

1 Robert A. Sacks (SBN 150146)  
sacksr@sullcrom.com  
2 Brian R. England (SBN 211335)  
englandb@sullcrom.com  
3 Edward E. Johnson (SBN 241065)  
johnsonee@sullcrom.com  
4 SULLIVAN & CROMWELL LLP  
1888 Century Park East, Suite 2100  
5 Los Angeles, California 90067-1725  
Tel.: (310) 712-6600  
6 Fax: (310) 712-8800

7 Richard A. Gaffin (*Pro Hac Vice*)  
gaffin@millercanfield.com  
8 A. Michael Palizzi (*Pro Hac Vice*)  
palizzi@millercanfield.com  
9 Frederick R. Juckniess (SBN 210454)  
juckniess@millercanfield.com  
10 Kristen I. Spano (*Pro Hac Vice*)  
spano@millercanfield.com  
11 MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.  
150 West Jefferson, Suite 2500  
12 Detroit, MI 48226  
Tel.: (313) 963-6420  
13 Fax: (313) 496-7500

14 *Attorneys for Plaintiffs j2 Global*  
15 *Communications, Inc., and Call*  
*Sciences, Inc.*

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

18 j2 GLOBAL COMMUNICATIONS, INC.,  
19 a Delaware Corporation, and CALL  
20 SCIENCES, INC., a Delaware corporation,

21 Plaintiffs/Counter-Defendants,

22 v.

23 ZILKER VENTURES, LLC, a Texas  
24 limited liability company, and  
25 CHOOSEWHAT.COM, LLC,

26 Defendants/Counter-Plaintiffs.  
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Case No. 2:08-cv-07470-SJO AJW

~~PROPOSED~~ PROTECTIVE  
ORDER

Date:  
Time:

1 I. Except as otherwise ordered by this Court, this Stipulated Protective  
2 Order (hereinafter "Order") shall apply to all documents produced and all  
3 discovery responses given or filed in this action both by the parties and by any  
4 non-party that produces discovery in this case pursuant to discovery demand,  
5 subpoena or agreement. For purposes of this Order, "document or discovery  
6 response" shall include, but not be limited to, documents and tangible things,  
7 responses to requests for production of documents or other things, responses to  
8 interrogatories, responses to requests for admissions, deposition testimony and  
9 exhibits and all copies, extracts, summaries or compilations.

10 A. This Order does not require production of (a) work product  
11 material or information or (b) materials or information covered  
12 by the attorney-client or other applicable, state or other,  
13 privileges. Such material may continue to be withheld from  
14 discovery by any party, unless the Court orders otherwise.

15 B. All discovery subject to this Order shall be used solely and  
16 exclusively for purposes of this case in accordance with the  
17 provisions of this Order.

18 C. The parties shall serve a copy of this Order simultaneously  
19 with any discovery request made to a non-party in this action.

20 II. Any party or non-party from whom production is sought may  
21 designate a document or discovery response as either CONFIDENTIAL or  
22 ATTORNEYS' EYES ONLY pursuant to the terms of this Order.

23 A. CONFIDENTIAL information shall include any discovery  
24 material that the producing party or non-party reasonably  
25 believes not to be in the public domain and contains any trade  
26 secrets or other confidential, strategic, research, development,  
27 or commercial information.

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B. ATTORNEYS' EYES ONLY information shall include any discovery material that the producing party or non-party reasonably believes to be so competitively sensitive that it is entitled to extraordinary protections, without which the disclosure of the information to another party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

C. A document or information contained in a document or discovery response given or filed in this case may be designated by stamping or otherwise marking (in such manner as will not interfere with the legibility of the document) each page of a document containing confidential information or, in the case of electronic discovery, in folders with an appropriate notation substantially in the form: CONFIDENTIAL or ATTORNEYS' EYES ONLY.

1. Any copies or reproductions, excerpts, summaries or other documents or media that paraphrase, excerpt or contain CONFIDENTIAL or ATTORNEYS' EYES ONLY information shall also be treated as CONFIDENTIAL or ATTORNEYS' EYES ONLY information pursuant to this Order.

