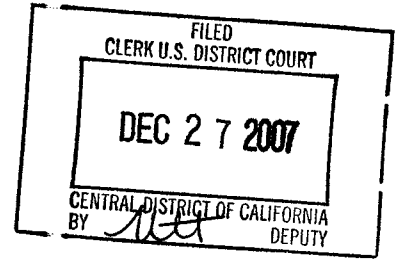


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NOTE CHANGES MADE BY THE COURT.

10 Attorneys for Defendant  
11 REVENUE SCIENCE, INC.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 VALUECLICK, INC.,  
16 a Delaware Corporation,  
17  
18 Plaintiff,  
19 v.  
20 REVENUE SCIENCE, INC.,  
21 a Washington Corporation,  
22 Defendant.

Case No.: CV 07 2052 MMM (JCX)  
**AMENDED STIPULATED  
[PROPOSED] PROTECTIVE  
ORDER**

22 WHEREAS, Plaintiff ValueClick, Inc. ("ValueClick") has filed a complaint  
23 against Defendant Revenue Science, Inc. ("RSI") (both ValueClick and RSI  
24 individually, a "Party", and collectively, the "Parties") in the above-captioned action  
25 (the "Action") and RSI has filed a counterclaim against ValueClick in the Action;  
26  
27 WHEREAS, the conduct of the Action may involve the disclosure of trade  
28 secret or other confidential technical, business and financial information;

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1 WHEREAS, the Parties hereto seek to preserve their privacy and property  
2 interests in such information, without unduly encroaching on the public's right to be  
3 informed of judicial proceedings, and recognizing that a Party seeking to protect  
4 information filed under seal with the Court must show <sup>at least</sup> good cause for sealing that  
5 part of the record, and that either Party may challenge any designation of  
6 confidentiality pursuant to this protective order;

7 WHEREAS, pursuant to Rule <sup>26 (c) (1) (G)</sup> ~~26(e)(7)~~ of the Federal Rules of Civil Procedure  
8 the Parties hereby stipulate to the entry of this protective order (the "Protective  
9 Order") limiting the disclosure of certain information produced or otherwise  
10 discovered and agree to be bound by the restrictions of the Protective Order limiting  
11 use of such information as provided;

12 IT IS HEREBY STIPULATED, AGREED AND ORDERED as follows:

13 **APPLICABILITY OF PROTECTIVE ORDER**

14 1. All documents, materials, items, testimony or information, regardless of  
15 whether stored in electronic or paper form, produced or filed with the Court in the  
16 context of a discovery proceeding, submitted to the Court in connection with a  
17 hearing, or produced, provided or served, formally or informally, either by a Party or  
18 by a non-party, to or for any of the other Parties, shall be governed by this Protective  
19 Order. The terms of this Protective Order shall also apply to all manner and means of  
20 disclosure of information in discovery, whether formal or informal, including without  
21 limitation oral testimony, entry onto land or premises, and production and/or  
22 inspection of books, records, documents and tangible things.

23 2. <sup>Financial</sup> Confidential, Technical Confidential and Restricted Source Code Media  
24 Documents or other information protected by this Protective Order shall be used only  
25 for the purposes of this litigation and not for any other purpose, including but not  
26 limited to business, legal, patent prosecution, competitive or governmental purpose or  
27 function. Notwithstanding the foregoing, nothing in this paragraph or in this

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28

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1 Protective Order shall be deemed to limit or otherwise restrict or impair in any  
2 manner any Party's use or disclosure of its own information, in whatever form.

3 **DEFINITIONS**

4 3. "Disclosing Party" is defined herein as any Party who is requested to  
5 produce or produces Documents or other information in connection with the conduct  
6 of the Action. In the event that a non-party is requested to produce or produces  
7 Documents or other information in connection with the conduct of the Action, that  
8 non-party may, but is not obligated to, elect to be subject to the provisions of this  
9 Order. In the event that said non-party chooses not to be subject to the provisions of  
10 this Order, that non-party's production, if any, shall be governed by the Federal Rules  
11 of Civil Procedure, the Court's Local Rules, and any applicable precedent.

12 4. "Document" shall include without limitation any records, exhibits,  
13 reports, samples, transcripts, oral testimony, video or audio recordings, affidavits,  
14 briefs, summaries, notes, abstracts, drawings, company records and reports,  
15 databases, version control systems, communications, letters, correspondence, emails  
16 and attachments thereto, answers to interrogatories, responses to requests for  
17 admissions, pleadings or motions, including copies or computer-stored versions of  
18 any of the foregoing.

19 5. "Financial Confidential" information is defined herein as information  
20 that a Disclosing Party in good faith believes is information not publicly known that  
21 would be valuable to the Disclosing Party's actual and potential competitors, that is  
22 related to financial information, marketing information or other business operations  
23 information, and that the Disclosing Party would not otherwise reveal to third parties  
24 without an agreement to maintain it in confidence.

