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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Attorney Yellow Pages.Com, L.L.C., an  
Arizona limited liability company and  
James E. Novak, an individual,

No. CV-09-0282-PHX-LOA

10

**ORDER**

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Plaintiffs,

12

vs.

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Advice Company, a California  
corporation,

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Defendant.

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Advice Company, a California  
Corporation,

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Counterclaimant,

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vs.

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Attorney Yellow Pages.Com, L.L.C., an  
Arizona limited liability company,

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Counterdefendant.

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This case arises upon the filing of the parties' proposed Stipulated Protective Order, docket # 42-2, seeking court approval.

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Subject to the Ninth Circuit's limitations for sealing documents attached to dispositive motions and introduced in evidence at trial absent compelling reasons with articulated findings, *Pintos v. Pacific Creditors Ass'n*, \_\_ F.3d \_\_, 2009 WL 1151800, \* 5-6 (9<sup>th</sup>

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1 Cir. 2009), *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006), and  
2 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003), the Court finds good  
3 cause exists, pursuant to Rule 26(c), to protect the parties' "customer lists, proprietary business  
4 methods and certain confidential financial information" during the course of this litigation. (docket  
5 # 42 at 2)

6 **IT IS ORDERED** that the parties' Stipulated Protective Order is hereby  
7 **APPROVED.**

8 **IT IS FURTHER ORDERED** as follows:

9 This order is issued to facilitate discovery in this matter. Unless otherwise ordered  
10 by the Court, this Order shall remain in effect so long as any party, or any attorney for any of the  
11 parties, retains possession, custody or control of designated material consistent with paragraph 4  
12 below.

13 **1. PURPOSES AND LIMITATIONS**

14 Disclosure and discovery activity in this action are likely to involve production of  
15 confidential, proprietary, or private information for which special protection from public disclosure  
16 and from use for any purpose other than prosecuting or defending this litigation would be warranted.  
17 The parties acknowledge that this Order does not confer blanket protections on all disclosures or  
18 responses to discovery and that the protection it affords extends only to the limited information or  
19 items that are entitled under the applicable legal principles to treatment as confidential. The parties  
20 further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates  
21 no entitlement to file confidential information under seal; Local Rules Civil (L.R.Civ.) 5.6 sets forth  
22 the procedures that must be followed and reflects the standards that will be applied when a party  
23 seeks permission from the court to file material under seal.

24 **2. DEFINITIONS**

25 2.1. Party: any party to this action, including all of its officers, directors, employees, consultants,  
26 retained experts, and outside counsel (and their support staff).

27 2.2. Disclosure or Discovery Material: all items or information, regardless of the medium or manner  
28 generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible

- 1 things) that are produced or generated in disclosures or responses to discovery in this matter.
- 2 2.3. "Confidential" Information or Items: information (regardless of how generated, stored or  
3 maintained) or tangible things that qualify for protection under standards developed under  
4 F.R.Civ.P. 26(c).
- 5 2.4. "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely sensitive  
6 "Confidential Information or Items" whose disclosure to another Party or non- party would create  
7 a substantial risk of serious injury that could not be avoided by less restrictive means.
- 8 2.5. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
9 Party.
- 10 2.6. Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this  
11 action.
- 12 2.7. Designating Party: a Party or non-party that designates information or items that it produces  
13 in disclosures or in responses to discovery as "Confidential" or "Highly Confidential — Attorneys'  
14 Eyes Only."
- 15 2.8. Protected Material: any Disclosure or Discovery Material that is designated as "Confidential"  
16 or as "Highly Confidential – Attorneys' Eyes Only."
- 17 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent  
18 or advise a Party in this action.
- 19 2.10. House Counsel: attorneys who are employees of a Party.
- 20 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support  
21 staffs).
- 22 2.12. Expert: a person with specialized knowledge or experience in a matter pertinent to the  
23 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
24 consultant in this action and who is not a past or a current employee of a Party or of a competitor  
25 of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party  
26 or a competitor of a Party's. This definition includes a professional jury or trial consultant retained  
27 in connection with this litigation.
- 28 2.13. Professional Vendors: persons or entities that provide litigation support services (e.g.,

1 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,  
2 retrieving data in any form or medium; etc.) and their employees and subcontractors.

