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15 DIGITAL CBT LLC

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

18 DIGITAL CBT LLC,

19 Plaintiff,

20 v.

21 AT&T SERVICES, INC.,

22 Defendant

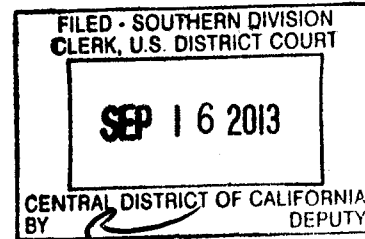
23 AT&T SERVICES, INC.,

24 Counterclaimant,

25 v.

26 DIGITAL CBT LLC,

27 Counterdefendant.  
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CASE NO.: 2:12-cv-06421-CJC-JPR

**PROTECTIVE ORDER**

**JURY TRIAL DEMANDED**

The Honorable Cormac J. Carney  
United States District Court Judge

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**AGREED PROTECTIVE ORDER**

**GOOD CAUSE STATEMENT**

It is the intent of the Parties and the Court that confidential materials will not be designated “Confidential,” “Highly Confidential – Attorney Eyes Only,” or “Restricted Confidential Source Code” for tactical reasons in this case and that nothing be so designated without a good faith belief that there is good cause why it should not be part of the public record of this case. Examples of confidential information that the Parties may seek to protect from unrestricted or unprotected disclosure include:

- (a) Information that is the subject of a non-disclosure or confidentiality agreement or obligation to a third party;
- (b) Confidential information about a Party’s suppliers or vendors;
- (c) Confidential information about a Party’s customers;
- (d) Confidential technical and financial information;
- (e) Non-public source code;
- (f) Confidential and competitively sensitive information related to research, design, or development of technology, products, or services;
- (g) Confidential information as to budgets, revenues, profits, costs, margins, licensing of technology, or pricing of products and services; and
- (h) Confidential information related to market analyses and business and marketing plans, strategies and forecasts.

Unrestricted or unprotected disclosure of such confidential information, which has been developed at the expense of the disclosing Party and which represents valuable tangible and intangible assets of that Party, would be likely to result in competitive prejudice, injury, or harm to the disclosing Party.

1 Accordingly, the Parties respectfully submit that there is good cause for the entry of  
2 this Protective Order.

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4 **ORDER**

5 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court  
6 hereby orders as follows. This Protective Order is issued to facilitate document  
7 disclosure and production under the Local Rules of this Court and the Federal Rules  
8 of Civil Procedure. Unless modified pursuant to the terms contained in this Order,  
9 this Order shall remain in effect through conclusion of this action and survive  
10 termination of this action.  
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13 IT IS THEREFORE ORDERED THAT:

14 **INFORMATION SUBJECT TO THIS ORDER**

15  
16 1. All documents, materials, items, and/or information produced either by  
17 a Party or Parties (or a non-Party upon request) (such Parties and non-Parties  
18 referred to as, individually, a “Producing Party”) to any of the Parties in this case (a  
19 “Receiving Party”) shall be governed by this Order. For purposes of this Order,  
20 “Party” means all entities named in the above-captioned complaint as well as such  
21 entities’ parent companies, subsidiary companies, and affiliated companies. For  
22 purposes of this Order, “Non-Party” means all entities named in any subpoena  
23 giving rise to the production of documents, materials, items, and/or information  
24 governed by this Order, as well as such entities’ parent companies, subsidiary  
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1 companies, and affiliated companies. Nothing herein shall be construed as a waiver  
2 of any Party's right to object to the production of any document or thing.

