IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAILWARE, INC., Plaintiff, v. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, Defendant.	C.A. No. 2:24-cv-02963-JMY

DEFENDANT SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY'S INITIAL DISCLOSURES

Defendant Southeastern Pennsylvania Transportation Authority ("SEPTA"), hereby makes the following initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A).

By making these disclosures, SEPTA does not waive any applicable privilege or immunity or any evidentiary objection that may apply to the information disclosed. SEPTA's investigations are continuing and SEPTA reserves the right to amend or modify these disclosures, pursuant to Federal Rule of Civil Procedure 26(e), based on additional information obtained through continued discovery or other means. SEPTA further reserves the right to object to the production of documents and things from the categories identified or the obtaining of testimony from the witnesses identified on any applicable basis.

Fed. R. Civ. P. 26(a)(1)

(A)(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

At this time and based on the current status of the record, SEPTA states that the following individuals may have information relevant to the claims or defenses of either party. SEPTA reserves the right to supplement this response at a later date.

Individuals Associated with SEPTA

The following individuals are current or former employees of SEPTA and should be contacted through undersigned outside counsel for SEPTA at Duane Morris LLP:

1. **Timothy Shirk** (Director, Communications and Signal Engineering). Mr. Shirk is an employee of SEPTA located in or around Philadelphia, Pennsylvania and should be contacted through SEPTA's undersigned counsel. *Subjects of knowledge*: Procurement, development, and implementation history of SEPTA's Work Zone Block Functionality and Secure Blocking Grant work zone block project; technical operation of SEPTA's Work Zone Block Functionality and Secure Blocking Grant work zone block project; potential technological alternatives to Work Zone Block functionality; SEPTA's communications and signal engineering operations.

2. **David Montvydas** (Chief Engineer, Maintenance of Way Department). Mr. Montvydas is an employee of SEPTA located in or around Philadelphia, Pennsylvania and should be contacted through SEPTA's undersigned counsel. *Subjects of knowledge*: Communication in the 2016-2017 timeframe with Barbara Pirtle and/or Ross Pirtle.

3. **John Frisoli** (Chief Engineer, Communications and Signals). Mr. Frisoli is an employee of SEPTA located in or around Philadelphia, Pennsylvania and should be contacted through SEPTA's undersigned counsel. *Subjects of knowledge:* Procurement, development, and implementation history of SEPTA's Secure Blocking Grant work zone block project; technical operation of SEPTA's Secure Blocking Grant work zone block project; potential technological alternatives to Work Zone Block functionality; SEPTA's communications and signals operations.

4. **Michael Monastero.** Michael Monastero is a former employee of SEPTA and should be contacted through SEPTA's undersigned counsel. *Subjects of knowledge*: Procurement, development, and implementation history of SEPTA's Work Zone Block Functionality; SEPTA's relationships with vendors on the Work Zone Block Functionality project; communication in the 2016-2017 timeframe with Barbara Pirtle and/or Ross Pirtle.

Individuals Associated with Railware

The following individuals are believed to be affiliated with Plaintiff Railware:

5. **Ross Pirtle**. Current address unknown. Railware purports to be owned by Ross Pirtle. Ross Pirtle is also the sole named inventor on each asserted patent. *Subjects of knowledge*: U.S. Patent No. 9,571,782; U.S. Reissue Patent Nos. RE47,835; and RE49,115 (the "Asserted Patents") and U.S. Patent No. 9,403,545 (the "'545 Patent"); conception, reduction to practice, and inventorship of the Asserted Patents and the '545 Patent; prosecution of the Asserted Patents and '545 Patent; prior art and the state of the art with respect to the alleged invention of the Asserted Patents; any embodiments of the alleged invention, including the disclosure, sale, and offer for sale of such embodiments

and the technical operation and functionality of such embodiments, including the Enhanced Employee Protection System; Railware's corporate history; Railware's and his business relationship with Metro-North Commuter Railroad Company ("Metro-North Railroad"), including with respect to Metro-North Railroad's Enhanced Employee Protection System project; persons with an investment or financial interest in the Asserted Patents or in the outcome of this litigation; assignment and ownership of the alleged inventions of the Asserted Patents; licensing of the Asserted Patents.

