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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

SYNOPSYS, INC.,

Plaintiff,

v.

UNIVERSITY OF RHODE ISLAND, and  
DOES 1-10, inclusive,

Defendants.

Case No.: 5:21-cv-00581-BLF

**DEFENDANT UNIVERSITY OF RHODE ISLAND'S OPPOSITION TO PLAINTIFF SYNOPSYS, INC.'S *EX PARTE* MOTION FOR (1) TEMPORARY RESTRAINING ORDER; (2) ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION; AND (3) ORDER FOR EXPEDITED DISCOVERY**

Original Date: July 1, 2021  
Ordered Date: February 4, 2021  
Time: 9:00 a.m.  
Dept.: Courtroom 3  
Judge: Hon. Beth Labson Freeman

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Pursuant to the Order Setting Briefing Schedule and Hearing Date on Plaintiff's Motion for Temporary Restraining Order, Order to Show Cause re Preliminary Injunction, and Order for Expedited Discovery (the "Order") [Dkt. 12],<sup>1</sup> Defendant University of Rhode Island ("URI"), by and through its counsel, hereby responds as follows to Plaintiff Synopsys, Inc.'s ("Synopsys") *Ex Parte* Motion for (1) Temporary Restraining Order; (2) Order to Show Cause re Preliminary Injunction; and (3) Order for Expedited Discovery (the "Motion") [Dkt. 11].<sup>2</sup>

## **I. INTRODUCTION**

By its own admission, Synopsys is seeking a temporary restraining order ("TRO") three months after discovering what it alleges are uses of counterfeit license keys to circumvent its licensing system and gain unauthorized access to its software tools. URI has met the seriousness of Synopsys' allegations with immediate actions that have preserved evidence and cut-off access to the implicated devices, as well as to the university's networks, for the individuals implicated by the allegations in the Motion and Complaint. The speed with which URI has taken these steps underscores the fatal flaw in Synopsys' request for extraordinary relief: the fact that, as set forth in the Motion, it allegedly identified 135,000 instances of counterfeit license keys being used between November 2020 and January 27, 2021 and did nothing to stop it. Nor did Synopsys bother to give notice to URI of the alleged information security risks to its campus IT network. Such dilatory

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<sup>1</sup> URI expressly reserves all of its rights to contest personal jurisdiction and venue in accordance with Federal Rule of Civil Procedure 12(b).

<sup>2</sup> Due to URI's substantial commitment of resources to its investigation of Synopsys' allegations, the challenges presented by Covid-19 to accessing campus materials, and the expedited deadline for this Response pursuant to the Order, URI does not address herein each and every point raised in the Motion. To the extent any issue is not addressed, it should not be construed as an admission by URI and URI reserves all of its rights to subsequently challenge Synopsys' allegations. Nevertheless, the Motion should be denied for the reasons set forth herein.

conduct is antithetical to the nature of an *ex parte* TRO and lays bare the fact that Synopsys will not suffer irreparable harm in the absence of preliminary relief.

## II. LEGAL STANDARDS

### a. Temporary Restraining Order and Preliminary Injunction

The standard for issuance of a temporary restraining order is identical to the standard for issuance of a preliminary injunction. *NML Capital, Ltd. v. Spaceport Sys. Int'l, L.P.*, 788 F. Supp. 2d 1111, 1117 (C.D. Cal. 2011) (quoting *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995)); *see also Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Generally, a party seeking a preliminary injunction or temporary restraining order is required to make a showing as to each of four elements: (1) a likelihood of success on the merits, (2) a likelihood of irreparable injury to the plaintiff if injunctive relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) an advancement of the public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009).

### b. Expedited Discovery

Federal Rule of Civil Procedure 26(d) permits a party to seek discovery before the conference required under Federal Rule of Civil Procedure 26(f) “when authorized by [the] rules, by stipulation, or by court order.” Fed. R. Civ. Pro. 26(d)(1). In this District, Courts apply “the conventional standard of good cause in evaluating . . . [a] request for expedited discovery.” *Semitoil, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). “Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *Id.*

