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*Inc. and Advanced Messaging Technologies, Inc..*  
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10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**  
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 14 J2 GLOBAL COMMUNICATIONS,  
 15 INC. and ADVANCED MESSAGING  
 TECHNOLOGIES, INC.,

16 Plaintiff,

17 v.

18 FAX87.COM, FARJAD FANI and  
 19 MATT JOHNSON FINANCE INC.,

20 Defendant.

Case No. 2:11-CV-02618 DDP (AJWx)

**PROTECTIVE ORDER**

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 22 AND RELATED CROSS-ACTION  
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1           The parties to this action stipulate to, and seek entry of, the following  
2 Protective Order:

3           1.     “Confidential” information is information that, in good faith, a  
4 party believes to contain (a) proprietary or commercially sensitive information  
5 which is not publicly known and which its owner would not reveal to others except  
6 in confidence; (b) personal financial information; or (c) information that should  
7 otherwise be subject to confidential treatment under the Federal Rules of Civil  
8 Procedure. If a person, including a third party, producing information under this  
9 Order (the “Producing Person”) designates information as “Confidential,” the  
10 designated information shall be treated as Confidential unless successfully  
11 challenged under ¶ 11. When producing documents, the Producing Person shall  
12 mark each page containing Confidential information as “Confidential.”

13           2.     “Restricted Confidential” information shall be limited to  
14 information that, in good faith, a party believes to contain (a) current and past  
15 business planning and financial information; (b) trade secrets; (c) past or current  
16 company personnel or employee information; (d) source code; and (e) information  
17 concerning a party’s sales or the design, structure or workings of a party’s products  
18 or systems which would, if it became known to other parties, harm the competitive  
19 position of its owner. If a Producing Person designates information as Restricted  
20 Confidential under this Order, the designated information shall be treated as  
21 Restricted Confidential unless successfully challenged under ¶ 11. When  
22 producing documents, the Producing Person shall mark each page containing  
23 Restricted Confidential information as “Restricted Confidential” or “Attorneys  
24 Eyes Only.” For avoidance of doubt, documents marked “Attorneys Eyes Only”  
25 shall be treated as Restricted Confidential materials under the terms of this  
26 Protective Order.

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1           3. Any Producing Person, whether or not a party to this action,  
2 may designate information as Confidential or Restricted Confidential under this  
3 Order.

4           4. When a document is designated as Confidential or Restricted  
5 Confidential, the designation includes not only the document so designated, but  
6 also any information derived from that document, and any copies, excerpts,  
7 summaries, or compilations thereof.

8           5. A person receiving information under this Order (the “Receiving  
9 Person”) shall use Confidential or Restricted Confidential information (together,  
10 “Protected Information”) only to conduct this litigation or any other litigation  
11 between or among parties to this action, provided that such other litigation does not  
12 involve any party that is not a party to this action.

13           6. By receiving information under this Order, all Receiving  
14 Persons agree to be subject to the jurisdiction of this Court concerning their use of  
15 Protected Information. All receiving persons other than attorneys, their staff, and  
16 independent companies engaged by outside litigation counsel to perform litigation  
17 support service, shall sign an acknowledgment in the form attached hereto as  
18 Exhibit A, indicating that they have read and understood the terms of this Order and  
19 agree to submit to the jurisdiction of the Central District of California for  
20 enforcement of this Order. Counsel for each party shall maintain all original  
21 acknowledgments, and will produce the same to the opposing party when so  
22 ordered by the Court.

23           7. A Receiving Person may disclose Restricted Confidential  
24 information only to the following:

- 25           a. outside litigation counsel retained by a party in this action, including  
26           attorneys, their staff, and independent companies engaged by outside  
27           litigation counsel to perform litigation support services;  
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1 b. independent experts or consultants retained by outside litigation  
2 counsel;

3 c. any person giving testimony in this action at deposition, trial or  
4 hearing, but only if the person giving testimony is the creator, author or  
5 recipient of the Restricted Confidential information; provided that such  
6 persons may not retain any documents containing Restricted Confidential  
7 information provided to them at such deposition, trial or hearing;

8 d. the Court, its personnel and any court reporters involved in taking or  
9 transcribing testimony in this action; and

10 e. any other person by written agreement of the parties or by order of the  
11 Court.