2. In the event deposition testimony concerns matters that a party or non-party deems CONFIDENTIAL or ATTORNEYS' EYES ONLY, the entity seeking such protection may designate that portion of the transcript as such (a) during the course of the deposition (in which

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case participation in that portion of the deposition may be limited to those persons who are authorized to receive such information pursuant to this Order) or (b) by written designation made within fifteen (15) days of receipt of the relevant transcript. The 15-day period is subject to enlargement or extension either by consent of the parties, such consent not to be unreasonably withheld, or by order of the Court. The parties shall treat each deposition transcript as if designated ATTORNEYS' EYES ONLY until the period for the confidentiality designation of such transcript has expired, after which time the parties shall honor all confidentiality designations in such transcript as provided in this Order.

3. Regardless of the manner in which deposition designation as CONFIDENTIAL or ATTORNEYS' EYES ONLY is initially made, such written designation as is contemplated in paragraph II.C.2.b. hereof shall be accomplished by clearly marking on a copy of that transcript each portion of the transcript containing CONFIDENTIAL or ATTORNEYS' EYES ONLY information by placing the appropriate legend on the page of each portion of the transcript to be so designated. The marked transcript shall be served on all parties to this action. In any Court filing or written discovery response, a party or non-party shall note on the cover page of the document or discovery response, that all or a portion of the document or discovery

1 response contains CONFIDENTIAL or ATTORNEYS'  
2 EYES ONLY information designated pursuant to this  
3 Order and shall furnish such information under seal  
4 pursuant to paragraph II.G. hereof.

5 D. Deposition testimony designated as containing  
6 CONFIDENTIAL or ATTORNEYS' EYES ONLY  
7 information may be so designated in response to a question,  
8 prior to any responsive testimony being given, or thereafter,  
9 regardless of whether the non-designating party objects to the  
10 designation. The objecting party, however, may challenge the  
11 designation before the Court, either during the deposition or  
12 after its conclusion. In the event that the designation of  
13 information precludes a deponent's access to information, the  
14 party seeking to utilize such information at the deposition may  
15 seek leave of the Court to examine the witness further on the  
16 information and related subjects covered by the designation.

17 E. At any deposition session, when counsel for a party or the  
18 deponent deems that the answer to a question will result in the  
19 disclosure of CONFIDENTIAL or ATTORNEYS' EYES  
20 ONLY information, counsel shall have the option, in lieu of  
21 taking other steps available under the Federal Rules of Civil  
22 Procedure, to request that all persons other than the reporter,  
23 counsel and those who have access to the appropriate category  
24 of information, leave the deposition room during that portion  
25 of the deposition. The failure of such other persons to comply  
26 with such a request shall constitute substantial justification for  
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1 counsel to advise the witness that he or she need not answer the  
2 question pending.

3 F. It is the responsibility of counsel for each party of this action to  
4 take reasonable precautions to prevent the unauthorized or  
5 inadvertent disclosure of any materials containing  
6 CONFIDENTIAL or ATTORNEYS' EYES ONLY  
7 information obtained from any party or non-party by  
8 maintaining the information in a secure and appropriate  
9 manner so as to allow access to the information only to such  
10 persons as are permitted pursuant to paragraph II.H. hereof.

11 G. To the extent that CONFIDENTIAL or ATTORNEYS' EYES  
12 ONLY information is contained in or attached to materials  
13 filed with the Court, such materials will be filed under seal.  
14 The parties agree to cooperate in ensuring that documents  
15 comply with Local Rule 79-5.1 regarding filing documents  
16 under seal. No one other than the Court, its agents and  
17 employees, and persons authorized by this Order or any  
18 subsequent order of the Court or agreement of the parties, shall  
19 have access to such sealed materials.

20  
21 H. Except with the prior written consent of the party asserting  
22 confidential treatment or prior order of the Court, any  
23 CONFIDENTIAL or ATTORNEYS' EYES ONLY document  
24 or discovery response, and the information contained therein,  
25 may not be disclosed other than in accordance with this Order.  
26 All persons to whom ATTORNEYS' EYES ONLY or  
27 CONFIDENTIAL information is disclosed shall be required to  
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abide by the terms of this Order.