6. **Barbara Pirtle.** Current address unknown. Based on emails between Barbara Pirtle and SEPTA employees, SEPTA believes Ms. Pirtle was the Vice President of Administration for Railware. *Subjects of knowledge*: Communication in the 2016-2017 timeframe with David Montvydas and/or Michael Monastero; Railware's business history; licensing of the Asserted Patents.

Third Parties

The following individuals or entities are currently believed to be third parties to this action:

7. **Representative(s) of Cooper & Dunham LLP**. The address in the prosecution file histories of the Asserted Patents is 30 Rockefeller Plaza, 20th Floor, New York, New York 10112. The Cooper & Dunham LLP firm was involved in the prosecution of the Asserted Patents and the '545 Patent. *Subjects of knowledge*: Prosecution of the Asserted Patents and the '545 Patent; prior art and the state of the art with respect to the alleged invention of the Asserted Patents and the '545 Patent; any embodiments of the alleged invention, including the public disclosure, sale, and offer for sale of such embodiments and the technical operation and functionality of such

embodiments; assignment and ownership of the alleged inventions of the Asserted Patents.

8. **Paul Teng**. Current address unknown. Paul Teng was involved in the prosecution of the Asserted Patents and the '545 Patent. *Subjects of knowledge*: Prosecution of the Asserted Patents and the '545 Patent; prior art and the state of the art with respect to the alleged invention of the Asserted Patents and the '545 Patent; any embodiments of the alleged invention, including the public disclosure, sale, and offer for sale of such embodiments and the technical operation and functionality of such embodiments; assignment and ownership of the alleged invention of the Asserted Patents.

9. **Representative of ARINC, Inc.** ARINC, Inc. is currently believed located at 2551 Riva Road, Annapolis, MD 21401. *Subjects of knowledge:* Procurement, development, and implementation history of SEPTA's Work Zone Block Functionality project; technical operation of SEPTA's Work Zone Block Functionality project.

10. **Representative of Semotus Inc. d/b/a Hiplink Software ("Hiplink Software")**. Based on public information, Hiplink Software is located at 20 S. Santa Cruz Avenue Suite 300, Los Gatos, CA 95030. *Subjects of knowledge:* The technical operation and functionality of SEPTA' Hiplink messaging system, including in connection with SEPTA's Work Zone Block Functionality project.

11. **Al Santini.** Current Address Unknown. Al Santini is believed to be a former employee of MTA Metro-North Railroad. *Subjects of knowledge*: Development and implementation history of MTA Metro-North Railroad's Enhanced Employee Protection System.

12. **Representative(s) Metro-North Railroad**: Based on public information, Metro-North Railroad is located at 333 W 34th St. Fl. 9, New York, NY 10001. *Subjects of knowledge*: Development and implementation history of MTA Metro-North Railroad's Enhanced Employee Protection System; Ross Pirtle's employment, contractor, or other business relationship with Metro-North Railroad, in particular in connection with Metro-North's Enhanced Employee Protection System project; any licenses, covenants not to sue, or other agreements relating to the Asserted Patents including any negotiation history related to the agreements.

13. **Representative(s) of National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak"):** Based on public information, Amtrak is located at 1 Massachusetts Ave., NW Washington, DC 20001. *Subjects of knowledge*: Any licenses, covenants not to sue, or other agreements relating to the Asserted Patents including any negation history related to the agreements.

14. **Representative(s) of MTA Long Island Railroad**: Based on public information, MTA Long Island Railroad is located at 333 W 34th St. Fl. 9, New York, NY 10001. *Subjects of knowledge*: any licenses, covenants not to sue, or other agreements relating to the Asserted Patents including any negation history related to the agreements.

15. Those individuals identified in Railware's initial disclosures in this case.

16. Currently unspecified authors, inventors, and other developers of prior art, or persons who are believed to have knowledge regarding art that may be relevant to the invalidity or unenforceability of the Asserted Patents. SEPTA's investigation is ongoing.

17. Currently unidentified custodians of pertinent records who may have knowledge regarding the authenticity and/or admissibility of documents, including without limitation prior art. SEPTA's investigation is ongoing.