12 8. A Receiving Person may disclose Confidential information only  
13 to the following:

14 a. persons listed in ¶ 7; and

15 b. any person giving testimony in this action at deposition, trial or  
16 hearing witnesses, but only for purposes of reasonable, material, and  
17 relevant testimony or preparation of such testimony in the litigation,  
18 provided that such persons may not retain any documents containing  
19 Protected Information; and

20 c. employees of the Receiving Person to whom disclosure is reasonably  
21 necessary for the management, supervision, or oversight of the litigation.

22 9. Before a Receiving Person can share Protected Information  
23 received from another party in the litigation with an independent expert or  
24 consultant under ¶ 7.b, the Receiving Person shall provide the Producing Person  
25 written notice of its intention, which shall include the proposed expert's curriculum  
26 vitae as well as a list of any previous or current relationship with any party to this  
27 action. If the Producing Person objects to the disclosure, it must send a written  
28 objection, including a detailed explanation of its objection, that is received within

1 ten business days after the Producing Person's receipt of the written notice. Absent  
2 a timely written objection, the Receiving Person may share Protected Information  
3 with the independent expert. If the Producing Person makes a timely written  
4 objection, the Receiving Person shall not share Protected Information with the  
5 independent expert until the objection is resolved by agreement or by the Court. If  
6 the parties cannot resolve this dispute, they may proceed under the Local Rules  
7 addressing discovery disputes, with the Producing Person bearing the burden of  
8 promptly filing a motion and establishing good cause to support its objection. A  
9 producing party shall not seek discovery with respect to a consultant or other non-  
10 testifying expert of a party who has received Protected Information, absent a Court  
11 order pursuant to a motion made by the producing party.

12           10. If not so designated in the transcript, deposition testimony shall  
13 be deemed Restricted Confidential until thirty days following the reporter's  
14 distribution of the final transcript. During those thirty days, a Producing Person  
15 may designate portions of the transcript under ¶ 1 or ¶ 2 by sending written  
16 designations to all parties to this action.

17           11. If a Receiving Person disagrees with a designation of  
18 information under ¶ 1 or ¶ 2, it shall provide the Producing Person written notice of  
19 its challenge. If the parties cannot resolve this dispute, the Receiving Person may  
20 bring a motion challenging the designation under the Local Rules addressing  
21 discovery disputes, with the Producing Person bearing the burden of showing that  
22 the information is Confidential or Restricted Confidential. Failure to challenge a  
23 designation immediately does not waive a Receiving Person's ability to bring a  
24 later challenge.

25           13. If a Producing Person inadvertently fails to designate material as  
26 Protected Information at the time of production, it shall notify all Receiving  
27 Persons of its failure as soon as possible after discovery. The Producing Person  
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1 shall promptly supply all Receiving Persons with new copies of any documents  
2 bearing corrected confidentiality designations.

3           14. Any discovery documents produced in this litigation may be  
4 later designated as “Attorney Client Privileged” or “Attorney Work Product”  
5 promptly upon discovery by the Producing Person that any such privileged or  
6 immune document was produced through inadvertence, mistake, or other error, and  
7 no waiver of privilege or immunity shall be deemed to have occurred. Upon such  
8 designation, the Receiving Person promptly shall make best efforts to collect all  
9 copies of the documents and return them to the Producing Person.

10           15. In the event that any Protected Information is used in any  
11 proceeding in connection with this litigation, it shall not lose its Confidential or  
12 Restricted Confidential status through such use, and the parties shall take all steps  
13 reasonably required to protect its confidentiality during such use.