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4 2. A Producing Party may designate any documents, materials, items, or  
5 information it produces in this action as (1) "CONFIDENTIAL," (2) "HIGHLY  
6 CONFIDENTIAL – ATTORNEY EYES ONLY," or (3) "RESTRICTED  
7 CONFIDENTIAL SOURCE CODE" under the terms of this Order (collectively  
8 referred to herein as "Protected Information"). Absent a specific order by this  
9 Court, Protected Information shall be used by a Receiving Party solely in  
10 connection with this action and not for any other purpose whatsoever, including but  
11 not limited to any business, competitive, or governmental purpose or function or for  
12 any other litigation, and such information shall not be disclosed to anyone except as  
13 provided herein. Any person or entity who obtains access to Protected Information  
14 or the contents thereof pursuant to this Order shall not make any copies, duplicates,  
15 extracts, summaries, or descriptions of such Protected Information or any portion  
16 thereof except may be reasonably appropriate in the litigation of this action. Any  
17 such copies, duplicates, extracts, summaries, or descriptions shall be classified  
18 Protected Information and subject to all of the terms and conditions of this Order.

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24 3. For purposes of this Order, "CONFIDENTIAL INFORMATION"  
25 shall mean all information or material produced for or disclosed to a Receiving  
26 Party that a Producing Party, including any Party to this action and any non-Party  
27 producing information or material pursuant to a subpoena or a court order,

1 considers in good faith to constitute or to contain trade secrets or other confidential  
2 research, development, or commercial information, whether embodied in physical  
3 objects, documents, or the factual knowledge of persons, and which has been so  
4 designated by the Producing Party in a manner consistent with this Order. Any  
5 CONFIDENTIAL INFORMATION obtained by any Party from any person  
6 pursuant to discovery in this action may be used only for purposes of preparation  
7 and litigation of this action.  
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10 4. Any document or tangible thing containing or including any  
11 CONFIDENTIAL INFORMATION may be designated as such by the Producing  
12 Party by marking it "CONFIDENTIAL" prior to or at the time copies are furnished  
13 to the Receiving Party. "CONFIDENTIAL" documents, materials, items, and  
14 information may be disclosed only to the following persons, except upon receipt of  
15 the prior written consent of the Producing Party or upon order of the Court:  
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18 (a) Outside litigation counsel and firms of record in this action and  
19 supporting personnel employed in the law firm(s) of outside litigation  
20 counsel of record (*e.g.*, attorneys, paralegals, clerks, secretaries,  
21 contract attorneys, clerical personnel) assigned to and reasonably  
22 necessary to assist in the litigation of this action ("Outside Counsel");  
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25 (b) Up to four (4) internal counsel of Defendant who either have  
26 responsibility for making decisions dealing directly with the litigation  
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of this action or who are assisting Outside Counsel in preparation for proceedings in this action;

(c) Up to four (4) internal counsel of Plaintiff who either have responsibility for making decisions dealing directly with the litigation of this action or who are assisting Outside Counsel in preparation for proceedings in this action;

(d) The Court, its personnel, and its stenographic reporters;

(e) Independent legal translators retained to translate in connection with this action, provided they agree to maintain the confidentiality of any Protected Information; independent court reporters and videographers retained to record and transcribe testimony given in connection with this action, provided they agree to maintain the confidentiality of any Protected Information; independent copying, scanning, technical support, and electronic document processing services retained by counsel in connection with this action, provided they agree to maintain the confidentiality of any Protected Information; graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, trial, or otherwise in connection with this action, provided they agree to maintain the confidentiality of any Protected Information; and non-technical jury or trial consulting services

1 retained by counsel in connection with this action, and mock jurors,  
2 provided they agree to maintain the confidentiality of any Protected  
3 Information; and  
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- 5 (f) Outside experts or consultants of the Parties (and their secretarial and  
6 clerical personnel) retained for the purpose of this action who have  
7 signed the Undertaking attached hereto as *Exhibit A*, only after  
8 compliance with the provisions of Paragraphs 11 and 12 herein.  
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10 5. At the request of any Party, the original and all copies of any  
11 deposition transcript, including video copies, in whole or in part, shall be marked  
12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,”  
13 or “RESTRICTED CONFIDENTIAL SOURCE CODE” by the reporter. This  
14 request may be made orally during the deposition or in writing within thirty (30)  
15 days of receipt of the final transcript. However, if a Party believes in good faith  
16 that a thirty-day delay in designation of any particular deposition transcript will be  
17 prejudicial, the Party may make a written request to the other Party or any non-  
18 party deponent, citing this Paragraph 5 and asking that any confidentiality  
19 designations be provided by a specified earlier date that is not less than fifteen days  
20 after the later of the designating Party or deponent’s receipt of the final transcript or  
21 the designating Party or deponent’s receipt of the request for early designation. In  
22 that event, the time for making confidentiality designations of that transcript shall  
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1 be shortened in accordance with that request. Any portions so designated shall  
2 thereafter be treated in accordance with the terms of this Order.

