction under which it may use AI, but Plaintiff may not. Put simply, if a tool is secure enough for Defendant to use, it is secure enough for Plaintiff to use.

Plaintiff requests that the Court direct the parties to file the protective order of Exhibit 1 with Plaintiff's proposed version of Section 27.

B. Tesla's Position

Both parties agree that there should be a prohibition on the use of AI tools that employ generative artificial intelligence (GenAI) or large language models (LLMs) ("advanced AI tools") on discovery material that is protected under the Protective Order. The parties differ, however, on (a) how a party may use its own data and (b) the exceptions to the prohibition on the use of advanced AI tools. Perceptive's proposal is flawed for at least two reasons.

First, Perceptive's proposal restricts how a party handles *its own documents*. Under Perceptive's proposal, neither Perceptive nor Tesla could use an advanced AI tool on any material

protected under the PO, regardless of where the data originated. Stated another way, Perceptive's proposal would prevent Tesla from using its *own* information in a way that it deems appropriate, including in accordance with its own corporate rules and policies. Thus, Perceptive's proposal would have the illogical effect of potentially preventing *Tesla* (including Tesla's engineering and business teams) from using advanced AI tools *on Tesla's own data for any litigation or non-litigation purpose*.

This goes too far, and the Protective Order should not interfere with either party's use of its own data. Each party should remain free to use its own data for any legal purpose and in accordance with that party's own rules and policies. If Tesla wants to use an advanced AI tool with respect to Tesla's data — and be able to do so with the protections and safeguards that Tesla deems appropriate for its own data — then Tesla should have that freedom. It is, after all, Tesla's data, and each party should have the freedom to use and control its own data. Perceptive's proposal would set up the unworkable situation in which Tesla can use AI tools with its own data today (including as part of its general business functions outside of litigation), but could no longer potentially do so after the data is produced in this lawsuit and designated under the Protective Order.

Second, under Perceptive's proposal, Perceptive could load Tesla's data into an advanced AI tool so long as "such tools keep such data private and do not use it for training purposes." This broad exception is untenable and raises significant risks to Tesla's confidential data. Once Tesla's data is uploaded to an advanced AI tool, the control of that data rests solely in the advanced AI tool. The owner of that advanced AI tool is not an officer of the Court, and Tesla has no way of determining if the advanced AI tools used by Perceptive will actually "keep such data private" and not use Tesla's data to train the advanced AI tool. Moreover, the precise meaning and limits of

these "safe harbors" is unclear, particularly in the context of the fast-changing, fallible, and nascent state of AI tools.

Moreover, the identity (and owner) of the advanced AI tools that Perceptive may employ is unknown and may be kept secret from Tesla. There is no mechanism for ensuring that Tesla's data is deleted at the conclusion of the lawsuit. There is no mechanism in Perceptive's proposal for ensuring that the advanced AI tool will not mix Tesla's data with the data from other third parties. There is no mechanism in Perceptive's proposal for ensuring that the advanced AI tool does not store the data offshore or in a location where the data could be hacked or compromised by a third party. Taken together, Perceptive's proposal would permit an AI company to possess and use Tesla's confidential data for a long (if not indefinite) period of time, with no controls over how or where the data is stored. If the advanced AI tool does in fact disclose the data in some fashion or does train itself with Tesla's data, that damage cannot be easily undone (if it all), and Tesla's proprietary data could be irreparably compromised. Neither party should have to subject its sensitive data to such risks.

The risks here are not merely speculative on Tesla's part. Mistakes involving AI in the legal community are so common that they border on cliché. Advanced AI tools are in their infancy, with new issues and risks coming to light continuously. Because the AI landscape is changing almost daily, there is no industry standard to provide confidence in how advanced AI tools may be handling data. Moreover, considering that non-AI discovery platforms have already been the subject of third party intrusion and data theft (*See* https://www.lawnext.com/2023/06/e-discovery-company-casepoint-investigates-data-breach-after-files-found-on-dark-web.html), newly developed advanced AI tools may carry a greater risk of breach.

Tesla's proposal is workable and fair to both sides. A party can use its own data for any legal purpose, and a Receiving Party may use an AI tool on the produced data if the Producing Party approves the use of the tool. Requiring approval in advance is fair because the Producing Party should be given a chance to vet any AI platform before its data is ingested. The only downside for the Receiving Party is that it could not use an unknown, unspecified, and unvetted AI tool on the Producing Party's confidential information, without the approval of the Producing Party. The Receiving Party will be no worse off; with respect to the Producing Party's confidential data, the Receiving Party would operate in the pre-AI environment that was common for all practitioners for decades. Tesla respectfully submits that this is a fair and reasonable restriction in that neither party should take such liberties with the other party's data.

Tesla respectfully asks that the Court issue an order directing the parties to file the protective order of Exhibit 1 with Tesla's proposed version of Section 27.

Dated: November 20, 2025

Respectfully submitted,

By: */s/ Patrick J. Conroy (w/permission)*
Patrick J. Conroy
Texas Bar No. 24012448
Jonathan H. Rastegar
Texas Bar No. 24064043
Nelson Bumgardner Conroy PC
2727 N. Harwood Street, Suite 250
Dallas, TX 75201
Tel: (214) 446-4950
pat@nelbum.com
jon@nelbum.com

John P. Murphy
Texas Bar No. 24056024
Janson H. Westmoreland
Texas Bar No. 24131755
Nelson Bumgardner Conroy PC
3131 W 7th Street, Suite 300
Fort Worth, TX 76107
Tel: (817) 377-9111
murphy@nelbum.com
janson@nelbum.com

Timothy E. Grochocinski
Illinois Bar No. 6295055
Taryn N. Trusty
Illinois Bar No. 6344409
C. Austin Ginnings
Illinois Bar No. 6343678
Nelson Bumgardner Conroy PC
745 McClintock Drive, Suite 340
Burr Ridge, Illinois 60527
Tel: (708) 675-1974
tim@nelbum.com
taryn@nelbum.com
austin@nelbum.com

By: */s/ Roger Fulghum*
Roger Fulghum
Lead Attorney
Texas State Bar No. 00790724
BAKER BOTTS L.L.P.
910 Louisiana St
Houston, TX 77002
Telephone: 713-229-1707
Facsimile: 713-229-2707
Email: roger.fulghum@bakerbotts.com

Mark Speegle
Texas State Bar No. 24117198
BAKER BOTTS L.L.P.
401 South First Street, Suite 1300
Austin, Texas 78704
Telephone: 512-322-2536
Facsimile: 512-322-3636
Email: mark.speegle@bakerbotts.com

Helen Trac
California Bar No. 285824
Tesla, Inc.
1501 Page Mill, Building 6
Palo Alto, CA 94304
Telephone: 628-218-1429
Email: htrac@tesla.com

Ashraf Fawzy
DC Bar No. 989132
Telephone: (202) 905-9221
Email: afawzy@tesla.com
Paul Margulies
DC Bar No. 1000297
Telephone: (202) 695-5388
Email: pmargulies@tesla.com
Tesla, Inc.
800 Connecticut Ave. NW
Washington, DC 20006

Counsel for Tesla, Inc.

Andrea L. Fair
Texas Bar No. 24078488
MILLER FAIR HENRY PLLC
1507 Bill Owens Parkway
Longview, Texas 75604
Telephone: 903-757-6400
Facsimile: 903-757-2323
andrea@millerfairhenry.com

Counsel for Perceptive Automata LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on November 20, 2025.

/s/ Roger Fulghum
Roger Fulghum