1. ATTORNEYS' EYES ONLY information may only be disclosed to (a) outside counsel of record for the respective parties to this litigation and their paralegal and clerical staff, each of whom shall be required to abide by the terms of this Order, (b) one in-house counsel for each party to be identified by name to the other party, subject to change only because of a change in employment status of the identified in-house counsel, and his or her direct supporting staff. No ATTORNEYS' EYES ONLY information will be disclosed to the officers, directors and employees of a non-designating party other than the identified in-house counsel.
2. CONFIDENTIAL information may be disclosed to (a) the individuals identified in paragraph II.H.1. hereof and to those officers, directors and employees of any party or producing non-party for purposes of participation and preparation of any claims or defenses to be asserted in the pending action as specified in I.B and II.H.I.
3. ATTORNEYS' EYES ONLY and CONFIDENTIAL information may be disclosed to (a) expert witnesses, (b) consultants, (c) litigation support services, including outside copying services, (d) court reporters, or (e) companies engaged in the business of supporting computerized or electronic litigation discovery or trial preparation, engaged by counsel for a party to assist in

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the prosecution or defense of this action, provided that each such person shall first have read a copy of this Order and manifest his or her intent to assent to its terms by signing a copy of the attached "Acknowledgement Regarding The Stipulated Protective Order" attached hereto. Each such signed Acknowledgement shall be maintained by the party providing the CONFIDENTIAL or ATTORNEYS' EYES ONLY information to that person and a copy thereof shall be provided to any party to this action and to the producing entity whose CONFIDENTIAL or ATTORNEYS' EYES ONLY information was disclosed pursuant to this paragraph upon request.

4. ATTORNEYS' EYES ONLY and CONFIDENTIAL information may be disclosed to the Court and Court personnel under such safeguards as provided for in paragraph II.G. hereof.

5. CONFIDENTIAL information may be disclosed to non-party witnesses and their counsel of record only to the extent that such information was written by, or to, such witness, or where counsel believes in good faith that the witness knows or should know of the existence and content of such information. (Only applies to CONFIDENTIAL information, not ATTORNEYS' EYES ONLY information).

6. CONFIDENTIAL information may be disclosed to deposition witnesses, including current or former



1 employees, officers or directors of a party or non-party,  
2 reasonably believed to have relevant information  
3 regarding the CONFIDENTIAL information. (Only  
4 applies to CONFIDENTIAL information, not  
5 ATTORNEYS' EYES ONLY information).

6 7. CONFIDENTIAL or ATTORNEYS' EYES ONLY  
7 information may be disclosed to any other person as to  
8 whom the party or non-party producing the information  
9 has consented to disclosure in advance and in writing, on  
10 notice to each party hereto. Such consent shall not be  
11 unreasonably withheld.

12 I. No recipient of CONFIDENTIAL or ATTORNEYS' EYES  
13 ONLY information shall make any copies of or notes  
14 concerning such information for any purpose whatsoever,  
15 except in connection with this litigation and solely for the  
16 purposes of this litigation.

17 J. Nothing in this Order shall preclude any party to this lawsuit or  
18 its counsel: (a) from showing any CONFIDENTIAL or  
19 ATTORNEYS' EYES ONLY document or discovery response  
20 to an individual who either prepared, authored, or received the  
21 document or discovery response prior to the filing of this  
22 action; (b) from disclosing or using, in any manner or for any  
23 purpose, any information or documents from the party's own  
24 files that that party itself has designated as CONFIDENTIAL  
25 or ATTORNEYS' EYES ONLY; or (c) from disclosing or  
26 using, in any manner or for any purpose, any information or  
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1 documents obtained legally from a source not governed by this  
2 Order.

3 K. A party disclosing CONFIDENTIAL information to a person  
4 described in paragraph II.H.2.-3., 5.-7. hereof must first: (i)  
5 advise the recipient that the information is CONFIDENTIAL  
6 and may only be used in connection with this or related  
7 litigation; (ii) provide the recipient with a copy of this Order;  
8 and (iii) have that person execute the Acknowledgment  
9 Regarding The Stipulated Protective Order attached hereto.