25 6. "Technical Confidential" information is defined herein as information  
26 that a Disclosing Party in good faith believes is information not publicly known that  
27 would be valuable to the Disclosing Party's actual and potential competitors, that is  
28 related to research and development, product design or specifications or other

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1 technical information, and that the Disclosing Party would not otherwise reveal to  
2 third parties without an agreement to maintain it in confidence.

3 7. "Financial Confidential" information may include, but is not limited to,  
4 the following:

- 5 a. Financial and sales information;
- 6 b. Marketing plans;
- 7 c. Current and future business plans, including unpublished financial data  
8 and pricing information;
- 9 d. Distributor or customer agreements and licenses;
- 10 e. Customer identity and "contact persons" at a customer;
- 11 f. Aggregate customer information and/or customer profile information,  
12 including, but not limited to, behavioral data and web analytics;
- 13 g. Proprietary market analysis (not generally available to the public)  
14 whether or not actually developed by the Disclosing Party; and
- 15 h. Information that the Disclosing Party believes, in good faith, constitutes  
16 financial trade secret information or business product information for  
17 which it is under a duty to maintain in confidence.

18 8. "Technical Confidential" information may include, but is not limited to,  
19 the following:

- 20 a. Product development and design information (for new, old, suspended  
21 and abandoned projects);
- 22 b. Current and future business plans, including unpublished technical data  
23 and product development information;
- 24 c. New business development (for old and new products);
- 25 d. Proprietary engineering information (not generally available to the  
26 public) whether or not actually developed by the Disclosing Party;
- 27 e. Information that the Disclosing Party believes, in good faith, constitutes  
28 technical trade secret information or other confidential technical or

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business product information for which it is under a duty to maintain in confidence, including, but not limited to, manufacturing information, non-public executable code, specifications, product design and feature information; and

- f. Source Code, subject to the additional requirements set forth below for “Restricted Source Code Media.”
- 9. “Qualified Person” as used herein means:
  - a. Trial Counsel;
  - b. Any person retained by a Party or its Trial Counsel as an independent consultant or expert (who is not a shareholder, officer, director, employee or long-term contractor of a Party, or inventor named on a patent-in-suit) who agrees in writing to be bound by the terms of this Protective Order in the form of Exhibit A, attached hereto (such signed agreement shall be preserved by the retaining Party or Trial Counsel);
  - c. Any court reporter or videographer who transcribes or records testimony in this Action at a deposition and who agrees that all designated confidential testimony is and shall remain confidential and shall not be disclosed except as provided in this Order;
  - d. The Court and the Court’s personnel;
  - e. Outside vendors who perform copying, document preparation, or creation of trial graphics or tutorials on behalf of any Party;
  - f. Members of focus groups and mock jurors, provided they sign an undertaking with the same protections as the Confidentiality Agreement attached hereto as Exhibit A, with the caption redacted to remove reference to the Parties, and further provided that no mock jurors or focus group participants be permitted to keep any discovery materials in this matter;

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- 1 g. Any other person who is designated as a Qualified Person by Order of
- 2 this Court;
- 3 h. Alan Koslow, General Counsel of RSI; and
- 4 i. Scott Barlow, General Counsel of ValueClick.

5 10. "Receiving Party" is defined herein as any Party who receives  
 6 Documents or other information produced by a Party in connection with the conduct  
 7 of the Action. This definition also includes any Party who receives Documents or  
 8 other information produced by a non-party, if that non-party elects to be bound by the  
 9 provisions of this Order. The definition of "Receiving Party" specifically excludes  
 10 the Court and court personnel.

11 11. "Source Code" is defined herein as code and accompanying statements  
 12 for the programming of computers written in a high-level or assembly language that  
 13 are readable by humans and electronic or non-electronic design documents that reveal  
 14 the internal structure of a program.

- 15 12. "Trial Counsel" as used herein, means only:
- 16 a. The attorneys and employees of Flachsbart & Greenspoon, LLC and
- 17 Fulwider Patton, LLP responsible for this litigation for ValueClick; and
- 18 b. The attorneys and employees of Heller Ehrman LLP responsible for this
- 19 litigation for RSI.

20 **DESIGNATION OF MATERIALS**

21 **"Financial Confidential" or "Technical Confidential" Information**

22 13. A Disclosing Party may designate Financial Confidential Information or  
 23 Technical Confidential Information, as defined herein. In so designating, the  
 24 Disclosing Party will make such designation only as to that information that it has  
 25 treated as, and in good faith believes contains, Financial Confidential Information, or  
 26 Technical Confidential Information, as defined herein and consistent with Federal  
 27 Rule of Civil Procedure <sup>26(c)(1)(G)</sup> ~~26(c)(7)~~. No item shall be deemed confidential if it is  
 28 disclosed in a printed publication available to the public or trade, is generally known

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1 throughout the trade and public, or is or comes to be known to a Party through means  
2 not constituting breach of any proprietary or confidential relationship or obligation or  
3 breach of this Protective Order.

