

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

INSTALLATION SOFTWARE TECHNOLOGIES,	)	
INC. d/b/a INSTALLSHIELD SOFTWARE	)	
CORPORATION,	)	
	)	
Plaintiff,	)	No. 03 C 4502
	)	
v.	)	Judge Coar
	)	
WISE SOLUTIONS, INC.,	)	Magistrate Judge Denlow
	)	
Defendant.	)	

**PROTECTIVE ORDER**

WHEREAS, the parties, plaintiff, INSTALLATION SOFTWARE TECHNOLOGIES, INC., d/b/a INSTALLSHIELD SOFTWARE CORPORATION (“InstallShield”), and defendant, WISE SOLUTIONS, INC. (“Wise”), are engaged in litigation requiring them to identify and disclose certain documents and other tangible items; and,

WHEREAS, in the course of such proceedings, information, documentation, and other tangible items that one or more parties consider to be confidential, proprietary and/or trade secrets will be produced;

IT IS HEREBY ORDERED THAT:

1. Each party to this action and anyone else who may subsequently subscribe to this Protective Order shall abide by the following provisions regarding certain documentation and information disclosed by the parties in connection with this litigation.

2. It is anticipated that some information or documentation disclosed in the course of this action that has not been publicly disclosed by either party and that falls within the following categories may be confidential and proprietary or constitute a trade secret(s):

(a) Confidential Sales and/or marketing plans;

- (b) Customer mailing lists;
- (c) Documents containing confidential information about either party's customers, including, without limitation, documents identifying contact personnel within customer organizations, documents containing or reflecting customer purchase history, and documents containing or reflecting customer orders;
- (d) Documents containing confidential financial information about either party's business, including, without limitation, ledgers, balance sheets, income statements, and reports from financial/accounting software;
- (e) Documents containing confidential information about either party's computer and software systems used in the ordinary course of its business;
- (f) Documents containing confidential information about either party's employees, including, without limitation, personnel records and records relating to compensation;
- (g) Documents containing confidential information about either party's existing software products and/or software products under development; and
- (h) Documents containing confidential information about either party's research and development activities.

Any party that discloses information or documentation that falls within one or more of the categories of documentation set forth above and that the party reasonably believes to be confidential, proprietary, and/or a trade secret(s) may, at the time of disclosure or production, designate such information or documentation as "Confidential" and the information or documentation so designated shall thereafter be subject to the provisions of this Protective Order. In the case of documents, each page that is to be protected under this Protective Order shall be

separately marked "Confidential." In the case of email messages produced electronically via CD-ROM, the CD must be marked "Confidential," while the individual pages are not.

3. It is anticipated that either a party to this action or a third party in response to a subpoena may disclose some information or documentation in the course of this action that a third party or a receiving party reasonably believes reflects or contains information that is proprietary or confidential or that constitutes a trade secret(s) and falls within the categories of documentation set forth in Paragraph No. 2 herein, but which has not been designated as "Confidential" pursuant to that paragraph by the disclosing party. Any party to this action, or the third party, that receives such information or documentation that it reasonably believes to be of the type so recognized, prior to the use of such information or documentation in any deposition or other proceeding in this action, designate such information or documentation as "Confidential" by notifying all other parties in writing and identifying with particularity the information and documentation so designated. The information or documentation so designated shall thereafter be subject to the provisions of this Protective Order. In the case of documents designated as "Confidential" pursuant to this Paragraph,

- (a) it shall be sufficient to state the range of bates numbers corresponding to pages of the designated document; and
- (b) each page that is to be protected under this Protective Order shall be separately marked "Confidential" prior to the document being disclosed to any person other than those enumerated in Paragraph No. 4 herein.

Documentation or information designated as "Confidential" pursuant to this Paragraph that has been received from a third-party shall be subject to this Protective Order for all purposes.

