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MARK BAKER and ECLIPS, LLC and Cross-  
Defendant LANE STEVENS

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

MARK BAKER, an individual; and  
ECLIPS, LLC, a California Limited  
Liability Company,

Plaintiffs,

v.

VARITALK, INC., a Delaware  
Corporation; FREDERICK LOWE, an  
individual; DEREK GOLDBERG, an  
individual; STEPHEN DRIMMER, an  
individual; ANTHONY JAMES, an  
individual; and GUY DAVIS, an  
individual,  
Defendants.

**AND RELATED COUNTERCLAIMS.**

)  
) **Case No.: CV07-6622 VBF (FFM)**  
)  
) [Honorable Valerie Baker Fairbank, U.S.  
) District Judge]  
)  
) [~~PROPOSED~~]  
) **DISCOVERY PROTECTIVE ORDER**  
) [Submitted To The Honorable Frederick F.  
) Mumm, U.S. Magistrate Judge]  
) [Revised Pursuant to Directions At February 24,  
) 2009 hearing.]

1 The Court, having reviewed the Plaintiffs Mark Baker and ECLIPS, LLC's Ex  
2 Parte Application for Entry of Stipulated Protective Order and good cause appearing  
3 therefore,

4 IT IS HEREBY ORDERED, as follows:

- 5 1. Designation of Materials as "CONFIDENTIAL," "HIGHLY  
6 CONFIDENTIAL — ATTORNEYS' EYES ONLY," or "HIGHLY  
7 CONFIDENTIAL — SOURCE CODE"

8 Any party or third party witness or entity in this action (hereinafter "the  
9 designating party") shall have the right to designate as "CONFIDENTIAL,"  
10 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY," or "HIGHLY  
11 CONFIDENTIAL — SOURCE CODE" any document, deposition, information or  
12 other form of evidence or discovery the party or third party witness or entity believes,  
13 in good faith, embodies, contains or reflects such information.

14 a. "CONFIDENTIAL INFORMATION" means information or other form  
15 of evidence or discovery the party or third party witness or entity believes, in good  
16 faith, embodies, contains or reflects confidential information that is used by it in, or  
17 pertaining to, its business, which information is not generally known and which that  
18 party would normally not reveal to third parties or, if disclosed, would require such  
19 third parties to maintain in confidence, including without limitation, research,  
20 development, commercial, financial or personnel information.

21 b. "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" means  
22 "CONFIDENTIAL INFORMATION" of a commercially sensitive nature that a  
23 producing party or producing third party determines in good faith is likely to cause  
24 significant competitive harm to its existing or prospective commercial relationships if  
25 disclosed to third parties, including, but not limited to, unpublished pending patent  
26 applications, foreign or domestic; non-public financial, marketing, strategic,  
27 organizational, operational, or competitive information, and may include any  
28 information that includes "source code" as defined hereinbelow;

1 c. “HIGHLY CONFIDENTIAL — SOURCE CODE” means  
2 “CONFIDENTIAL INFORMATION” that is limited solely to source code and object  
3 code, software tools, and design documents containing algorithms for the foregoing.  
4 For the avoidance of doubt, “source code” includes, but is not limited to, source files,  
5 make files, intermediate output files, executable files, header files, resource files,  
6 library files, module definition files, map files, object files, linker files, browse info  
7 files, and debug files. Source code also may include CAD software and similar three-  
8 dimensional representations programmed into a computer for display on a screen.  
9 Information designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” may  
10 only be used and disclosed as provided in this Protective Order.

11 2. Restriction on Use and Disclosure of Designated and Non-Designated  
12 Materials

13 No documents, information or things designated as “CONFIDENTIAL,”  
14 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY  
15 CONFIDENTIAL — SOURCE CODE,” nor any information derived therefrom, shall  
16 be disclosed to any person or entity except as set forth in paragraphs 6, 7, 8, 9 and 10  
17 of this Order. No person shall use any material designated “CONFIDENTIAL,”  
18 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY  
19 CONFIDENTIAL — SOURCE CODE,” or any information derived therefrom, for  
20 any purpose other than to assist outside counsel of record in the preparation and trial  
21 for this action. Counsel for each party shall take reasonable precautions to prevent the  
22 unauthorized or inadvertent disclosure of any such designated material.