4 14. Documents and things produced that contain Financial Confidential  
5 Information or Technical Confidential Information may be designated with its  
6 respective designation as such by marking the first page or tangible medium  
7 containing such information, if it is an electronic document, or each page if it is a  
8 paper document at or before the time of production as follows:

9 **“FINANCIAL CONFIDENTIAL”**

10 or

11 **“TECHNICAL CONFIDENTIAL – TRIAL COUNSEL ONLY”**

12 15. Access to information designated as Financial Confidential shall be  
13 limited to Qualified Persons (as defined in paragraph 9 above). A Receiving Party  
14 shall treat information as “Financial Confidential” or “Technical Confidential”  
15 respectively, under this Protective Order, as soon as a Disclosing Party so designates  
16 the information.

17 16. Documents, testimony, information and other things designated  
18 Technical Confidential may be disclosed only to the Qualified Persons identified in  
19 subsections (a) through (g) of Paragraph 9 of this Protective Order.

20 **“Restricted Source Code Media”**

21 17. A Disclosing Party may specially designate Source Code (whether in  
22 electronic or hardcopy form) as Technical Confidential: Restricted Source Code  
23 Media (hereinafter “Restricted Source Code Media”). In designating Restricted  
24 Source Code Media, the Disclosing Party will make such designation only as to that  
25 information that it has treated as, and in good faith believes contains, Restricted  
26 Source Code Media, as defined herein and consistent with Federal Rule of Civil  
27 Procedure <sup>26(c)(1)(G)</sup>~~26(e)(7)~~. Restricted Source Code Media shall be subject to all of the  
28 provisions of this Protective Order regarding Technical Confidential Information and

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1 shall also be subject to the following additional restrictions on copying and use. A  
2 Receiving Party shall treat information designated as Technical Confidential:  
3 Restricted Source Code Media under this Protective Order, as soon as a Disclosing  
4 Party so designates the information.

5 18. If produced, Source Code shall be provided in its native, electronic  
6 format to the extent that it exists in an electronic format. A Disclosing Party need not  
7 produce more than two (2) copies of the Source Code for a particular product. Trial  
8 Counsel for the Receiving Party may not relinquish or transfer possession or control  
9 of any particular copy of a Disclosing Party's Restricted Source Code Media except  
10 to an expert or consultant who has been retained by such counsel for the requesting  
11 party to assist in the prosecution, defense or settlement of this Action, and only if all  
12 of the conditions in paragraphs 23 and 24 are met.

13 19. All tangible media (*e.g.*, CD Roms, disks, but not including computer  
14 hard drives) with Restricted Source Code Media must be kept by the Receiving  
15 Party's Trial Counsel, or the Receiving Party's retained expert or consultant, in a  
16 secure, locked cabinet when the Restricted Source Code Media is not in use.

17 20. Restricted Source Code Media may not be copied by any person acting  
18 on behalf of a Receiving Party except as follows:

19 a. Complete Copies

20 (i) Restricted Source Code Media may be copied into the hard drive  
21 memory and/or into the RAM of a secure, non-internet accessible computer for the  
22 purposes of conducting analyses of the Restricted Source Code Media. Restricted  
23 Source Code Media is to be kept secure throughout the Action by means of being  
24 stored in encrypted form on a stand-alone, desktop computer where it resides, with  
25 such encryption protocol (employing at least 128 bit encryption) designed to limit  
26 access to said Restricted Source Code Media to those persons designated under this  
27 Protective Order as having access to said Restricted Source Code Media;

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1 (ii) any computer into which the Restricted Source Code Media of a  
2 Disclosing Party is copied by a person authorized to receive Restricted Source Code  
3 Media under this Protective Order must, prior to or contemporaneously with such  
4 copying, be equipped with a password protection/lockout/screen saver function  
5 having a "timeout" period of no longer than ten (10) minutes. Such  
6 protection/lockout/screen saver function shall remain enabled continuously during  
7 any period that such computer is in use while the Restricted Source Code Media  
8 remains on such computer; provided, however, notwithstanding the foregoing, if each  
9 Party's Trial Counsel agrees in writing beforehand, an alternative security  
10 mechanism may be substituted for such password protection/lockout/screen saver  
11 function on any particular computer; and

12 (iii) absent written agreement by the Disclosing Party, a particular  
13 copy of the Disclosing Party's Restricted Source Code Media, may reside in the hard  
14 drive memory RAM of only five computers at any given time.