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4 6. All CONFIDENTIAL INFORMATION not reduced to documentary,  
5 tangible, or physical form or which cannot be conveniently designated as set forth  
6 in Paragraph 4 herein, shall be designated by the Producing Party by informing the  
7 Receiving Party of the designation in writing. In the event the Producing Party  
8 elects to produce original documents or other material for inspection, no markings  
9 need be made by the Producing Party in advance of the inspection. During the  
10 inspection, all such documents shall be considered as marked "HIGHLY  
11 CONFIDENTIAL – ATTORNEY EYES ONLY." After selection by the Receiving  
12 Party of specified documents or material for copying, the Producing Party shall  
13 make the appropriate copies, and the appropriate confidentiality designations shall  
14 be placed on the specified documents or materials prior to providing the copies to  
15 the Receiving Party.

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20 7. The following information is not CONFIDENTIAL INFORMATION  
21 or Protected Information:

22 (a) Any information which at the time of disclosure to a Receiving Party  
23 is in the public domain;

24 (b) Any information that, after its disclosure to a Receiving Party,  
25 becomes part of the public domain as a result of publication not  
26 involving a violation of this Order;



- 1 (c) Any information that the Receiving Party can show was already  
2 known to it prior to this action;  
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- 4 (d) Any information that the Receiving Party can show was received by it,  
5 after the disclosure by the Producing Party, from a source who  
6 obtained the information lawfully, not in violation of this Order, and  
7 under no obligation of confidentiality to the Producing Party; and  
8
- 9 (e) Any information that the Receiving Party can show was independently  
10 developed by it, after the disclosure by the Producing Party, by  
11 personnel who did not have access to the Producing Party's  
12 CONFIDENTIAL INFORMATION or Protected Information.  
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14 **ADDITIONAL RESTRICTIONS ON CERTAIN INFORMATION**  
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16 8. To the extent a Producing Party believes that certain CONFIDENTIAL  
17 INFORMATION is so sensitive that there is a significant risk of harm to the  
18 Producing Party absent further protection, the Producing Party may designate such  
19 CONFIDENTIAL INFORMATION as "HIGHLY CONFIDENTIAL –  
20 ATTORNEY EYES ONLY" by marking it as such prior to or at the time copies are  
21 furnished to the Receiving Party (or as required by Paragraph 6 herein for all  
22 CONFIDENTIAL INFORMATION not reduced to documentary, tangible, or  
23 physical form, or which cannot be conveniently designated as set forth in this  
24 paragraph). Documents, materials, items, and information designated "HIGHLY  
25 CONFIDENTIAL – ATTORNEY EYES ONLY" and information contained  
26 PROTECTIVE ORDER  
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1 therein shall be available only to those persons identified in sections (a), (d), (e) and  
2 (f) of Paragraph 4 herein.

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4 9. To the extent Protected Information includes computer source code  
5 (“Source Code Material”), the Producing Party may designate such  
6 CONFIDENTIAL INFORMATION as “RESTRICTED CONFIDENTIAL  
7 SOURCE CODE.” For CONFIDENTIAL INFORMATION designated  
8 “RESTRICTED CONFIDENTIAL SOURCE CODE,” the following additional  
9 restrictions apply:  
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12 (a) Access to a Party’s Source Code Material shall be provided only on  
13 “stand-alone” computer(s) (that is, the computer may not be linked to  
14 any network, including a local area network (“LAN”), an intranet, or  
15 the Internet). Except as provided in Paragraph 9(k) below, the stand-  
16 alone computer(s) will be located at a location of the Producing Party’s  
17 choosing within either Los Angeles County or Orange County, or at  
18 another location acceptable to both parties;  
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21 (b) The Receiving Party shall make reasonable efforts to restrict its  
22 requests for such access to the stand-alone computer(s) to normal  
23 business hours, which for purposes of this paragraph shall be 8:00 a.m.  
24 through 6:00 p.m. However, upon reasonable notice from the  
25 Receiving Party, the Producing Party shall make reasonable efforts to  
26 accommodate the Receiving Party’s request for access to the stand-  
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1 alone computer(s) outside of normal business hours. The Parties agree  
2 to cooperate in good faith such that maintaining the Producing Party's  
3 Source Code Material at a location of the Producing Party's choosing  
4 shall not unreasonably hinder the Receiving Party's ability to  
5 efficiently and effectively conduct the prosecution or defense of this  
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7 Action;