23 3. Marking of Designated Materials

24 A designation as to documents shall be made by placing a legend on each page  
25 of any document that a designating party wishes to protect against unauthorized use or  
26 disclosure. In the event that compilations of information are produced on computer  
27 systems or databases, such information shall be treated as “HIGHLY  
28 CONFIDENTIAL — ATTORNEYS’ EYES ONLY” information pending the

1 production of specific documents from such databases and systems at which time the  
2 documents will be formally designated. The legend shall substantially state:  
3 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
4 ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE CODE.” All documents to be  
5 so designated shall be marked prior to the provision of a physical copy thereof to a  
6 receiving party. The designation as to things as to which inspection or sampling has  
7 been requested shall be made by placing a “CONFIDENTIAL,” “HIGHLY  
8 CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY  
9 CONFIDENTIAL — SOURCE CODE” legend in the form described above on the  
10 thing or the container within which it is stored. By agreement of counsel for the  
11 parties, documents may be made available for initial inspection by counsel for the  
12 requesting or receiving party prior to the furnishing party producing copies of selected  
13 items. In such cases, documents shall be inspected only by counsel for the receiving  
14 party permitted access to anything designated “HIGHLY CONFIDENTIAL —  
15 ATTORNEYS’ EYES ONLY.” The furnishing party shall then have an opportunity  
16 to designate and mark the documents as “CONFIDENTIAL,” “HIGHLY  
17 CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY  
18 CONFIDENTIAL — SOURCE CODE,” pursuant to the provisions of this Order,  
19 prior to furnishing copies to the receiving party. Such initial inspection shall not  
20 constitute a waiver of the attorney-client privilege, work product immunity or  
21 confidentiality with respect to any document so inspected but not ever “produced”. If  
22 any document(s) is (are) produced in electronic format, the file structure of said  
23 electronic document(s) shall be designated as “HIGHLY CONFIDENTIAL —  
24 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL — SOURCE CODE”  
25 pursuant to the provisions of this Order, to the same extent as the underlying  
26 document(s) has (have) been so designated. For the avoidance of doubt, if a  
27 document(s) is (are) marked “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
28 ONLY” or “HIGHLY CONFIDENTIAL — SOURCE CODE” the name of the file

1 containing the electronic copy (ies) of said document(s) shall also be kept strictly  
2 CONFIDENTIAL pursuant to the provisions of Paragraphs 7 and 8 of this Order.

3 4. Designation of Deposition Testimony

4 Any party or deponent may unilaterally designate portions of a deposition  
5 transcript as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’  
6 EYES ONLY,” provided such designation is either (a) made on the record during the  
7 deposition in which case the transcript of the designated testimony shall be bound in a  
8 separate volume and marked either “CONFIDENTIAL” or “HIGHLY  
9 CONFIDENTIAL — ATTORNEYS’ EYES ONLY” by the reporter or (b) made by  
10 written notice to all counsel of record, given within ten (10) business days after a final  
11 deposition transcript is received by the deponent or his counsel, in which case all  
12 counsel receiving a transcript shall be responsible for marking the copies of the  
13 designated transcript in their possession or under their control as directed by the  
14 designating party. Pending the expiration of ten (10) business days after a final  
15 deposition transcript is received by the deponent or his counsel, all parties shall treat  
16 the deposition testimony and transcript as if it has been designated “HIGHLY  
17 CONFIDENTIAL — ATTORNEYS’ EYES ONLY.” The designating party shall  
18 have the right to have all persons, except the deponent and his counsel, outside  
19 counsel of record for named parties, the court reporter and such other persons as are  
20 permitted to see the designated material under 6 and 7 hereof, excluded from a  
21 deposition, or any portion thereof, before the taking therein of deposition testimony  
22 which the designating party designates under this Order.

23 5. Filing Designated Materials

24 Any materials which are filed with the Court for any purpose and which are  
25 designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’  
26 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be filed in  
27 accordance with Central District of California Local Rule 79–5.1.