15 b. Excerpts: Certain portions of the Restricted Source Code Media of a  
16 Disclosing Party may be copied onto paper or secure electronic media ("Restricted  
17 Source Code Media Excerpts") by Trial Counsel or a retained independent consultant  
18 or expert in this action if, and only if, all of the following conditions are met:

19 (i) Trial Counsel for a Receiving Party and a retained independent  
20 consultant or expert of the Receiving Party may each make one (1) electronic backup  
21 copy of the Restricted Source Code Media Excerpts as needed to preserve analyses  
22 and/or prepare an expert report;

23 (ii) Trial Counsel for a Receiving Party may make that number of  
24 copies of the Restricted Source Code Media Excerpts as is required to fulfill filing  
25 and service requirements of a document required to be filed with the Court or served  
26 on another Party;

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1 (iii) the total amount of the Restricted Source Code Media Excerpts  
2 may not exceed the amount necessary to perform the analyses or prepare the expert  
3 report; and

4 (iv) a Disclosing Party's Restricted Source Code Media Excerpts shall  
5 only be copied as provided herein, and, once having been made, all such copies of a  
6 Disclosing Party's Restricted Source Code Media Excerpts shall be marked as:

7 **"TECHNICAL CONFIDENTIAL – RESTRICTED SOURCE CODE MEDIA"**  
8 in the name of the disclosing party. The Parties agree that, should the need arise to  
9 file Restricted Source Code Media Excerpts with the Court, the Parties shall jointly  
10 seek permission to file said Excerpts under seal.

11 21. A Disclosing Party's Restricted Source Code Media and Restricted  
12 Source Code Media Excerpts may not be disclosed to anyone other than Trial  
13 Counsel, the Court and court personnel, retained independent consultants or experts  
14 satisfying all of the requirements of Paragraphs 24 and 25, *infra*, and court reporters  
15 and videographers employed in this action who are neither a Party to this action nor an  
16 officer, director, or employee of a Party to this action, unless authorized by a prior  
17 order of the Court or the prior written approval of the Disclosing Party (individually,  
18 each a "Person Authorized To View Restricted Source Code Media"). Nothing  
19 herein shall preclude, however, Trial Counsel from appropriately using Restricted  
20 Source Code Media or Restricted Source Code Media Excerpts at the deposition of  
21 an officer or employee of the Disclosing Party.

22 22. A Disclosing Party's Restricted Source Code Media and Restricted  
23 Source Code Media Excerpts may only be transported within the direct control of a  
24 Person Authorized To View Restricted Source Code Media, except for shipments on  
25 encrypted physical electronic media (*e.g.*, CD-ROM, magnetic tape or diskette) or  
26 paper via Federal Express or other similar courier service directly from one Person  
27 Authorized To View Restricted Source Code Media to another Person Authorized To

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1 View Restricted Source Code Media. Under no circumstances may Restricted  
2 Source Code Media be transmitted electronically.

3 **RETAINED INDEPENDENT CONSULTANTS AND EXPERTS**

4 23. In the event that either Party retains independent consultants or experts  
5 to furnish technical or consulting services or to give testimony with respect to the  
6 subject matter of this Action, and such Party desires to disclose to such independent  
7 consultant or expert any information designated by the other Party as Financial  
8 Confidential, Technical Confidential or Restricted Source Code Media, then such  
9 disclosure shall be permitted only under the following conditions:

- 10 a. Prior to disclosure, the independent consultant or expert shall
- 11 acknowledge, in writing, by signing a copy of Exhibit A attached hereto,
- 12 that he/she has received and read a copy of this Protective Order, and
- 13 that he/she is bound by the terms thereof;
- 14 b. Ten (10) calendar days prior to disclosure of such Financial
- 15 Confidential, Technical Confidential or Restricted Source Code Media,
- 16 a copy of signed Exhibit A and a copy of the independent consultant or
- 17 expert's curriculum vitae shall be delivered by hand, facsimile, email or
- 18 overnight courier to Trial Counsel for the Disclosing Party along with a
- 19 statement that the Exhibit and curriculum vitae are being served in
- 20 accordance with this paragraph 23 of the Protective Order;
- 21 c. In the event that the Disclosing Party objects to disclosure of its
- 22 Financial Confidential, Technical Confidential or Restricted Source
- 23 Code Media Information to the independent consultant or expert, the
- 24 Disclosing Party shall deliver by hand, facsimile, email or overnight
- 25 courier, a notice of objection to the opposing Party within ten (10)
- 26 calendar days from service of the materials required to be served under
- 27 subparagraph (b) of this paragraph 23. In such event, disclosure of the
- 28 information shall not be made until the Parties agree in writing that such

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disclosure may be made or the Court issues an order or ruling that such disclosure is permitted. The Disclosing Party shall, with its notice of objection, state fully its reasons and grounds for such objection. Failure to give notice of objection within ten (10) calendar days from service of the materials required to be served under subparagraph (b) of this paragraph 23 shall operate as a waiver of the objection, unless a new ground for objection arises after such time; and

d. Unless the dispute is resolved by agreement between the Parties, within five (5) court days after receipt of the objection, the Disclosing Party shall move for a ruling by the Court on the dispute and shall have the burden of establishing that the disclosure should not be permitted. If the Disclosing Party does not so move, any objection to the disclosure shall be deemed waived.