### III. ARGUMENT

#### a. Synopsys' Dilatory Conduct Shows It Is Unlikely to Suffer Irreparable Harm

Synopsys has not shown that it is likely to suffer irreparable harm in the absence of preliminary relief.<sup>3</sup> By Synopsys' own admission, it learned of the alleged use of counterfeit license keys in November 2020. Motion at 4. Rather than contact URI or take other immediate steps to prevent any further use of such counterfeit license keys, Synopsys appears to have sat back while, per its own allegations, the unauthorized license keys were used 135,000 times. *Id.* Even assuming Synopsys' allegations in the Complaint are true, which URI has not yet seen any evidence of, its dilatory conduct over the past three months cannot be reconciled with the urgency required for the issuance of a TRO. *See, e.g., Rovio Entertainment Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp.2d 1086, 1097 (N.D. Cal. 2012) ("Parties spurred on by the threat of or actual immediate irreparable harm file for TROs as quickly as possible to head or stave it off," citing to *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1091 (9th Cir. 2007) (zero days delay in seeking TRO); *Lands Council v. Martin*, 479 F.3d 636, 638–639 (9th Cir. 2007) (TRO sought one day after discovering conduct at issue); *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1155–1156 (9th Cir. 2006) (only ten day delay in seeking TRO) [abrogated on other grounds by *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008)]; *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S.D.A.*, 415 F.3d 1078, 1089 (9th Cir. 2005) (only six day delay in seeking TRO); *Duke Energy Trading and Mktg., L.L.C. v. Davis*, 267 F.3d 1042, 1048 (9th Cir. 2001) (only two day delay in seeking TRO)).

Since learning of Synopsys' allegations on January 28, 2021, URI has taken immediate and wide-reaching action, *see infra*, to address the allegations set forth in the Motion. URI's demonstrated urgency in moving to prevent any future unauthorized use of Synopsys' software

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<sup>3</sup> For the reasons set forth herein, this fact alone defeats Synopsys' request for a TRO as well as its request for an order to show cause re preliminary injunction, as Synopsys is unable to show a likelihood of irreparable harm for either form of relief.

begs the question of how many of the alleged 135,000 uses of counterfeit license keys could have been prevented had Synopsys immediately notified URI in November 2020 of the “call-home data” it had allegedly begun to receive.<sup>4</sup> While URI does not know the answer to that question at this nascent stage of the litigation, Synopsys’ dilatory approach to putting a stop to the alleged use of counterfeit license keys by certain individuals at URI belies its need for the extraordinary relief sought by the Motion. Further, the actions that URI has undertaken after receiving notice of the allegations, and would have undertaken far sooner had Synopsys advised it of the alleged wrongdoing when Synopsys first learned of it, has obviated the purported need for the requested TRO or any injunctive or other provisional relief.

**b. URI Has Immediately Taken Strong and Decisive Action**

As soon as URI had notice of Synopsys’ allegations of misconduct, it engaged with the issues raised by the Motion at the highest levels of university leadership.

As an initial matter, URI took immediate steps to preserve evidence by, *inter alia*, identifying the devices implicated by Synopsys’ allegations, obtaining the relevant devices, and storing them securely. *See* Declaration of Michael Khalfayan in support of URI’s Opposition to the Motion (the “Khalfayan Decl.”) ¶¶ 3-5.

Further, despite Synopsys’ failure to provide competent evidence in support of its allegations to date,<sup>5</sup> URI has worked without delay to cut-off access to systems and devices that

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<sup>4</sup> URI uses the term “call-home data” herein as it understands Synopsys’ use of the same in the Motion. In other words, URI understands that “call-home data” is the information Synopsys receives from its security software when it detects potential unauthorized use of Synopsys’ tools. URI makes no admission as to the accuracy of the call-home data referenced in the Motion nor of the effectiveness of Synopsys’ call-home data system more generally, which are likely topics for future discovery.

<sup>5</sup> URI objects to the Declaration of Norman F. Kelly filed concurrently with the Motion (the “Kelly Decl.”) as the evidence it purports to offer in support of the Motion is inadmissible hearsay. While

would enable further uses of any counterfeit license keys. *Id.* ¶¶ 7-8. URI has already acted to disable the devices and access credentials of the individuals implicated by the allegations in the Motion. *Id.* As an additional step, URI has also removed those two individuals from campus and directed that they may not return until further notice.

URI's urgency in addressing the troubling facts alleged in the Motion is unambiguously evidenced by its actions over the past four days. URI's rapid, decisive actions after learning of the alleged use of counterfeit license keys stand in stark contrast to Synopsys' inexplicable delay in the face of its own alleged security software sending call-home data tens of thousands of times over a three-month period. Further, it apparently never dawned on Synopsys that its own customer (URI) would want to immediately know about the alleged conduct at issue here in order to promptly address it, as well as determine whether there was potentially an internal problem that posed an additional independent or broader risk to URI.