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1           6.     Access to “CONFIDENTIAL” Materials

2           Material designated as “CONFIDENTIAL” shall not be provided, shown, made  
3 available, or communicated in any way to any person or entity with the exception of:

4                 (i)     The Court (including appellate courts), arbitrators, and mediators,  
5 and the personnel of any of the foregoing;

6                 (ii)    Counsel to all parties in this litigation, including counsel of any  
7 party’s members, affiliates or investors and the counsel’s regular and temporary  
8 employees and service vendors;

9                 (iii)   Author(s), addressee(s), and recipient(s) of the designated  
10 information;

11                (iv)    Officers, directors, and employees of any of the parties to this  
12 litigation or their members, affiliates or investors that are assisting counsel in the  
13 prosecution or defense of this litigation or whom counsel must advise concerning the  
14 status of this litigation;

15                (v)     Any person who is expressly retained or sought to be retained by a  
16 Party as a consultant or as a testifying expert, provided that “CONFIDENTIAL”  
17 information shall be disclosed to any such person only to the extent necessary for that  
18 person to perform his or her work in connection with this action;

19                (vi)    Actual or potential deponents or witnesses in this action, and their  
20 counsel, during the course of their deposition or testimony or, to the extent necessary,  
21 in preparation for such depositions or testimony;

22                (vii)   Stenographers and videographers engaged to transcribe depositions  
23 conducted in this action.

24           7.     Access to “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
25                 ONLY” Materials

26           All information designated with this legend, and all information derived from  
27 the information so designated (excluding such information as is derived lawfully from  
28 an independent source without reference to, or use of, the Confidential Information of

1 a Party), shall be used only for the purposes of this action, and not for any business,  
2 commercial, patent prosecution, or other purpose whatsoever. Material designated as  
3 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” shall not be  
4 provided, shown, made available, or communicated in any way to any person or entity  
5 with the exception of:

6 (i) Then current outside litigation Counsel of Record for the parties in  
7 this action of the law firms that have made appearances in this action whose duties  
8 and responsibilities require access to confidential information;

9 (ii) the regularly employed office staffs and outside vendors for the  
10 then current outside litigation Counsel of Record for the parties who are performing  
11 legal and other related support services in connection with this action;

12 (iii) Any person who is expressly retained or sought to be retained by a  
13 Party as a consultant or as a testifying expert, provided that such “HIGHLY  
14 CONFIDENTIAL — ATTORNEYS’ EYES ONLY” information shall be disclosed to  
15 any such person only to the extent necessary for that person to perform his or her work  
16 in connection with this action;

17 (iv) With respect to any particular document that has been designated  
18 as “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” information, the  
19 author or addressee of that particular document, as well as any person who prepared or  
20 reviewed that document prior to the date this action was filed;

21 (v) Any person who is designated to receive “HIGHLY  
22 CONFIDENTIAL — ATTORNEYS’ EYES ONLY” information by Order of the  
23 Court or by written stipulation of the Parties;

24 (vi) The Court, court personnel, any court or deposition reporters used  
25 in connection with this action, and any such reporter’s support personnel; and

26 (vii) Outside litigation support vendors, including commercial  
27 photocopying vendors, scanning service vendors, coders and keyboard operators.

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1           8.     Access to “HIGHLY CONFIDENTIAL — SOURCE CODE” Materials.

2           All information designated with this legend, and all information derived from  
3 the information so designated (excluding such information as is derived lawfully from  
4 an independent source without reference to, or use of, the Confidential Information of  
5 a Party), shall be used only for the purposes of this action, and not for any business,  
6 commercial, patent prosecution, or other purpose whatsoever. Such information shall  
7 not be Communicated to any person or entity other than:

8                     (i)     (i)     Then current outside litigation Counsel of Record for the  
9 parties in this action, including the counsel’s regular and temporary employees and  
10 service vendors, that have made appearances in this action whose duties and  
11 responsibilities require access to confidential information, and whose duties do not  
12 include preparing and prosecuting patent applications for the parties in this action;