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9 (c) The Receiving Party shall not bring any recordable media devices,  
10 including cell phones with camera capabilities, computers, or cameras  
11 into the room containing the stand-alone computer with the Source  
12 Code Material. The Producing Party shall be permitted to inspect any  
13 briefcase, computer bag, hand bag, tote bag, or similar item brought  
14 into the room containing the stand-alone computer, either before or  
15 after any inspection of the Source Code Material.  
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18 (d) The Producing Party shall provide the Receiving Party with  
19 information explaining how to start, log on to, and operate the stand-  
20 alone computer(s) in order to access the produced Source Code  
21 Material on the stand-alone computer(s);  
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23  
24 (e) The Producing Party will produce Source Code Material in computer  
25 searchable format on the stand-alone computer(s) as described above;

26 (f) Access to Protected Material designated RESTRICTED

27 CONFIDENTIAL SOURCE CODE shall be limited to Outside  
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1 Counsel and three (3) outside consultants or experts retained for the  
2 purpose of this action and approved to access such Protected Materials  
3 pursuant to Paragraph 4(e) above. A Receiving Party may include  
4 excerpts of Source Code Material in a pleading, exhibit, expert report,  
5 discovery document, deposition transcript, or other Court document,  
6 provided that the documents containing Source Code Material are  
7 appropriately marked under this Order, restricted to those who are  
8 entitled to have access to them as specified herein, and, if filed with  
9 the Court, filed under seal in accordance with the Court's rules,  
10 procedures, and orders, including Local Rule 79-5;