### 3 3. SCOPE

4           The protections conferred by this Stipulation and Order cover not only Protected  
5 Material (as defined above), but also any information copied or extracted therefrom, as well as all  
6 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations  
7 by parties or counsel to or in court or in other settings that might reveal Protected Material.

### 8 4. DURATION

9           Even after the termination of this litigation, the confidentiality obligations imposed  
10 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
11 order otherwise directs.

### 12 5. DESIGNATING PROTECTED MATERIAL

13 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party  
14 that designates information or items for protection under this Order must take care to limit any such  
15 designation to specific material that qualifies under the appropriate standards. A Designating Party  
16 must take care to designate for protection only those parts of material, documents, items, or oral or  
17 written communications that qualify - so that other portions of the material, documents, items, or  
18 communications for which protection is not warranted are not swept unjustifiably within the ambit  
19 of this Order. Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
20 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
21 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses  
22 and burdens on other parties), expose the Designating Party to sanctions. If it comes to a Party's or  
23 a non-party's attention that information or items that it designated for protection do not qualify for  
24 protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party  
25 must promptly notify all other parties that it is withdrawing the mistaken designation.

26  
27 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,  
28 second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that

1 qualifies for protection under this Order must be clearly designated before the material is disclosed  
2 or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (apart from transcripts of depositions or  
5 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or  
6 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" conspicuously on each page that  
7 contains protected material. If only a portion or portions of the material on a page qualifies for  
8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
9 appropriate markings in the margins) and must specify, for each portion, the level of protection  
10 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
11 ONLY").

12 A Party or non-party that makes original documents or materials available for  
13 inspection need not designate them for protection until after the inspecting Party has indicated which  
14 material it would like copied and produced. During the inspection and before the designation, all of  
15 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL  
16 –ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants  
17 copied and produced, the Producing Party must determine which documents, or portions thereof,  
18 qualify for protection under this Order; then, before producing the specified documents, the  
19 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY  
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY") conspicuously on each page that contains  
21 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
22 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
23 markings in the margins) and must specify, for each portion, the level of protection being asserted  
24 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

25 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or  
26 non-party offering or sponsoring the testimony identify on the record, before the close of the  
27 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions  
28 of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

1 When it is impractical to identify separately each portion of testimony that is entitled to protection,  
2 and when it appears that substantial portions of the testimony may qualify for protection, the Party  
3 or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the  
4 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions  
5 of the testimony as to which protection is sought and to specify the level of protection being asserted  
6 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"). Only those  
7 portions of the testimony that are appropriately designated for protection within the 20 days shall  
8 be covered by the provisions of this Stipulated Protective Order.

9 Transcript pages containing Protected Material must be separately bound by the court  
10 reporter, who must affix on each such page the legend "CONFIDENTIAL" or "HIGHLY  
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or non-party offering  
12 or sponsoring the witness or presenting the testimony.

13 (c) for information produced in some form other than documentary, and for any other  
14 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
15 or containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY  
16 CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the information or item  
17 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
18 portions, specifying whether they qualify as "Confidential" or as "Highly Confidential – Attorneys'  
19 Eyes Only."

20 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
21 qualified information or items as "Confidential" or "Highly Confidential - Attorneys' Eyes Only"  
22 does not, standing alone, waive the Designating Party's right to secure protection under this Order  
23 for such material. If material is appropriately designated as "Confidential" or "Highly Confidential  
24 – Attorneys' Eyes Only" after the material was initially produced, the Receiving Party, on timely  
25 notification of the designation, must make reasonable efforts to assure that the material is treated in  
26 accordance with the provisions of this Order.

## 27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality

1 designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens,  
2 or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge  
3 a confidentiality designation by electing not to mount a challenge promptly after the original  
4 designation is disclosed.