13                     (ii)    Any person who is expressly retained or sought to be retained by a  
14 Party as a consultant or as a testifying expert, provided that such “HIGHLY  
15 CONFIDENTIAL — SOURCE CODE” information shall be disclosed to any such  
16 person only to the extent necessary for that person to perform his or her work in  
17 connection with this action;

18                     (iii)   With respect to any particular document that has been designated  
19 as “HIGHLY CONFIDENTIAL — SOURCE CODE” information, the author of that  
20 particular document, as well as any person who prepared that document prior to the  
21 date this action was filed;

22                     (iv)   Any person who is designated to receive “HIGHLY  
23 CONFIDENTIAL — SOURCE CODE” information by order of the Court or by  
24 written stipulation of the Parties;

25                     (v)    The Court, court personnel, any court or deposition reporters used  
26 in connection with this action, and any such reporter’s support personnel, but only to  
27 the extent their responsibilities require access to such confidential information; and

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1 (vi) Outside litigation support vendors, including commercial  
2 photocopying vendors, scanning service vendors, coders and keyboard operators, but  
3 only to the extent their responsibilities require access to such confidential information.

4 9. Procedure for Seeking Additional Disclosures

5 Prior to any disclosure of material designated as “CONFIDENTIAL,”  
6 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY  
7 CONFIDENTIAL — SOURCE CODE,” other than as provided in 6, 7, and 8 above,  
8 counsel desiring to make such disclosure shall provide written notification to counsel  
9 for the designating party of the desire to make such disclosures, stating therein the  
10 specific material to be disclosed and the name, address, and position of the person to  
11 whom it is intended that disclosure be made. Disclosure to the person or persons so  
12 identified shall not be made until agreement of the designating party is obtained.  
13 However, if the designating party does not convey an objection to the proposed  
14 disclosure within five (5) business days of receipt of the written notification, the  
15 designating party will be deemed to have waived objection to the disclosure and its  
16 agreement will be assumed. If within five (5) business days of receipt of the written  
17 notification, the designating party gives written notification of its objection to the  
18 disclosure to counsel desiring to make the disclosure, the proposed disclosure is  
19 forbidden until such time as the requesting party obtains a court order permitting such  
20 disclosure.

21 10. Protective Order Acknowledgement

22 Except by written consent of the Designating Party, each person (other than the  
23 attorneys of record, their respective legal assistants, staff, and outside vendors, and  
24 court personnel) to whom Information designated as “CONFIDENTIAL,” “HIGHLY  
25 CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY  
26 CONFIDENTIAL — SOURCE CODE” may be disclosed under this Protective Order  
27 shall be provided with a copy of this Protective Order and shall certify in the  
28 PROTECTIVE ORDER ACKNOWLEDGEMENT (attached as Exhibit A), prior to

1 the time he or she receives such designated information in any form whatsoever, that  
2 he or she has carefully read this Protective Order and fully understands its terms and  
3 will be bound by its terms. Counsel disclosing information designated as  
4 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
5 ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE CODE” to any such person  
6 shall retain the original executed copy of the PROTECTIVE ORDER  
7 ACKNOWLEDGEMENT and is required to disclose the executed copies to opposing  
8 counsel only upon order of the Court.

9 11. Disclosure of Designated Material to Experts Specifically Retained For  
10 The Purposes of this Litigation

11 Prior to any disclosure by a party of material designated as either  
12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
13 ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE CODE,” by a designated party  
14 to any person specified in subsections 6 (v), 7 (iii), 8 (ii), counsel desiring to make  
15 such disclosure shall provide written notification to counsel for the designating party  
16 of the desire to make such disclosure, stating therein the name, address and position of  
17 the person to whom it is intended that disclosure be made together with a current  
18 curriculum vitae including a list of all companies for which such person has consulted  
19 during the last three (3) years. Disclosure to the person or persons so identified shall  
20 not be made until five (5) business days after a copy of the PROTECTIVE ORDER  
21 ACKNOWLEDGEMENT (attached as Exhibit A) signed by the person to whom it is  
22 intended that disclosure be made has been provided to the designating party. If the  
23 designating party does not convey an objection to the proposed disclosure within five  
24 (5) business days of receipt of the written notification, the designating party will be  
25 deemed to have waived objection to the disclosure and its agreement will be assumed.  
26 If within five (5) business days of receipt of the written notification, designating party  
27 gives written notification of its objection to the disclosure to counsel desiring to make  
28 the disclosure, the party seeking disclosure shall thereafter be permitted to file a