10 L. In the event that a party receiving CONFIDENTIAL or  
11 ATTORNEYS' EYES ONLY documents or information,  
12 receives a subpoena or other compulsory process for any such  
13 CONFIDENTIAL or ATTORNEYS' EYES ONLY documents  
14 or information from any court or local, state, or federal  
15 government entity, the receiving party shall provide notice of  
16 the subpoena in writing to the party that produced the  
17 information within 24 hours of receipt of such process. The  
18 notice will set forth the information subpoenaed, the person  
19 requesting the subpoenaed information, and attach a copy of  
20 the subpoena or other process. The purpose of the notice is to  
21 provide an opportunity for the party that had produced and  
22 designated the CONFIDENTIAL or ATTORNEYS' EYES  
23 ONLY information to challenge the subpoena or other process.  
24 Any such subpoenaed information will not be turned over  
25 before the expiration of ten (10) days following service of this  
26 notice or resolution of the judicial challenge to said subpoena  
27 or other process, whichever is later.  
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1           III. Any party who wishes to challenge another party's designation of  
2 information as CONFIDENTIAL or ATTORNEYS' EYES ONLY may proceed  
3 as follows:

4           A. Any party receiving any information or documents that have  
5 been designated as CONFIDENTIAL or ATTORNEYS' EYES  
6 ONLY may object in writing to such designation (and to a non-  
7 party if that is the designating entity), and identify the desired  
8 de-designation by specifying the information or material that  
9 the challenging party contends was improperly designated.  
10 The designating party (or any other interested party) shall then  
11 have ten (10) days to reject the desired de-designation by so  
12 informing the challenging party, in writing, on notice to all  
13 parties. (The 10-day period in which to respond is subject to  
14 enlargement or extension by either consent of the challenging  
15 party, such consent not to be unreasonably withheld, or the  
16 Court.) Absent a timely rejection of the desired de-  
17 designation, the information shall be deemed to be de-  
18 designated in accordance with the challenging party's notice of  
19 de-designation. If such objection cannot be resolved, in good  
20 faith, by agreement, the objecting party may file a motion with  
21 the Court to determine the propriety of the designation.

22           B. The objecting party's motion shall:  
23           1. certify that he or she has sought in good faith to confer  
24           with opposing counsel and has been unable to resolve  
25           the dispute by agreement;  
26           2. list by document number, deposition page and line  
27           number, or other appropriate designation of material  
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1                   lacking bates numbers, the information that the party  
2                   claims was improperly designated CONFIDENTIAL or  
3                   ATTORNEYS' EYES ONLY.

4                   C.    The burden of establishing the factual and legal basis for  
5                   CONFIDENTIAL or ATTORNEY'S EYES ONLY treatment  
6                   of any information rests with the party requesting such  
7                   confidentiality.

8                   D.    If such motion is timely made as provided in paragraph III  
9                   hereto, until the motion is ruled upon by the Court, the  
10                  designation of confidentiality shall remain in full force and  
11                  effect and the information shall continue to be accorded the  
12                  treatment required by this Order.

13                IV.   Disclosure by the producing party or non-party of CONFIDENTIAL  
14                or ATTORNEYS' EYES ONLY information without proper designation at the  
15                time of disclosure shall not be deemed a waiver, in whole or in part, of any party's  
16                or non-party's claim to confidentiality, either as to the specific information  
17                disclosed or as to any other information relating to the subject matter of the  
18                information disclosed. Upon learning of the disclosure of CONFIDENTIAL or  
19                ATTORNEYS' EYES ONLY information without proper designation, the party or  
20                non-party seeking protection of the information shall, within ten (10) days,  
21                properly designate such information; provided, however, that no party shall be  
22                deemed to be in breach of this Order by reason of any use or disclosure of such  
23                information, inconsistent with such later designation, that occurred prior to  
24                notification of such later designation.