5 6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's  
6 confidentiality designation must do so in good faith and must begin the process by conferring  
7 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel  
8 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief  
9 that the confidentiality designation was not proper and must give the Designating Party an  
10 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
11 designation is offered, to explain the basis for the chosen designation. A challenging Party may  
12 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
13 process first.

14 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation  
15 after considering the justification offered by the Designating Party may file and serve a motion (in  
16 compliance with LRCiv. 5.6(d), if applicable) that identifies the challenged material and sets forth  
17 in detail the basis for the challenge. Each such motion must be accompanied by a competent  
18 declaration that affirms that the movant has complied with the meet and confer requirements  
19 imposed in the preceding paragraph and that sets forth with specificity the justification for the  
20 confidentiality designation that was given by the Designating Party in the meet and confer dialogue.  
21 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until  
22 the court rules on the challenge, all parties shall continue to afford the material in question the level  
23 of protection to which it is entitled under the Producing Party's designation.

## 24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced  
26 by another Party or by a non-party in connection with this case only for prosecuting, defending, or  
27 attempting to settle this litigation. Such Protected Material may be disclosed only to the categories  
28 of persons and under the conditions described in this Order. When the litigation has been terminated,

1 a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).  
2 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure  
3 manner that ensures that access is limited to the persons authorized under this Order.

4 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court  
5 or permitted in writing by the Designating Party, a Receiving Party may disclose any information  
6 or item designated CONFIDENTIAL only to:

7 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
8 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
9 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
10 hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
12 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
13 "Agreement to Be Bound by Protective Order" (Exhibit A);

14 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
15 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
16 Protective Order" (Exhibit A);

17 (d) the Court and its personnel;

18 (e) outside (non-court personnel) court reporters, their staffs, and professional  
19 vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
20 "Agreement to Be Bound by Protective Order" (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
22 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

23 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
24 must be separately bound by the court reporter and may not be disclosed to anyone except as  
25 permitted under this Stipulated Protective Order.

26 (g) the author of the document or the original source of the information.

27 7.3. Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
28 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a



1 Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL –  
2 ATTORNEYS' EYES ONLY" only to:

3 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
4 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
5 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
6 hereto as Exhibit A;

7 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary  
8 for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit  
9 A), [Optional: and (3) as to whom the procedures set forth in paragraph 7.4, below, have been  
10 followed];

11 (c) the Court and its personnel;

12 (d) outside court reporters, their staffs, and professional vendors to whom disclosure  
13 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
14 Protective Order" (Exhibit A); and

15 (f) the author of the document or the original source of the information.

16 7.4. Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
17 ONLY" Information or Items to "Experts"

18 (a) Unless otherwise ordered by the court or agreed in writing by the Designating  
19 Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any information or item  
20 that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" first must  
21 make a written request to the Designating Party that (1) identifies the specific HIGHLY  
22 CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert,  
23 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)  
24 attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5)  
25 identifies each person or entity from whom the Expert has received compensation for work in his  
26 or her areas of expertise or to whom the expert has provided professional services at any time during  
27 the preceding five years, and (6) identifies (by name and number of the case, filing date, and location  
28 of court) any litigation in connection with which the Expert has provided any professional services

1 during the preceding five years.

2 (b) A Party that makes a request and provides the information specified in the  
3 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,  
4 within seven court days of delivering the request, the Party receives a written objection from the  
5 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

6 (c) A Party that receives a timely written objection must meet and confer with the  
7 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement.  
8 If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion  
9 (and in compliance with L.R.Civ. 5.6(d), if applicable) seeking permission from the court to do so.  
10 Any such motion must describe the circumstances with specificity, set forth in detail the reasons for  
11 which the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure  
12 would entail and suggest any additional means that might be used to reduce that risk. In addition,  
13 any such motion must be accompanied by a competent declaration in which the movant describes  
14 the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and  
15 confer discussions) and sets forth the reasons advanced by the Designating Party for its refusal to  
16 approve the disclosure.