*To the extent the above procedures are inconsistent with local Rule 37, local Rule 37 will govern.*

24. No independent consultant or expert retained by a Party shall be permitted access to Technical Confidential documents or information constituting (i) product design and development information, (ii) proprietary engineering information, (iii) information that the Disclosing Party believes, in good faith, constitutes technical trade secret information or other confidential technical product information for which it is under a duty to maintain in confidence, or (iv) unpublished patent applications, or to Restricted Source Code Media unless the following additional conditions are satisfied:

- a. Such expert may not be, and no member of such expert's clerical staff, if any, may be;
  - (i) a Party or a current or former officer, director, or employee of a Party; or
  - (ii) an officer, director or employee of a competitor of a Party; and
- b. Such expert must agree not to accept employment with a Party for a period of one (1) year after the conclusion of this Action (either by full

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settlement of all disputed causes of action or exhaustion or abandonment of all appeals) with the exception of employment or retention in said expert's capacity as an expert consultant or expert witness in litigation on behalf of the same Party for which said expert has been retained in this Action, provided that any expert accepting such employment must not use, disclose, or otherwise access any information beyond the extent permitted and authorized by this Protective Order.

**EXAMINATION OF EMPLOYEES, FORMER EMPLOYEES AND THIRD PARTIES:**

25. In addition to those persons who may receive such Financial Confidential, Technical Confidential or Restricted Source Code Media material identified above, the following persons may be examined and give deposition testimony as follows:

- a. A present employee or representative of a Disclosing Party may be examined and may testify concerning all Documents and information designated as Financial Confidential, Technical Confidential or Restricted Source Code Media by his employer;
- b. A former employee, associate, representative or consultant of a Disclosing Party may be examined and may testify concerning all Documents and information designated as Financial Confidential or Technical Confidential by that Party only if the former employee, associate, representative or consultant had access to the Financial Confidential or Technical Confidential material during the period or periods of his/her employment or association with that Disclosing party;
- c. Non-parties may be examined and may testify concerning all documents or information designated as Financial Confidential or Technical Confidential which appears on its face to have been received by or communicated to the non-party;

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- d. Witnesses may be examined and may testify concerning all documents or information designated as Financial Confidential or Technical Confidential if, by virtue of other testimony or circumstances, the witness previously had lawful access to this information;
- e. Any individual in circumstances not falling into the above categories may be examined and may testify concerning all documents or information designated as Financial Confidential, Technical Confidential or Restricted Source Code Media upon approval in writing or on the record by Trial Counsel for the Disclosing Party or order of the Court; and
- f. Any issues regarding whether deposition testimony given in accordance with subsections (a)-(e) above may be submitted to the Court under seal in conjunction with a non-discovery related dispute are reserved and will be addressed to the judicial officer conducting the applicable proceeding at the appropriate time.

**DEPOSITION TRANSCRIPTS AND EXHIBITS**

26. Except for use during court proceedings, all information, including testimony and exhibits, disclosed in a deposition of a Party or a Party's present or former officers, directors, employees, agents, or independent experts retained by such party for purposes of this litigation shall be treated as if it had been designated as Technical Confidential at the time of the taking of the deposition and for a period of twenty (20) court days after the transcript of said deposition is received by the Disclosing Party. Information disclosed at the deposition may be designated under this Protective Order by a Disclosing Party by so-indicating on the record at the deposition, or by the Disclosing Party's notifying all other Parties and the court reporter in writing, within twenty (20) court days of receipt of the transcript of the specific pages and lines of the transcript that contain information to be designated under this Protective Order. The Disclosing Party shall attach a copy of a written

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1 statement making such designation to the face of the transcript and provide a copy of  
2 same to every other Party, or shall request that the court reporter taking such  
3 testimony do so. Thereafter, each Party shall attach a copy of such written statement  
4 to the face of the transcript and each copy thereof in his possession, custody or  
5 control.

6 27. An exhibit to a deposition shall be treated in accordance with the  
7 confidentiality designation already given to it. If an exhibit has not been previously  
8 designated, it shall be treated in accordance with any designation given to it on the  
9 record at the time of the deposition, or if no such designation is made, shall be treated  
10 as being designated as Technical Confidential for a period of twenty (20) court days  
11 after the original or a copy of the original transcript of said deposition is received by  
12 the Disclosing Party. The designation of testimony given as Financial Confidential,  
13 Technical Confidential or Restricted Source Code Media, or the de-designation of  
14 such testimony given, shall not affect the confidentiality status of exhibits presented  
15 or used in connection with such testimony. Notwithstanding the foregoing, nothing  
16 prevents a Party or the deponent either on the record at the deposition or at any later  
17 date from changing the confidentiality designation of a previously designated exhibit  
18 in accordance with the terms of this Order.