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14 (g) To the extent portions of Source Code Material are quoted in a Source  
15 Code Document, either (1) the entire Source Code Document will be  
16 stamped and treated as RESTRICTED CONFIDENTIAL SOURCE  
17 CODE or (2) those pages containing quoted Source Code Material will  
18 be separately stamped and treated as RESTRICTED CONFIDENTIAL  
19 SOURCE CODE;  
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22 (h) Except as set forth in Paragraph 9(k) below, no electronic copies of  
23 Source Code Material shall be made without prior written consent of  
24 the Producing Party, except as necessary to create documents which,  
25 pursuant to the Court's rules, procedures, and orders, must be filed or  
26 served electronically;  
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1 (i) The Receiving Party may request that the Producing Party provide  
2 printouts of portions of Source Code Material for the limited purpose  
3 of preparing court filings, pleadings, or papers served in this case.  
4 Printed portions of Source Code Material shall be limited to a total of  
5 250 total pages of Source Code Material and will include no more than  
6 20 consecutive pages of continuous Source Code Material. The  
7 Receiving Party may request up to five photocopies of the printed  
8 portions of Source Code Material. All copies of the printed portions of  
9 Source Code Material, including the original printouts, shall be  
10 securely stored and clearly labeled "RESTRICTED CONFIDENTIAL  
11 SOURCE CODE," and the Receiving Party shall maintain a log of all  
12 such copies that records the identity of each individual to whom each  
13 copy containing Source Code Material is provided and when it was  
14 provided to that person. Within sixty (60) days after the entry of a  
15 final non-appealable judgment or order, or the complete settlement of  
16 all claims asserted against all Parties in this action, the Receiving Party  
17 must serve the log upon the Producing Party;  
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24 (j) Should such printouts or photocopies be transferred back to electronic  
25 media, in accordance with Paragraph 9(g) above, such media shall be  
26 labeled "RESTRICTED CONFIDENTIAL SOURCE CODE" and  
27 shall continue to be treated as such;  
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1 (k) If the Receiving Party's Outside Counsel, consultants, or experts  
2 obtain printouts or photocopies of Source Code Material, the  
3 Receiving Party shall ensure that such Outside Counsel, consultants, or  
4 experts keep the printouts or photocopies in a secured locked area in  
5 the offices of such Outside Counsel, consultants, or experts. The  
6 Receiving Party may also temporarily keep the printouts or  
7 photocopies at: (i) the Court for any proceeding(s) relating to the  
8 Source Code Material, for the dates associated with the proceeding(s);  
9 (ii) the sites where any deposition(s) relating to the Source Code  
10 Material are taken, for the dates associated with the deposition(s); and  
11 (iii) any intermediate location reasonably necessary to transport the  
12 printouts or photocopies (*e.g.*, a hotel prior to a Court proceeding or  
13 deposition); and  
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18 (l) Source Code Material may not be transported or transmitted  
19 electronically over a network of any kind, including a LAN, an  
20 intranet, or the Internet. Source Code Material may only be  
21 transported electronically for the purpose of Court proceeding(s) or  
22 deposition(s) as set forth in Paragraph 9(k) above and is at all times  
23 subject to the transport restrictions set forth herein. But, for those  
24 purposes only, the Source Code Materials may be loaded onto a stand-  
25 alone computer.  
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1 counsel and such expert or consultant must agree to be bound by this Order. Before  
2 any disclosure of Protected Information occurs, such experts and consultants shall  
3 execute the Undertaking attached hereto as *Exhibit A*. Outside Counsel for the  
4 Receiving Party with whom such expert or consultant is affiliated or by whom  
5 he/she is retained shall maintain the signed *Exhibit A*.  
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8 12. A Party objecting to disclosure of Protected Information to an expert  
9 or consultant shall, within ten (10) business days of receiving the written notice  
10 contemplated by Paragraph 11 herein, state with particularity the ground(s) for the  
11 objection and the specific categories of documents that are subject to the objection.  
12 The objecting Party's consent to the disclosure of Protected Information to an  
13 expert or consultant shall not be unreasonably withheld, and its objection must be  
14 based on that Party's good faith belief that disclosure of its Protected Information to  
15 the expert will result in business or economic harm to that Party.  
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18 13. If, after consideration of the objection, the Party desiring to disclose  
19 the Protected Information to an expert or consultant refuses to withdraw the expert  
20 or consultant from consideration, that Party shall provide written notice to the  
21 objecting Party. Thereafter, the objecting Party shall, pursuant to L.R. 37, promptly  
22 seek a ruling from the Court on its objection. A failure to file a motion within  
23 seven (7) court days after the minimum time required to comply with the  
24 prerequisites under L.R. 37 shall operate as an approval of disclosure of the  
25 Protected Information to the expert or consultant.  
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1           14. The Party desiring to deny Protected Information to an expert or  
2 consultant shall have the burden of showing to the Court good cause for an order  
3 prohibiting such disclosure.  
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5                           **CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