17 In any such proceeding, the Party opposing disclosure to the Expert shall bear the  
18 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
19 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

## 20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER 21 LITIGATION

22 If a Receiving Party is served with a subpoena or an order issued in other litigation  
23 that would compel disclosure of any information or items designated in this action as  
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the  
25 Receiving Party must so notify the Designating Party, in writing (by fax or email, if possible)  
26 immediately and in no event more than three court days after receiving the subpoena or order. Such  
27 notification must include a copy of the subpoena or court order.

28 The Receiving Party also must immediately inform in writing the Party who caused

1 the subpoena or order to issue in the other litigation that some or all the material covered by the  
2 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
3 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
4 caused the subpoena or order to issue.

5           The purpose of imposing these duties is to alert the interested parties to the existence  
6 of this Protective Order and to afford the Designating Party in this case an opportunity to try to  
7 protect its confidentiality interests in the court from which the subpoena or order issued. The  
8 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
9 confidential material – and nothing in these provisions should be construed as authorizing or  
10 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

#### 11 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
13 Protected Material to any person or in any circumstance not authorized under this Stipulated  
14 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
15 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected  
16 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
17 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
18 Agreement to Be Bound" that is attached hereto as Exhibit A.

19 ///

#### 20 10. FILING PROTECTED MATERIAL

21           Without written permission from the Designating Party or a court order secured after  
22 appropriate notice to all interested persons, a Party may not file in the public record in this action  
23 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
24 with LRCiv. 5.6.

#### 25 11. FINAL DISPOSITION

26           Unless otherwise ordered or agreed in writing by the Producing Party, within sixty  
27 days after the final termination of this action, each Receiving Party must return all Protected  
28 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all

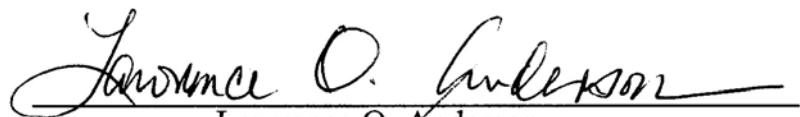
1 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
2 Protected Material. With permission in writing from the Designating Party, the Receiving Party may  
3 destroy some or all of the Protected Material instead of returning it. Whether the Protected Material  
4 is returned or destroyed, the Receiving Party must submit a written certification to the Producing  
5 Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that  
6 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed  
7 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
8 summaries or other forms of reproducing or capturing any of the Protected Material.  
9 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
10 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such  
11 materials contain Protected Material. Any such archival copies that contain or constitute Protected  
12 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

13 12. MISCELLANEOUS

14 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
15 modification by the Court in the future.

16 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party  
17 waives any right it otherwise would have to object to disclosing or producing any information or  
18 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any  
19 right to object on any ground to use in evidence of any of the material covered by this Protective  
20 Order.

21 DATED this 9<sup>th</sup> day of June, 2009.

22  
23 

24 Lawrence O. Anderson  
25 United States Magistrate Judge  
26 EXHIBIT A

27 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

28 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_

[print or type full address], declare under penalty of perjury that I have read in its entirety and

1 understand the Stipulated Protective Order that was issued by the United States District Court for  
2 the District of Arizona on \_\_\_\_\_ in the case of Attorney Yellow Pages.com, et al v. Advice  
3 Company, Case No. CV-09-282-PHX-LOA. I agree to comply with and to be bound by all the terms  
4 of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
5 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
6 disclose in any manner any information or item that is subject to this Stipulated Protective Order to  
7 any person or entity except in strict compliance with the provisions of this Order.

8 I further agree to submit to the jurisdiction of the United States District Court for the  
9 District of Arizona for the purpose of enforcing the terms of this Stipulated Protective Order, even  
10 if such enforcement proceedings occur after termination of this action.

11 Date: \_\_\_\_\_

12 City and State where sworn and signed: \_\_\_\_\_

13 Printed name: \_\_\_\_\_

14 Signature: \_\_\_\_\_

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