1 motion to permit such disclosure and the proposed disclosure will be forbidden until  
2 such time as the party seeking disclosure obtains a court order permitting such  
3 disclosure. Any such motion shall be made in compliance with Local Rules 37-1 and  
4 37-2. Should the Court find that the position of the designating party opposing such  
5 disclosure is not made in good faith, the Court may award to the party seeking  
6 disclosure attorneys fees and other costs incurred in making the motion to permit  
7 disclosure.

8 12. Retention of Confidential Materials

9 All materials designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL —  
10 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE  
11 CODE,” and any and all copies of reproductions thereof, shall be retained (except as  
12 otherwise provided in paragraph number 14 hereof) as follows:

13 (i) Materials designated “CONFIDENTIAL” are to be retained by the  
14 persons listed in subparagraphs (i) and (iii) of paragraph 6 hereof;

15 (ii) Materials designated “HIGHLY CONFIDENTIAL —  
16 ATTORNEYS’ EYES ONLY” are to be retained by the persons identified in  
17 subparagraph (i) of paragraph 7 hereof;

18 (iii) Materials designated “HIGHLY CONFIDENTIAL — SOURCE  
19 CODE” are to be retained by the persons identified in subparagraph (i) of paragraph 7  
20 hereof; and

21 (iv) Independent experts authorized to view designated materials under  
22 the terms of this Order may retain custody of copies of such materials as may be  
23 necessary for their participation in this litigation.

24 13. Production and Review of Source Code.

25 (i) Production of Source Code. To the extent that materials  
26 designated “HIGHLY CONFIDENTIAL – SOURCE CODE” are produced in this  
27 action, the materials shall be produced in native electronic format and access to such  
28 materials will be given only to those individuals for the Receiving Party who are

1 authorized under this Order to have access to information designated as “HIGHLY  
2 CONFIDENTIAL – SOURCE CODE,” and only on “stand-alone” secured systems  
3 (i.e., computer systems not connected to a network or the Internet). The secure  
4 computers will be maintained, and the Receiving Party may only review the produced  
5 code, as follows: (i) for Plaintiff’s produced code, at the offices of Hankin Patent Law  
6 and Ralph Schindler & Robert Gray, and (ii) for Defendant’s produced code, at the  
7 office of Krane & Smith. Each secure computer system shall be password protected.  
8 The Receiving Party may upload only one copy of any “HIGHLY CONFIDENTIAL  
9 – SOURCE CODE” information onto the secure computer as described above, and  
10 will maintain the production disks or external hard drive in a secure environment and  
11 not use them or provide anyone access to them for any purpose except as set forth  
12 herein. Each secure computer system shall be maintained in a secured area at the  
13 Receiving Party’s office, and except for building security personnel, only those  
14 individuals who are authorized under this Order to have access to information  
15 designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall have access to  
16 such secured area. The parties may install any source code analysis tools,  
17 applications, and/or utilities on the secure computer systems that they deem necessary  
18 or desirable in order to permit authorized individuals to analyze the produced source  
19 code.

20 (ii) Review of Source Code. The Receiving Party’s consultant or  
21 testifying experts shall not alter, dismantle, disassemble or modify the secure  
22 computer in any way, and shall not attempt to circumvent any security feature of the  
23 computer.