25                V.    Nothing contained in this Order shall affect the right of any party or  
26                producing entity to make any objection, claim privilege, or otherwise contest any  
27                request for production of documents, subpoena, interrogatory, request for  
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1 admission, or question at a deposition as permitted by the Federal Rules of Civil  
2 Procedure. Nothing in this Order shall constitute an admission or waiver, in  
3 whole or in part, of any claim, privilege, or defense by any party or producing  
4 entity. If a producing party or non-party inadvertently produces privileged  
5 material, upon learning of the inadvertent disclosure, it shall promptly so notify in  
6 writing those persons to whom it produced that material. Upon receipt of such  
7 notification, the receiving persons shall immediately return to the producing party  
8 or non-party all copies of such material in its possession and shall immediately  
9 delete all electronic copies of such material. The receiving persons shall also  
10 immediately inform any person to whom disclosure of such material was made  
11 pursuant to paragraph II.H. hereof of the inadvertent disclosure, and shall request  
12 that each such person immediately destroy and/or delete all copies of such  
13 material within its possession and shall expunge from any other document or  
14 material information solely derived from the inadvertently produced information  
15 except where the document or information has been made part of the record or a  
16 filing in the action in which case the burden of seeking removal or expungement  
17 shall be on the designating party. If a person who receives CONFIDENTIAL or  
18 ATTORNEYS' EYES ONLY information pursuant to paragraph II.H.1.-3., 5.-7.  
19 hereof realizes that any of that information is subject to the attorney-client, work-  
20 product, or other privilege, that person shall promptly notify the producing party,  
21 return to it the privileged information, delete all electronic copies of such  
22 information, and shall expunge from any other document or material information  
23 solely derived from the inadvertently produced privileged information except  
24 where the document or information has been made part of the record or a filing in  
25 the action in which case the burden of seeking removal or expungement shall be  
26 on the designating party. Those persons shall also immediately inform any other  
27 person to whom disclosure of such material was made pursuant to paragraph II.H.

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1 hereof, and shall request that each such person immediately destroy and/or delete  
2 all copies of such material within its possession.

3 VI. Any party shall be free to move to modify this Order.

4 VII. A failure to challenge the propriety of a designation of confidentiality  
5 at the time the designation is made shall not preclude or detract from a subsequent  
6 challenge thereto.

7 VIII. All materials containing CONFIDENTIAL or ATTORNEYS' EYES  
8 ONLY information that are submitted to the Court or used in any pretrial  
9 proceeding before this Court shall continue to be entitled to the protection  
10 provided by this Order.

11 IX. Each person who receives CONFIDENTIAL or ATTORNEYS'  
12 EYES ONLY information hereby agrees to subject himself or herself to the  
13 jurisdiction of this Court for the purpose of any proceedings relating to the  
14 performance under, compliance with, or violation of, this Order. Furthermore, the  
15 parties agree that, to the extent a non-party produces documents pursuant to  
16 subpoena served in a jurisdiction other than the Central District of California and  
17 designates those documents under the provisions of this order, the parties consent  
18 to any challenge or enforcement of the Order in the jurisdiction under which the  
19 documents were originally produced.

20 X. Promptly upon the conclusion of this action, all CONFIDENTIAL  
21 and ATTORNEYS' EYES ONLY information of any type, all copies thereof, and  
22 all excerpts therefrom shall be returned to counsel for the party or non-party  
23 producing the documents, or destroyed, at the producing entity's option.

24 XI. After termination of this litigation, the provisions of this Order shall  
25 continue to be binding, except with respect to those documents and information  
26 that become a matter of public record. This Court retains and shall have  
27 jurisdiction over the parties and recipients of CONFIDENTIAL or ATTORNEYS'  
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1 EYES ONLY information of any type for enforcement of the provisions of this  
2 Order following termination of this litigation.

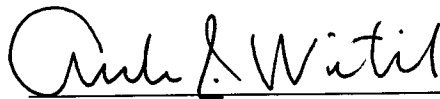
3 XII. A breach of the provisions of this Order shall be subject to sanctions,  
4 in the discretion of the Court as within or authorized by any statute, rule or  
5 inherent power of the Court, or as otherwise provided by law.

6 XIII. This Order shall have no effect on whether a document or  
7 information is discoverable. Any agreement of the parties embodied in this Order  
8 does not constitute an admission or agreement that any document or information  
9 designated CONFIDENTIAL or ATTORNEYS' EYES ONLY by a party or non-  
10 party: (a) is entitled to any confidentiality; (b) is competent, relevant, or material;  
11 (c) is subject to discovery; or (d) is admissible as evidence in this case.  
12 Designation of any information subject to this Order shall have no meaning or  
13 effect with respect to the substantive issues in this proceeding for the claims or  
14 defenses of any party hereto.

15 XIV. This Order is binding on the parties immediately upon execution.

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17 Dated: 9.4.2009



18 \_\_\_\_\_  
19 Hon. Andrew J. Wistrich  
20 United States Magistrate Judge

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