14           16. To the extent that any Confidential or Restricted Confidential  
15 information subject to this Protective Order (or any pleading, motion, or  
16 memorandum referring to them) is proposed to be filed or is filed with the Court,  
17 those materials and papers, or any portion thereof which discloses Confidential or  
18 Restricted Confidential information, shall be presented to the judge (by the filing  
19 party) accompanied by an application to file under seal in accordance with the  
20 procedures set forth in Local Rule 79-5.1 and shall be marked “CONFIDENTIAL  
21 INFORMATION FILED UNDER SEAL” on the outside of the sealing envelopes;  
22 such application shall be directed to the judge to whom the papers are directed.  
23 Pending a ruling on the application submitted in accordance with Local Rule 79-  
24 5.1, the papers or portions thereof subject to the application shall be lodged under  
25 seal. However, only those portions of filings containing Confidential or Restricted  
26 Confidential information shall be filed under seal. The filing party shall also file  
27 with the Court for regular filing a redacted version of any filing submitted under  
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1 Local Rule 79-5.1 in which any Confidential and/or Restricted Confidential  
2 information shall be redacted.

3 17. Nothing in this Order precludes any person from disclosing or  
4 using in any manner its own information, or information not obtained under this  
5 Order, even if the same information is also produced under this Order.

6 18. Nothing in this Order precludes any person from showing a  
7 document containing Protected Information to an individual who prepared or  
8 received the document, or from disclosing Protected Information to a current  
9 employee, officer or director of the Producing Person.

10 19. No information may be withheld from discovery on the ground  
11 that the material to be disclosed requires protection greater than that afforded by  
12 this Protective Order unless the party claiming a need for greater protection moves  
13 for an order providing such special protection pursuant to Rule 26(c) and Local  
14 Rules 37-1 through 37-4.

15 20. The Parties acknowledge and agree that nothing in this  
16 protective order is intended to be construed inconsistently with the rights and  
17 obligations of the Parties under Local Rules 37-1 through 37-4 governing  
18 cooperation during discovery, and that, in the event of any inconsistency, the  
19 procedures defined by the Local Rules shall govern. If the Parties wish to file the  
20 Joint Stipulation (or portions thereof) required by Local Rule 37-2 under seal, the  
21 Parties may file a separate stipulation to that effect, or the moving party may file an  
22 *ex parte* application making the appropriate request. The Parties acknowledge and  
23 agree that the stipulation or *ex parte* application must demonstrate good cause as to  
24 why the Joint Stipulation or portions thereof should be filed under seal.

25 21. Within sixty days of the termination of litigation between the  
26 parties, all Protected Information shall be destroyed or returned to the Producing  
27 Person, except that one designated outside litigation counsel of record for each  
28 party may maintain in its files one copy of each deposition transcript, each

1 document filed with the Court, and each correspondence transmitted between  
2 outside counsel for the parties to this action.

3 So **ORDERED AND SIGNED** this 27th day of October, 2011.

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/s/  
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HON. ANDREW J. WISTRICH  
UNITED STATES MAGISTRATE JUDGE



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**EXHIBIT A**  
**CERTIFICATE OF COMPLIANCE**

I, \_\_\_\_\_ (print name), declare as follows:

I certify that I have received a copy of the Stipulated Protective Order (“Order”) in the matter captioned j2 Global Communications, Inc., et al. v. Fax87.com, et al. United States District Court for the Central District of California, Case No. CV-11-2618 DDP (AJWx), which governs the production and use of Protected Information in this case. I have read and understand the Order. I hereby acknowledge that I am bound by the Order, and I agree to abide by it. I further understand that the Protected Information may only be used in strict accordance with the terms of the Order and then only for the prosecution and defense of this litigation.

I further acknowledge that I may be held responsible for any failure on my part to comply with the provisions of the Order, and I agree to subject myself to the jurisdiction of the United States District Court for the Central District of California, for the purpose of enforcing the Order.

I hereby declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)