(A)(ii) A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

SEPTA identifies the following documents that may be relevant to the claims or defenses in this action. SEPTA's investigation is ongoing and SEPTA reserves the right to supplement this response at a later date.

The following is a description of the categories of documents and electronically stored information that are in the possession, custody, or control of SEPTA, which it may use to support its defenses in this case. These documents and electronically stored information will be made available through SEPTA's counsel.

1. Documents relating to the operation and functionality of Work Zone Block Functionality and SEPTA's Secure Blocking Grant work zone project;

2. Documents relating to the procurement, development, and implementation history of SEPTA's Work Zone Block Functionality and SEPTA's Secure Blocking Grant work zone project;

3. SEPTA's communications with Railware, including the communications between SEPTA and Barbara Pirtle and Ross Pirtle in December 2016 through February 2017;

4. Communications from Michael Monastero relating to Al Santini's involvement in the creation of the Enhanced Employee Protection System.

5. Documents relating to the SEPTA's worker-safety-related operations.

6. Prior art and potential prior art to the alleged inventions of the Asserted Patents.

Information on SEPTA's Electronically Stored Information

Before August 2020, SEPTA stored email on an on premise Microsoft Exchange server. Each employee had a separate Microsoft Exchange mailbox and an additional Microsoft Exchange mailbox, known internally as a "Journal Archive," was kept to preserve a copy of all emails sent and received. Other types of electronically stored information ("ESI") were similarly stored on premise, in a file share system. In August 2020, SEPTA suffered a malware attack. After the attack, SEPTA transitioned to Microsoft 365, a cloud-based file storage system, for storage and access to ESI. Each employee with a Microsoft 365 account is given a Microsoft Online Exchange mailbox for storing email and a OneDrive for storing personal working documents. During the transition to Microsoft 365, Employees' previous on-site Microsoft Exchange mailboxes were cleared. The Journal Archive mailbox was split chronologically and migrated into several Microsoft Online Exchange mailboxes. On the Microsoft 365 system, each division and department is given a SharePoint to store ESI shared among a particular group of employees. The ESI files previously stored on the on-premise file share system were migrated into the Microsoft 365 system. During the migration, several ESI files, including emails transferred from the Journal Archive, were discovered to be corrupted by the malware attack and were purged from the system.

SEPTA also has a document retention policy which governs the destruction of documents, including ESI. Pursuant to the policy, all messages in a Microsoft Online Exchange mailbox are deleted if older than eight years. The only emails existing on

SEPTA's Microsoft 365 system eight years old or older are those manually saved separately by an employee on a OneDrive or SharePoint. The policy also has specific dates to destroy documents based on content. The policy requires this content-based destruction to be carried out by the document's custodian. SEPTA suspended this routine email and ESI destruction upon the commencement of this lawsuit.

(A)(iii) A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

SEPTA currently does not seek any damages in this action, but reserves the right to recover its attorneys' fees and costs incurred in this matter to the extent allowed by applicable law, including without limitation 35 U.S.C. § 285.

(A)(iv) For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

SEPTA continues to investigate whether one or more of its software system vendors, including ARINC, may have an indemnity obligation to SEPTA. SEPTA has produced its procurement file for the Work Zone Block Functionality project carried out under SEPTA Purchase Order No. S817624 under bates numbers SEPTA_0000001 — SEPTA_0000312. This includes a copy of an August 6, 2015 transmittal from SEPTA to ARINC of an amended purchase order in connection with Contract Amendment No. 2 (SEPTA_0000156 — SEPTA_0000161), which purchase order includes, as part of SEPTA's Terms and Conditions of Purchase, a warranty in paragraph 6 stating *inter alia:* "Seller expressly warrants that the goods and/or work purchased hereunder, and the production, sale and use, thereof, do not and will not infringe any third party patent

rights. Seller shall, at its own expense, defend any suit that may arise in respect thereto, provided Seller is notified thereof, and Seller shall indemnify and hold harmless SEPTA, its successors and assigns, its officers, agents, servants, and employees, and the customers of any of them, from all loss, damages, costs, and expenses (including attorney's fees) which may be incurred on account of the assertion of any patent rights by any person." *Id.* at SEPTA_0000161.

Dated: September 12, 2024

/s/ Aleksander J. Goranin

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