6           15. The Parties will use reasonable care when designating any documents,  
7 materials, items, or information as “CONFIDENTIAL,” “HIGHLY  
8 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “RESTRICTED  
9 CONFIDENTIAL SOURCE CODE.” Nothing in this Order shall prevent a  
10 Receiving Party from contending that documents, material, or information  
11 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY  
12 EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” have been  
13 improperly designated. A Receiving Party may at any time request that the  
14 Producing Party cancel or modify the confidentiality designation with respect to  
15 any such document, material, item, or the information contained therein.  
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20           16. A Receiving Party shall not be obligated to challenge the propriety of a  
21 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,”  
22 or “RESTRICTED CONFIDENTIAL SOURCE CODE” designation at the time  
23 made, and a failure to do so shall not preclude a subsequent challenge thereto. Such  
24 a challenge shall be written and served on counsel for the Producing Party, and  
25 shall particularly identify the documents, materials, items, and/or information that  
26 the Receiving Party contends should be differently designated. The Receiving  
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1 Party and Producing Party shall use their best efforts to resolve promptly and  
2 informally such disputes. If agreement cannot be reached, the Receiving Party may  
3 file a motion under Local Rule 37-1 and 37-2 requesting that the Court cancel or  
4 modify a “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES  
5 ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” designation.  
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7 Upon any such application to the Court, the burden shall be on the requesting Party  
8 to show why redesignation is proper.  
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10 **LIMITATIONS ON THE USE OF PROTECTED MATERIAL**  
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12 17. Protected Information shall be held in confidence by each person to  
13 whom it is disclosed, shall be used only for purposes of this action, shall not be  
14 used for any other purpose, and shall not be disclosed to any person who is not  
15 entitled to receive such information as herein provided. All such information shall  
16 be carefully maintained so as to preclude access by persons who are not entitled to  
17 receive such information.  
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20 18. No attorney for or representing Plaintiff, whether in-house or Outside  
21 Counsel of record, nor any other person associated with Plaintiff who is permitted  
22 to receive Protected Information pursuant to Paragraphs 8 or 9(f) herein, who  
23 obtains, receives, has access to, or otherwise learns, in whole or in part, Protected  
24 Information of Defendant designated HIGHLY CONFIDENTIAL – ATTORNEY  
25 EYES ONLY or RESTRICTED CONFIDENTIAL SOURCE CODE pursuant to  
26 Paragraphs 8 or 9 herein shall prepare, prosecute, supervise, or assist in the  
27 PROTECTIVE ORDER  
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1 preparation or prosecution of any patent application, reexamination procedures, or  
2 reissue procedures for Plaintiff, or for any affiliated or related entity or person,  
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4 pertaining to video processing and/or capturing (“Technical Field”) or the disclosed  
5 Protected Information during the pendency of this action and for two years after the  
6 conclusion of this action, including any appeals. Nothing in this paragraph shall be  
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8 construed as a waiver of the other provisions of this Order, including but not  
9 limited to those provisions restricting the use and disclosure of Protected  
10 Information.

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12 20. Nothing in this Order shall preclude any Party to this lawsuit or their  
13 attorneys from (1) showing a document or documents designated as  
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES  
15 ONLY” to an individual who either authored or was copied on the distribution of  
16 the document, as indicated on the document’s face, prior to the filing of this action;  
17  
18 (2) showing a document or documents designated as “CONFIDENTIAL” or  
19 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” to an individual who,  
20 by sworn testimony, has been identified as a recipient or author of the document; or  
21  
22 (3) from disclosing or using, in any manner or for any purpose, any information or  
23 documents from the Party’s own files which the Party itself has designated  
24 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,”  
25 or “RESTRICTED CONFIDENTIAL SOURCE CODE.”  
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1           21. Any person may be examined as a witness at a deposition or hearing,  
2 and may testify concerning all Protected Information of which such person has  
3 knowledge, including knowledge based on that person's appropriate or permitted  
4 review of any Protected Information from a Producing Party. Without in any way  
5 limiting the generality of the foregoing:  
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8           (a) If a present director, officer, and/or employee of a Producing Party is  
9 examined, he or she may testify concerning all Protected Information  
10 which has been produced by the Producing Party and/or which he or  
11 she has prior knowledge;  
12

13           (b) If a non-Party or opposing Party is examined or testifies, the non-Party  
14 or opposing Party may be examined or testify concerning any  
15 document containing Protected Information of a Producing Party  
16 which appears on its face or from other documents or testimony to  
17 have been received from or communicated to the non-Party or  
18 opposing Party.  
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21           22. Nothing in this Order shall prohibit the transmission or communication  
22 of CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEYS' EYES  
23 ONLY materials between or among qualified recipients under the terms of this  
24 Order (1) by hand delivery, (2) in sealed envelopes via mail or delivery service, or  
25 (3) by telephone, facsimile, email, or other electronic transmission.  
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1           23. Nothing in this Order shall be interpreted to restrict an attorney  
2 permitted to receive Protected Information pursuant to Paragraph 4, 8, or 9(f) herein  
3 from rendering legal advice to or discussing with her or his client the merits of any  
4 issue in this action as long as the specific substance or content of the Protected  
5 Information is not revealed to a person who is not qualified to receive such  
6 information under the terms of this Order.  
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9                                   **NON-PARTY USE OF THIS PROTECTIVE ORDER**