24 (iii) No copies of the source code shall be removed from the secured  
25 computer system, except for: (i) a reasonable volume of excerpted written or printed  
26 portions of the source code for use in, or in preparation for, arbitration filings or  
27 proceedings, expert analysis or reports, and depositions of persons or entities  
28 permitted to access “HIGHLY CONFIDENTIAL – SOURCE CODE” material, (ii)

1 output files generated by any source code analysis tools, applications, and/or utilities,  
2 provided that the volume of such output files will count towards the reasonable  
3 volume noted immediately above, and (iii) such other uses to which the Parties may  
4 agree or the Tribunal may order. Any printed copies of source code shall be clearly  
5 labeled by the Receiving Party “HIGHLY CONFIDENTIAL – SOURCE CODE” on  
6 each page and shall be securely maintained by the Receiving Party’s Outside Counsel  
7 and/or the Receiving Party’s consultant(s) and testifying expert(s), shall be printed on  
8 paper that is non-white and numbered (whether “Bates-labeled” or some other means),  
9 and shall be destroyed as soon as they are no longer needed.

10 (iv) A written log shall be maintained by the Receiving Party’s Outside  
11 Counsel and/or the Receiving Party’s consultant(s) and testifying expert(s) for all  
12 printed copies of source code or any portion thereof, including output files. The log  
13 shall record the date, the number of lines printed, and the identity of the person who  
14 created the printed copies. The Receiving Party must also keep any copied source  
15 code in a secured container or location at all times.

16 (v) Should the Review procedures described herein become unduly  
17 burdensome or impracticable to the Parties, the Parties shall timely confer in good  
18 faith with a view to modifying these Review procedures.

19 Each Party recognizes that misuse or unauthorized disclosure of the other  
20 Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
21 CONFIDENTIAL – SOURCE CODE” information may substantially impair the value  
22 of the such information and could also cause irreparable harm to the Designating  
23 Party. Each Receiving Party and its Outside Counsel shall be responsible for any  
24 misuse or unauthorized disclosure of the other Party’s “HIGHLY CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”  
26 information to the extent any insufficient security measures of the Receiving Party or  
27 its Outside Counsel lead to such misuse or unauthorized disclosure, and as otherwise  
28 set forth herein.

1           14.    Discovery Sought By Non-Parties

2           In the event that either party having possession, custody or control of any  
3 materials designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL —  
4 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE  
5 CODE,” by the other party receives a subpoena or other process or order to produce  
6 materials in another, unrelated legal proceeding from a non-party to this action, such  
7 party shall promptly notify counsel for the disclosing party of the subpoena or other  
8 process or order, furnish counsel for the disclosing party with a copy of said subpoena  
9 or other process or order and cooperate with respect to all reasonable procedures  
10 sought to be pursued by the disclosing party whose interests may be affected. The  
11 party having designated such materials as “CONFIDENTIAL,” “HIGHLY  
12 CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY  
13 CONFIDENTIAL — SOURCE CODE,” shall have the burden of defending against  
14 disclosure of its designated materials under such subpoena, process or order.

15           15.    Discovery Subject to Confidentiality Obligations to Non-Parties

16           In the event that a Party is requested to disclose documents or information in its  
17 possession, custody or control that are subject to an obligation of confidentiality to  
18 any non-Party, said Party shall disclose the existence of the requested documents or  
19 information to the opposing Party and identify the obligation of confidentiality in its  
20 response to the request. If the Party which has requested the documents or  
21 information decides to press for disclosure, the Party in possession, custody or control  
22 thereof shall inform the non-Party within a reasonable time thereafter that the  
23 documents or information in question will be produced under this Protective Order  
24 within ten days unless the non-Party or the Party in possession, custody or control  
25 thereof on the non-Party’s behalf, files a motion to preclude the disclosure pursuant to  
26 Local Rules 37-1 and 37-2. A non-Party asserting a confidentiality interest in  
27 documents or information in the control of a Party may, at its option, condition its  
28 assent to disclosure thereof by requiring that such documents or information be

1 designated by the Furnishing Party as “CONFIDENTIAL,” “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
3 – SOURCE CODE,” pursuant to this Order.