19 **COURT FILINGS**

20 28. In the event that a Receiving Party wishes to use any Financial  
21 Confidential, Technical Confidential or Restricted Source Code Media produced by a  
22 Disclosing Party in any affidavits, briefs, memoranda of law, or other papers filed in  
23 Court in this litigation, such Party must attempt to obtain leave from the Court to file  
24 such information under seal. Any Party may file with the Court additional reasons as  
25 to why the documents should be filed under seal. Any document, thing or  
26 information that has been designated as Financial Confidential, Technical  
27 Confidential or Restricted Source Code Media and that is included with, or the  
28 contents of which are in any way disclosed in, any pleading, motion, deposition

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*Submitted for filing*

1 transcript, or other papers filed with the Clerk of the Court shall be ~~filed~~ in sealed  
2 envelopes prominently marked with the notation:

3 **FINANCIAL CONFIDENTIAL INFORMATION**  
4 **(or TECHNICAL CONFIDENTIAL**  
5 **or RESTRICTED SOURCE CODE MEDIA)**

6 **CONDITIONALLY FILED UNDER SEAL**

7 **SUBJECT TO PROTECTIVE ORDER IN CASE NO. CV 07 2052 MMM (JCX)**

8 **THIS ENVELOPE IS NOT TO BE OPENED, NOR THE CONTENTS**  
9 **DISPLAYED, COPIED OR REVEALED EXCEPT BY COURT PERSONNEL**  
10 **AUTHORIZED UNDER THIS ORDER TO DO SO OR BY WRITTEN**  
11 **AGREEMENT OF THE PARTIES.**

12 **USE OF INFORMATION DESIGNATED UNDER THIS PROTECTIVE**  
13 **ORDER AT HEARING OR TRIAL**

*Unless the Court directs otherwise,*

14 29. In the context of a discovery dispute, Trial Counsel shall refrain from  
15 referring in open court to any information designated Financial Confidential,  
16 Technical Confidential or Restricted Source Code Media except under conditions and  
17 safeguards that the Court <sup>may elect</sup> employs to protect against disclosure of such Confidential  
18 Information. In the context of a non-discovery dispute, any issues regarding the  
19 disclosure in open court of information designated Financial Confidential, Technical  
20 Confidential or Restricted Source Code Media are reserved and will be addressed to  
21 the judicial officer conducting the applicable proceeding at the appropriate time. ~~The~~  
22 ~~Court, either through its own initiative or upon motion of the Disclosing Party, may~~  
23 ~~subject such information to further protections, including, but not limited to, in~~  
24 ~~camera proceedings in chambers or conducting proceedings closed to the general~~  
25 ~~public. Nothing herein shall operate as a waiver or relinquishment of a designation~~  
26 ~~under this Protective Order, should such materials be disclosed at a Court hearing or~~  
27 ~~other proceeding where the general public is not so excluded.~~

28 *Nothing in this order precludes the court from affording such information further protection if legally appropriate*

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**INADVERTENT FAILURE TO DESIGNATE / INADVERTENT DISCLOSURE OF PRIVILEGED INFORMATION**

30. A Disclosing Party that inadvertently fails to designate an item pursuant to this Protective Order at the time of the production may thereafter make a designation pursuant to this Protective Order by serving notice thereof in writing, accompanied by substitute copies of each item, appropriately designated. As soon as notice of a designation is so provided by a Disclosing Party, all recipients of the designated materials shall immediately treat the designated documents consistent with the designation given by the Disclosing Party. Those individuals who reviewed the documents or information prior to notice of the misdesignation or failure to designate by the Disclosing Party shall return to Trial Counsel for the Disclosing Party or destroy all copies of the misdesignated documents and shall honor, to the extent reasonably practicable, the provisions of this Protective Order with respect to the use and disclosure of any confidential information contained in the misdesignated documents. The Receiving Party shall not be in violation of this Protective Order for any disclosure of information made prior to receiving such notice, so long as any such disclosure was consistent with the document's then-current designation (or nondesignation).

31. In the event that information designated pursuant to this Protective Order is disclosed to any person not authorized by this Protective Order to receive the information, the party responsible for this disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of all Parties, and without prejudice to other rights and remedies of the Disclosing Party, shall make every reasonable effort to prevent further disclosure by it or by any other person who was the recipient of such information. The identification under this section of a Party to whom disclosure was made shall not constitute a waiver of attorney-work-product or attorney-client privileges.

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1           32. The inadvertent production of any privileged or otherwise protected  
2 materials shall not be deemed a waiver or impairment of any claim of privilege or  
3 protection including, but not limited to, the attorney-client privilege and the  
4 protection afforded to work-product materials, or the subject matter thereof. Upon  
5 receiving written notice from the Disclosing Party that materials asserted to be  
6 privileged or protected have been inadvertently produced, the Receiving Party shall  
7 promptly return all such material (and any copies that may have been made and may  
8 have been distributed) to the Disclosing Party within five (5) business days of receipt  
9 of such notice. Until such materials are returned, such materials and the information  
10 contained therein shall be treated as Technical Confidential. Except as provided by  
11 this paragraph, nothing stated herein shall limit the right of a Party to challenge a  
12 claim of privilege or protection.