4. Any information or documentation designated as "Confidential" pursuant to Paragraph Nos. 2 and 3 of this Protective Order shall not be disclosed to any person other than:

- (a) Employees of InstallShield actively involved in this litigation;

- (b) Employees of Wise actively involved in this litigation;
- (c) The parties' attorneys of record;
- (d) A member of the legal, paralegal, secretarial, or clerical staff of the attorneys of record;
- (e) Any testifying or non-testifying expert witnesses retained by plaintiff or defendants;
- (f) Any court reporter and/or notary public recording or transcribing a deposition in this case; and/or
- (g) Subject to the requirements of Paragraph No. 8 herein, any third-party witness whom the plaintiff or the defendants reasonably believes possesses information relevant to the subject matter of the plaintiff's claims and/or defendants' defenses in this litigation, with the exception of any party employed by or otherwise affiliated with InstallShield or Wise, with the exception of those parties designated in subpart (a), (b) and (c) of this Paragraph.

5. Any documents, materials, or other information designated as "Confidential" shall be maintained under strict confidence by the parties and their counsel and shall be used only for purposes of this litigation and shall be disclosed only to the individuals identified in Paragraph No. 4 above except upon the prior written consent of the party or persons producing the information or by order of Court. Each may seek further protective orders or to modify this Protective Order by application to the Court in connection with any documents or information contained therein.

6. A party shall designate materials as "Confidential" if the party in good faith believes that such a designation is necessary to prevent the party from incurring serious economic or competitive harm or injury and should not be disclosed to other parties under any

circumstances. Documentation or information that may be designated is limited only to the categories of documentation set forth in Paragraph No. 2 herein. Any party or any third party seeking to designate documentation or information that does not fall within these categories must seek leave of Court to do so or must seek modification of this Protective Order.

7. While protected by this Protective Order, any information or documentation designated as "Confidential" as provided in this Protective Order may be used in the depositions of those afforded access to these documents in accordance with this Protective Agreement with instructions to the court reporter that those portions of the depositions relating to "Confidential" information, as well as "Confidential" documents made exhibits, shall not be disclosed to any person other than those persons afforded access to these documents or information in accordance with this Protective Order, unless otherwise ordered by this Court. Information disclosed at any deposition in this litigation also may be designated by any party as "Confidential" by indicating on the record at the deposition that the specified part of the testimony is "Confidential" and subject to the provisions of this Protective Order. Any party may also designate "Confidential" information in a deposition transcript by notifying all parties in writing, within thirty (30) days after receipt of the deposition transcript by the attorneys for the designating party, of the specific pages and lines of the transcript that contain such confidential information. All depositions shall be treated as though designated "Confidential" for a period of forty-five (45) days after a full and complete transcript of said deposition is available.

8. Third-party witnesses to whom "Confidential" materials are to be disclosed shall be designated and identified in writing to the other party or parties prior to the disclosure of any "Confidential" materials to any such third-party witness. Prior to the disclosure of any "Confidential" materials to any third-party witness, the third-party witness shall acknowledge, in writing and in the form the same as Exhibit A attached hereto, that he or she has read this Protective Order and agrees to be bound by its terms. The number of such third-party witnesses

and the “Confidential” materials they are permitted to inspect shall be strictly limited to those necessary to assist counsel in the conduct of this litigation, and each such third-party witness shall agree to comply with the terms of this Protective Order before being given access to any “Confidential” materials.

9. Prior to any deposition of any third-party witness taken in this action, the noticing party shall provide the deponent with a copy of this Protective Order and shall request that the deponent acknowledge, in writing and in the form precisely the same as Exhibit A hereto, that he or she has read this Protective Order and agrees to be bound by its terms (unless the third party previously signed Exhibit A). A copy of said written acknowledgment shall be attached as an exhibit to each and every copy of the deposition transcript of the third party witness's deposition. If, prior to any deposition of any third party witness taken in this action, the deponent refuses to be bound by the terms of this Protective Order, the parties, outside the presence of the deponent or any other third party not bound by the terms of this Protective Order, and prior to the commencement of the deposition, may reach an agreement that information or documentation proposed to be revealed to said deponent that is subject to this Protective Order may be disclosed to the deponent without waiving the applicability of this Protective Order to such information or documentation for all other purposes. Under such circumstances, the information or documentation as may be disclosed to the deponent shall remain subject to this Protective Order for all other purposes. If the parties are unable to reach such an agreement, the deposition shall be suspended pending resolution of the problem by the Court.