4 16. Inadvertent Production of Privileged Materials

5 It is agreed that inadvertent production of documents or information subject to  
6 the attorney-client privilege or work product immunity does not waive the attorney-  
7 client privilege or work-product immunity with respect to such production or with  
8 respect to other materials or information referred to in the materials produced if a  
9 request for return of such documents or information is made promptly after the  
10 disclosing party learns of its inadvertent production. Such inadvertently produced  
11 privileged documents or information (and all related notes and information) must be  
12 destroyed by the receiving party or returned to the disclosing party within ten (10)  
13 days after receiving notice of the inadvertent production. In the event that the  
14 receiving party destroys the inadvertently produced documents or information, a  
15 written confirmation of such destruction shall be promptly provided to the producing  
16 party. Nothing in this paragraph shall prejudice the right of any party to seek  
17 discovery of communications, documents and things as to which a claim of privilege  
18 has been made.

19 17. Disposition of Designated Materials at Conclusion of Case

20 Within sixty (60) days of the adjudication or resolution through settlement of  
21 the claims at issue herein, unless otherwise agreed to in writing by an attorney of  
22 record for the designating party, each party shall assemble and return all material,  
23 including all copies and extracts thereof, to the party or third party witness or entity  
24 from whom the designated materials were obtained. The party or parties receiving  
25 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
26 ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE CODE” materials may keep  
27 their attorney work product which refers or relates to any “CONFIDENTIAL,”  
28 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY



1 CONFIDENTIAL — SOURCE CODE” materials. Attorney work product may be  
2 used in subsequent litigation provided that such use does not disclose or use  
3 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
4 ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE CODE” material or any  
5 information contained therein.

6 18. Miscellaneous Provisions

7 (i) This Protective Order shall be without prejudice to the right of  
8 either party to bring before the Court at any time the question of (a) whether any  
9 particular information is or is not confidential; or (b) whether any particular  
10 information is or is not relevant to any issue of this case. Upon such hearing, the party  
11 asserting confidentiality or relevance shall have the burden of establishing the same.

12 (ii) Neither the taking of any action in accordance with the provisions  
13 of this Protective Order, nor the failure to object thereof, shall be construed as a  
14 waiver of any claim or defense in this action. Moreover, neither the failure to  
15 designate information in accordance with the Protective Order nor the failure to object  
16 to a designation at a given time shall preclude the filing of a motion at a later date  
17 seeking to impose such designation or challenging the propriety thereof. The entry of  
18 this Protective Order shall not be construed as a waiver of any right to object to the  
19 furnishing of information in response to discovery or to object to a requested  
20 inspection of documents or things, and, except as expressly provided, shall not relieve  
21 any party of the obligation of producing information in the course of discovery.

22 (iii) The inadvertent or unintended disclosure of materials designated  
23 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
24 ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE CODE” by a designating  
25 party, or the failure to initially designate materials as “CONFIDENTIAL,” “HIGHLY  
26 CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” or “HIGHLY  
27 CONFIDENTIAL — SOURCE CODE” under this Order, shall not be deemed a  
28 waiver of any claim for protection, provided the designating party gives prompt

1 notice, after discovery of said inadvertent or unintended disclosure or the failure to  
2 initially designate, that the materials should be treated confidential in accordance with  
3 the provisions of this Order. Upon such notice, the receiving party must treat the  
4 materials as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’  
5 EYES ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE CODE,” and must then  
6 make a good faith effort to advise any person to whom such materials may have been  
7 disclosed as to the change in designation and the manner in which such materials  
8 should thereafter be treated.

9 (iv) In the event any one shall violate, or threaten to violate, the terms  
10 of this Order, the parties agree that the aggrieved party may immediately apply to  
11 obtain injunctive relief against any violation or threatened violation, and in the event  
12 the aggrieved party shall do so, the respondent, subject to the provisions of this Order,  
13 shall not employ as a defense thereto any claim that the aggrieved party possesses an  
14 adequate remedy at law. The parties and any other person subject to the terms of this  
15 Order agree that this Protective Order shall continue to be binding after termination of  
16 this litigation, except with respect to those documents and information that become a  
17 matter of public record. The Court retains and shall have continuing jurisdiction over  
18 the parties and recipients of “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL —  
19 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE  
20 CODE” materials for enforcement of the provisions of this Protective Order following  
21 termination of this litigation.