13           33. Absent an order or agreement between Trial Counsel to the contrary, the  
14 parties shall exchange privilege logs pursuant to the Federal Rules of Civil  
15 Procedure, forty-five (45) days before the close of fact discovery. Further, absent an  
16 order or agreement between Trial Counsel to the contrary, the following types of  
17 documents shall not be placed on a privilege log and will not be the subject of  
18 discovery: (a) drafts of expert reports; (b) communications between Trial Counsel  
19 and expert witnesses; and (c) any attorney-client communications or attorney-work-  
20 product created after the date of the filing of the above-captioned action.

21 **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22           34. The Parties acknowledge that it may be impractical to  
23 contemporaneously assess the confidentiality of any or all information in documents,  
24 testimony, transcripts, and/or other materials and things produced by a Party or  
25 producing entity in the course of this Action. Therefore, if a Party wishes to  
26 challenge the designation of any such information, the Party shall, in good faith,  
27 narrowly limit such efforts solely to those documents, testimony, transcripts, and/or  
28 other materials or things (or portions thereof) for which declassification reasonably

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1 appears to be appropriate. The Disclosing Party shall, within five (5) business days  
2 after receipt of the Receiving Party's request for declassification, make a good faith  
3 determination as to whether the information at issue should be declassified and notify  
4 the Receiving Party of its determination. If the dispute cannot be resolved  
5 informally, the Receiving Party may seek appropriate relief from the Court, pursuant  
6 to the procedures concerning discovery disputes. The Disclosing Party shall have the  
7 burden of proving the propriety of the designation. The designation of the disputed  
8 information shall remain, unless and until otherwise ordered by the Court.

9 35. A Party shall not be obligated to challenge the propriety of a designation  
10 of a document at any level of confidentiality identified in this Protective Order at the  
11 time made, and a failure to do so shall not preclude a subsequent challenge thereto.

12 36. In the event of a dispute or other need for court intervention arising  
13 under this Order, the Parties shall follow the procedures set forth in Local Rule 37.

14 **RETURN AND/OR DESTRUCTION OF MATERIALS UPON CONCLUSION**  
15 **OF THE ACTION**

16 37. Financial Confidential and Technical Confidential materials: Within  
17 ninety (90) calendar days after the conclusion of this litigation, unless the Parties  
18 agree in writing to the contrary, any originals or reproductions of any documents  
19 produced by a Disclosing Party containing Financial Confidential and Technical  
20 Confidential information shall be destroyed, by cross-cut shredding, except that Trial  
21 Counsel shall be entitled to retain for archival purposes one (1) paper and one (1)  
22 electronic copy of pleadings, correspondence, memoranda, notes and other work-  
23 product materials which contain or refer to Confidential and Highly Confidential  
24 information.

25 38. Restricted Source Code Media materials: Within ninety (90) days of the  
26 conclusion of this litigation, the Restricted Source Code Media materials must be  
27 returned to the Disclosing Party, and each Trial Counsel, retained independent

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1 consultant or expert who had access to the Restricted Source Code Media materials  
2 must sign a declaration that shall be sent to the Disclosing Party certifying that:

- 3 a. To the best of that person’s knowledge, all Restricted Source Code
- 4 Media materials have been returned to the Disclosing Party; and
- 5 b. Every copy, whether whole or partial, of the Restricted Source Code
- 6 Media materials that exists in electronic, magnetic or other machine-
- 7 readable form has been permanently deleted such that the deleted files
- 8 could not be recovered absent extraordinary efforts, if at all (for
- 9 example, through the use of a disk utility program such as Norton
- 10 Utilities or its equivalent, to rewrite the free disk space).

11 Notwithstanding the provisions of subparagraphs (a) and (b) herein, Trial  
12 Counsel may retain for archive purposes one (1) electronic and one (1) paper copy of  
13 all pleadings, including expert reports, exchanged by the parties or filed with the  
14 Court that contain Restricted Source Code Media materials.

15 39. Insofar as the provisions of this Protective Order restrict the  
16 communication and use of the documents produced hereunder, this Order shall  
17 continue to be binding after the conclusion of this litigation except that a Party may  
18 seek the written permission of the Disclosing Party or further order of the Court with  
19 respect to dissolution or modification of the Protective Order.

20 **PATENT PROSECUTION**

21 40. Any individual attorney or agent who actually receives or reviews any  
22 Technical Confidential or Restricted Source Code Media documents or information  
23 under this Protective Order shall not prosecute, supervise, assist in the prosecution of  
24 or advise regarding patent prosecution strategy for (i) any applications, continuations,  
25 continuations-in-part, divisionals, reissues, renewals, substitutes, foreign applications  
26 or convention applications of the asserted patents and any applications claiming  
27 priority to such applications or the asserted patents; or (ii) any application or potential  
28 application having claims materially related to the subject matter of the Technical

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1 Confidential or Restricted Source Code Media documents or information actually  
 2 received or reviewed. The restrictions provided in this paragraph 39 shall be  
 3 applicable during the pendency of the Action and for one (1) year after the Action is  
 4 terminated (either through settlement or judgment, including any appeals). The  
 5 Receiving Party shall maintain an accurate log of all attorneys and agents who  
 6 actually receive or review any Technical Confidential or Restricted Source Code  
 7 Media materials. In the event of a dispute regarding this provision of the Protective  
 8 Order, the Receiving Party must, upon the request of the Disclosing Party, submit  
 9 this log *in camera* for the Court's inspection.