10. Nothing in this Protective Order shall be deemed to prohibit the transmission or communication of information designated as “Confidential” between or among those afforded access to it pursuant to this Protective Order by hand delivery, face-to-face conference, or (a) in sealed envelopes or containers via the mail or an established freight, delivery, or messenger

service, or (b) by facsimile or electronic mail (if, under the circumstances, there is no reasonable likelihood that the transmission will be intercepted or misused).

11. Information designated as "Confidential" shall not be copied or otherwise reproduced by the non-designating party, except for transmissions to persons permitted access to such information under Paragraph No. 4, without the written permission of the designating party. Nothing herein shall, however, restrict those identified in Paragraph No. 4 from making working copies, abstracts, indices, numerous summaries or digests of information designated as "Confidential" for use in connection with this action, and such working copies, abstracts, indices, numerous summaries and digests shall be deemed information designated as "Confidential" under the terms of this Protective Order.

12. Upon conclusion of all proceedings in this action whether by judgment, settlement or otherwise, including any appeals, counsel for the parties shall return all documents or other materials produced and designated "Confidential" to the producing party, in whatever forms stored or reproduced, all working copies thereof, accompanied by a written verification precisely in the form attached hereto as "Exhibit B," that all such documents and materials have been returned to counsel for the producing party. Any attorney designated in Paragraph No. 4 herein shall be entitled to retain, in whatever forms stored or reproduced, all the materials, including but not limited to, pleadings, correspondence, memoranda, notes, and other work product materials that contain or refer to information designated "Confidential" and such materials shall remain protected by this Protective Order.

13. The restrictions and obligations relating to information or documentation designated "Confidential" and protected by this Protective Order shall not apply to any such information or documentation that:

- (a) the designating party agrees shall no longer be subject to such restrictions and obligations;
- (b) was in the public domain at the time of disclosure by one party to any other party; and/or
- (c) is published or otherwise becomes part of the public domain, after the disclosure to or by the non-designating party and through no fault of the non-designating party, but only after and to the extent said information is published or otherwise becomes part of the public domain through no fault of the non-designating party.

14. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as “Confidential” or the designation of any person as being entitled to receive materials under this Protective Order, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved within seven (7) days of first notice of disagreement, the party objecting to the designation may seek appropriate relief from the Court. This Order shall be without prejudice to any party to bring before the Court at any time the question of whether any particular information is or is not, in fact, “Confidential” and deserving of protection pursuant to this Protective Agreement or otherwise. A party shall not be obligated to challenge the propriety of a designation as “Confidential” materials at the time made, and failure to do so shall not preclude a subsequent challenge thereto.

15. A party’s inadvertent or unintentional production, or other disclosure, of information or documentation that is confidential, proprietary, or a trade secret without designating such information as “Confidential” under this Protective Order, or a party’s failure to timely designate information or documentation that is confidential, proprietary, or a trade secret



as “Confidential” under this Protective Order shall not be deemed a waiver in whole or in part of that party’s claim of confidentiality or secrecy, either as to specific information disclosed or as to any other information relating thereto or on the same or related subject matter.

16. Information or documentation disclosed in the course of this action may be used only for the purposes of this litigation (whether or not designated or marked as “Confidential”), irrespective of whether such information or documentation is designated or marked as “Confidential” pursuant to Paragraph Nos. 2, 3 and 6 of this Protective Order. The parties may not disclose any information or documentation disclosed in the course of this litigation that is otherwise not designated or marked as “Confidential” to any third party except as necessary for the prosecution of this action.

17. This Protective Order is entered solely for the purpose of facilitating the exchange of documents and information between the parties to this Protective Order without involving this Court unnecessarily in this process. Nothing in this Protective Order nor the production of any information or document under the terms of this Protective Order shall be deemed to have the effect of any admission or waiver, including an admission that designated information is confidential or a trade secret, or including waiver under the rules of evidence, by either party or other subscriber to this Protective Order, or of altering any existing obligation of any party or other subscriber, or the absence of such obligation.