**c. The Proposed Order for Expedited Discovery Is Unduly Broad and Burdensome**

As a result of the steps already taken by URI to preserve evidence and cut-off access to devices and systems for the alleged wrongdoers, Synopsys would not suffer any harm, let alone irreparable harm, if its request for a TRO is denied. Alternatively, if the Court determines that a TRO is warranted notwithstanding the foregoing, it should reject the flawed, prejudicial and over-reaching form proffered by Synopsys. The Proposed Order submitted by Synopsys concurrently with the Motion (the "Proposed Order") [Dkt. 11-3] is, among other things, overly broad, provides

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it is within the Court's discretion to accept hearsay in considering preliminary relief, the Kelly Decl. fails to offer any documents or even basic details in support of its conclusions. For instance, the Kelly Decl. does not specify the nature of the business records Mr. Kelly reviewed nor the dates on which his review took place. Further, the Kelly Decl. repeatedly makes assertions on information and belief rather than firsthand knowledge. Accordingly, the Kelly Decl. lacks the indicia of reliability that would permit this Court to rely on the hearsay set forth therein.



1 for wrongful dissemination to Synopsys of confidential and proprietary information completely  
2 unrelated to this case and belonging to URI as well as innocent third parties, and is premature in  
3 mandating the collection and dissemination of forensic evidence prior to entry of a protective order  
4 and a forensic inspection protocol.

5 In particular, the Proposed Order provides that a third party consultant chosen by Synopsys,  
6 FTI Consulting (“FTI”), shall immediately have access to all of the relevant devices for imaging  
7 and analysis. Proposed Order at 2-3. As Synopsys is well aware, URI does not object, as a general  
8 matter, to forensic imaging of the devices at issue pursuant to an agreed upon forensic inspection  
9 protocol and protective order. In fact, since the filing of the Motion, counsel for URI has already  
10 agreed to engage a third-party consultant to take custody of the devices secured by URI and work  
11 cooperatively with FTI to image those devices. Despite URI’s productive and substantive  
12 engagement with these core aspects of the requested expedited discovery, Synopsys insists on  
13 burdening the Court with its request that would, instead, put the cart before the horse.

14 Specifically, URI has informed Synopsys that the devices implicated by the Motion were  
15 available such that they may have been used by multiple users, not just the two individuals  
16 implicated by the allegations in the Motion.<sup>6</sup> Khalfayan Decl. ¶ 6. It is also a near certainty that  
17 these devices contain confidential and/or proprietary information belonging to the university and  
18 its faculty and graduate students, such as unpublished research data, as well as confidential and  
19 proprietary intellectual property of third parties, such as licensed software, for which URI is under  
20 non-disclosure obligations. Furthermore, the devices are very likely to contain personal information  
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25 <sup>6</sup> URI is presently unable to make a definitive conclusion on this point since the devices were  
26 immediately locked down and securely stored following receipt of Synopsys’ allegations. URI’s  
27 investigation is just days old and remains ongoing.

1 pertaining to URI's employees and students, information which is protected by various state and  
2 federal privacy laws.<sup>7</sup>

3 URI does not set forth these realities in opposition to imaging the devices, but rather as  
4 indicative of the clear need for a forensic inspection protocol prior to commencing that process  
5 (which URI contemplates would begin in short order in any event). Notably, Synopsys' Proposed  
6 Order would mandate that URI immediately provide FTI with access to the devices to conduct  
7 *analysis* as well as to image them. Proposed Order at 2-3. For the reasons set forth above, to permit  
8 unrestricted access to such devices prior to a forensic inspection protocol would place an undue  
9 burden on URI.

10 Synopsys' assertion that imaging and analysis must proceed immediately is also belied by  
11 its dilatory conduct for months prior to filing the Motion. As it has expressed to Synopsys on  
12 multiple occasions since the Motion was filed, URI is committed to proceeding cooperatively in  
13 the parties' respective investigations into Synopsys' allegations in this matter, including as to  
14 imaging and analysis of the devices at issue. However, to permit imaging and analysis of the  
15 devices at issue without first entering a forensic inspection protocol and protective order would be  
16 reckless and grant Synopsys access to material that it has no right to in this litigation or otherwise.

#### 17 **IV. CONCLUSION**

18 For the foregoing reasons, URI respectfully requests that Synopsys' *ex parte* Motion be  
19 denied in its entirety, including its (i) request for a temporary restraining order; (ii) request for an  
20 order to show cause re preliminary injunction; and (iii) request for expedited discovery.

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25 <sup>7</sup> For the same reasons discussed in Footnote 6, *supra*, URI is presently unable to make a definitive  
26 conclusion with respect to these points pertaining to potentially sensitive or protected information  
27 on these devices.

Dated: February 1, 2021

Respectfully submitted,

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