10 **MISCELLANEOUS**

11 41. This Protective Order is being entered without prejudice to the right of  
 12 any Party or other person to move the Court for modification of or relief from any of  
 13 its terms.

14 42. Nothing shall prevent disclosure beyond the terms of this Order if the  
 15 Disclosing Party consents to such disclosure, or if the Court, ~~after notice to all~~  
 16 ~~Parties~~, orders such disclosure.

17 43. The Parties agree that they will not seek to admit, as evidence, the  
 18 existence or nonexistence of a designation under this Protective Order. The Parties  
 19 further agree that the designation or acceptance of any information designated  
 20 pursuant to this Protective Order does not constitute an admission or  
 21 acknowledgment that the material so designated is in fact proprietary, confidential or  
 22 a trade secret. The Court reserves the right to address the admissibility or non-  
 23 admissibility of any information, including that identified in this paragraph, at the  
 24 time it deems appropriate.

25 44. This Protective Order shall not be deemed (a) a waiver of any Party's or  
 26 producing entity's right to object to any discovery requests on any ground; (b) a  
 27 waiver of any Party's right to seek an order compelling discovery with respect to any  
 28 discovery requests; (c) a waiver of any Party's right to object to the admission of

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1 evidence on any ground; (d) a waiver of any Party's or producing entity's right to use  
2 or disclose its own documents, testimony, transcripts, and/or other materials or things  
3 at its sole own discretion; or (e) any waiver of the attorney-client privilege or  
4 protection of the work-product doctrine.

5 45. Nothing in this Protective Order shall bar counsel from rendering advice  
6 to their client with respect to the Action, and in the course thereof, relying upon any  
7 information under this Protective Order, provided that counsel does not disclose such  
8 information in a manner not specifically authorized under this Protective Order.

9 46. Nothing in this Order shall bar amendment of this Order upon  
10 submission of a stipulation of the Parties and, upon a subsequent showing of good  
11 cause, an Order of the Court.

12 47. If a third party, another court or an administrative agency subpoenas or  
13 orders production by a Receiving Party of documents or information designated for  
14 protection under this Protective Order, the Receiving Party shall notify the Disclosing  
15 Party of the pendency of such subpoena or order at least five (5) court days prior to  
16 such disclosure, if possible, but in any event, at least prior to any such disclosure.

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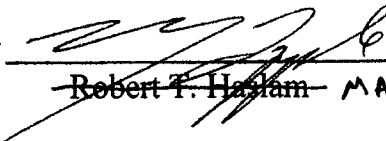
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48. The terms of this Protective Order shall survive termination of this action.

**SO STIPULATED:**

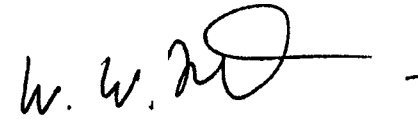
Dated: November 15, 2007

HELLER EHRMAN LLP

By   
~~Robert F. Haslam~~ MATTHEW C. LAPPLE  
Attorneys for Defendant Revenue Science, Inc.

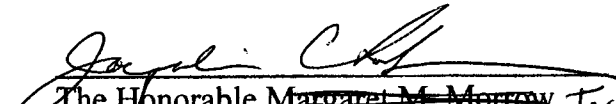
Dated: November 9, 2007

FLACHSBART & GREENSPOON, LLC

By   
William W. Flachsbart  
Attorneys for Plaintiff ValueClick, Inc.

**IT IS SO ORDERED:**

Dated: ~~November~~ December 27, 2007

  
The Honorable ~~Margaret M. Morrow~~ Jacqueline Chooljian  
United States District Judge  
Magistrate  
JACQUELINE CHOOLJIAN

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**EXHIBIT A**  
**CERTIFICATION CONCERNING**  
**MATERIAL COVERED BY PROTECTIVE ORDER**

I, the undersigned, hereby certify that I have read the Protective Order entered in the District of California in the case entitled *ValueClick, Inc. v. Revenue Science, Inc.*, Case No. CV 07 2052 MMM (JCX).

I understand the terms of the Protective Order. I agree to be bound by such terms and to submit to the personal jurisdiction of the District of California with respect to any proceeding related to the enforcement of this Protective Order, including any proceedings related to contempt of Court. I will not disclose Financial Confidential, Technical Confidential or Restricted Source Code Media materials to anyone other than persons specially authorized by the Protective Order, and I agree to return all such materials which come into my possession to counsel from whom I received such materials.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Name or Individual: \_\_\_\_\_

Company or Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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

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

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