18. Nothing herein shall be deemed to restrict in any way a party or its attorneys with respect to its own documents or to prevent a party from using or disclosing information properly obtained other than pursuant to discovery in this case.

19. This Protective Order shall in no way affect or impair the right of any party or person to raise or assert any defense or objection, including, but not limited to, defenses or objections to discovery or production of documents or information and to the use, relevance, or admissibility at the hearing on the merits of any evidence, whether or not comprised of

documents or information governed by this Protective Order.

20. Nothing in this Protective Order shall limit the producing party from using its own documents and its own information otherwise subject to the terms of this Protective Order in any fashion it may desire.

21. Prior to introducing any confidential information during any hearing or trial in this action, the party intending to introduce such information shall approach the bench for a ruling on how the information is to be treated.

22. After termination of this litigation, including appeals, this Protective Order shall continue to be binding on the parties hereto, and upon all persons to whom "Confidential" information has been disclosed for five years from the termination of this litigation, and this Court shall retain jurisdiction over the parties for enforcement of its provisions.

23. This Protective Order shall be without prejudice to the right of the parties to this Protective Order to present a motion to the Court for a separate order as to any such particular document or information, including restrictions differing from those as specified herein. This Protective Order may be amended by leave of Court with or without the agreement of counsel, or as the need may arise by the mutual consent and agreement of counsel without prior leave of Court.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge David Coar

## EXHIBIT A

To Whom It May Concern:

**Protective Order Governing Confidentiality of Documents and Information In Installation Software Technologies, Inc. d/b/a InstallShield Software Corporation and Wise Solutions, Inc., U.S. District Court, Northern District of Illinois, Case No. 03 C \_\_\_\_.**

This is to certify that the undersigned has read, understands, and is fully familiar with the provisions of the Protective Order governing confidentiality of documents and information in the referenced action.

As a condition precedent to my examination of any of the Confidential documents or information covered by the Protective Order, I agree that the Protective Order shall be deemed to be directed to, and shall include, me and I shall observe and comply with all provisions of the Protective Order. I fully understand that my failure to maintain the confidentiality of any documents or information covered by the Protective Order may result in the initiation of legal action against me.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Occupation and Job Title

\_\_\_\_\_  
Employer

## EXHIBIT B

To Whom It May Concern:

**Protective Order Governing Confidentiality of Documents and Information In Installation Software Technologies, Inc. d/b/a InstallShield Software Corporation and Wise Solutions, Inc., U.S. District Court, Northern District of Illinois, Case No. 03 C \_\_\_\_.**

This is to certify that the undersigned states that along with this signed verification, he/she is returning to counsel for [insert name of producing party] any and all copies of Confidential documents and information produced by [insert name of producing party] pursuant to the Protective Order in the referenced action.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Occupation and Job Title

\_\_\_\_\_  
Employer

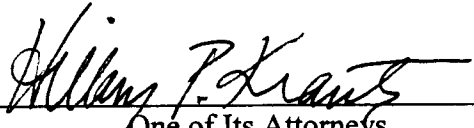
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**CERTIFICATE OF SERVICE**

I, Hillary P. Krantz, certify that on June 30, 2003, true and correct copies of the foregoing, **InstallShield's Motion for Temporary Restraining Order and Preliminary Injunction, with Notice, Pursuant to Rule 65(b) and Plaintiff's Memorandum in Support of Rule 65(b) Motion for Temporary Restraining Order and Preliminary Injunction; Plaintiff's Rule 26 Motion for Expedited Discovery; Plaintiff's Motion for an Order Preserving Evidence; Motion for Entry of Protective Order; Plaintiff's Table of Authorities, Other Than Those Published in the West National Reporter, Cited in its Memorandum in Support of its Rule 65 Motion for a Temporary Restraining Order and Preliminary Injunction, and June 30, 2003 letter to Judge David Coar**, were served via Federal Express, on:

Mr. Larry Jordan  
Jaffe Raitt  
201 South Main Street  
Ann Arbor, MI 48104

Mr. Patrick Ziarnik  
Attorney  
Wise Solutions, Inc.  
47911 Halyard Drive  
Plymouth, MI 48170

  
\_\_\_\_\_  
One of Its Attorneys