22 (v) Entry of this Order is without prejudice to any party seeking to  
23 impose further restrictions on the dissemination of certain materials designated as  
24 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
25 ONLY,” or “HIGHLY CONFIDENTIAL — SOURCE CODE” or seeking to rescind,  
26 modify, alter or amend this Order with respect to specific documents or information.

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1 The party seeking such relief shall first attempt in good faith to resolve the matter  
2 informally. If the matter cannot be resolved, the party seeking relief may then apply  
3 for a suitable order from the Court.

4 (vi) Nothing in the foregoing provisions of this Protective Order shall  
5 affect any previous protective order or shall be deemed to preclude any party from  
6 seeking and obtaining, on an appropriate showing, additional protection with respect  
7 to the confidentiality of documents or other discovery material or relief from this  
8 Protective Order with respect to particular designated material.

9 (vii) Notwithstanding any other provision of this Protective Order to the  
10 contrary, the confidentiality obligations of this Protective Order shall not apply or  
11 shall cease to apply to any information that:

12 (a) At the time of disclosure hereunder was generally known to  
13 the public as evidenced by preexisting documentary evidence, or the document  
14 containing the information is already in the public record by publication or otherwise;

15 (b) Since the time of disclosure hereunder has become, through  
16 no act or failure on the part of the receiving party, part of the public domain by  
17 publication or otherwise;

18 (c) At the time of disclosure was already in the possession of  
19 the receiving party and was not acquired directly or indirectly from the producing  
20 party or from any third party under obligation of confidence to the producing party;

21 (d) After disclosure hereunder was acquired by the receiving  
22 party from a third party lawfully possessing the same and having no obligation to the  
23 producing party hereunder;

24 (e) The disclosing party agrees may be disclosed to a third party  
25 under no obligation of confidentiality;

26 (f) The disclosing party disclosed to any government entity  
27 without request for confidential treatment; or

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1 (g) The party claiming that he/she/it is relieved of the obligation  
2 of this Protective Order by operation of any of paragraph 19 (vii)(a-f) shall have the  
3 burden or proving that any of the provisions of paragraph 19 (vii)(a-f) apply.  
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5 **IT IS SO ORDERED.**

6 DATED: March 5, 2009

/S/ FREDERICK F. MUMM

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8 **HONORABLE FREDERICK F. MUMM**  
9 **UNITED STATES MAGISTRATE JUDGE**

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EXHIBIT A  
PROTECTIVE ORDER ACKNOWLEDGEMENT

I, \_\_\_\_\_, declare under penalty of perjury under the laws of the United States and California that:

1. My address is \_\_\_\_\_  
\_\_\_\_\_
2. My present employer is \_\_\_\_\_  
\_\_\_\_\_
3. My present occupation or job description is \_\_\_\_\_  
\_\_\_\_\_

4. I HEREBY CERTIFY AND AGREE that I have read and understand the terms of the Protective Order in the matter of *MARK BAKER, and ECLIPS, LLC v. VARITALK, INC., FREDERICK LOWE, DEREK GOLDBERG, STEPHEN DRIMMER, ANTHONY JAMES, and GUY DAVIS*, Case No. CV07-6622 VBF (FFM); that I will not use or disclose to anyone any of the contents of any Confidential Information received under the protection of the Protective Order except in accordance with the Protective Order; that I will comply with and be bound by the terms and conditions of the Protective Order; and that I hereby submit to the jurisdiction of the United States District Court for the Central District of California and the Superior Court of the State of California for the County of Los Angeles for the purposes of enforcement of the Protective Order.

5. I understand and agree that, pursuant to the Protective Order, I am

1 required to retain all Copies of any of the materials that I receive that have been so  
2 designated as containing Confidential Information in a container, cabinet, drawer, area  
3 or other safe place in a manner consistent with this Protective Order, that all Copies  
4 are to remain in my custody until they are to be returned or destroyed as specified in  
5 the Protective Order. I acknowledge that such return or the destruction of such  
6 materials shall not relieve me from any of the continuing obligations imposed on me  
7 by the Protective Order.  
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12 Dated: \_\_\_\_\_  
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14 (Signature)  
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