10           24. A non-Party producing information pursuant to a subpoena or a court  
11 order may request to do so pursuant to this Order. The non-Party may designate  
12 such documents, materials, items, or information in the same manner and shall  
13 receive the same level of protection under this Order as any Party to this lawsuit.  
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15           25. A non-Party's use of this Order to protect its information does not  
16 entitle that non-Party to access to Protected Information produced by any Party in  
17 this case.  
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19  
20                                   **NO WAIVER OF PRIVILEGE**

21           26. Pursuant to Rule 502 of the Federal Rules of Evidence and Rule  
22 26(c)(5)(B) of the Federal Rules of Civil Procedure, the disclosure of protected  
23 communications or information shall not constitute a waiver of any privilege or  
24 other protection (including work product).  
25

26           27. Within the time agreed by the Parties or prescribed by the Court, the  
27 Parties will provide privilege logs for protected materials withheld for attorney-  
28 PROTECTIVE ORDER

1 client privilege or pursuant to the work product doctrine (or other privileges or  
2 doctrines). The Producing Party shall provide a privilege log for all withheld  
3 documents or other materials, including redacted materials. Nothing herein shall  
4 prevent the Receiving Party from challenging the propriety of the designation of  
5 attorney-client privilege, work product, or other designation of protection. The  
6 Parties are not required to include on their privilege logs any protected documents  
7 that came into existence after the filing date of the complaint.  
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### 10 MISCELLANEOUS PROVISIONS

11  
12 28. Inadvertent failure to identify documents, materials, items, or  
13 information as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY  
14 EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE”  
15 information pursuant to this Order shall not constitute a waiver in whole or in part  
16 of any otherwise valid claim for protection, provided that the provisions of this  
17 paragraph are satisfied. If the Producing Party discovers that information should  
18 have been but was not designated “CONFIDENTIAL,” “HIGHLY  
19 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “RESTRICTED  
20 CONFIDENTIAL SOURCE CODE,” the Producing Party must immediately notify  
21 all other Parties, specifically identifying the applicable production serial numbers.  
22 The Receiving Party, having been notified of inadvertent failure to designate the  
23 Protected Information as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
24 ATTORNEY EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE  
25 PROTECTIVE ORDER

1 CODE,” shall immediately treat the Protected Information as if it were properly  
2 designated; notify any persons or entities to which it disclosed information  
3 contained in unlabeled or mislabeled documents or things before the Receiving  
4 Party was placed on notice of the Producing Party’s claims of confidentiality of  
5 said information; and make its best reasonable efforts to ensure the destruction by  
6 said persons or entities of all copies of the inadvertently produced Protected  
7 Information and any documents, information, or material derived from it or based  
8 thereon. Within seven (7) business days of notifying all other Parties, the  
9 Producing Party must provide copies of the “CONFIDENTIAL,” “HIGHLY  
10 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “RESTRICTED  
11 CONFIDENTIAL SOURCE CODE” information designated in accordance with  
12 this Order. After receipt of such re-designated information, the Receiving Party  
13 shall then destroy all undesignated copies of the inadvertently produced Protected  
14 Information.  
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20 29. Any of the notice requirements herein may be waived, in whole or in  
21 part, solely by a writing signed by an attorney of record for the Party against whom  
22 such waiver will be effective.  
23

24 30. Within sixty (60) days after the entry of a final non-appealable  
25 judgment or order, or the complete settlement of all claims asserted against all  
26 Parties in this action, each Party shall either return or destroy all physical objects  
27 and documents which contain Protected Information which were received from the  
28

1 Producing Party, and shall destroy in whatever form stored or reproduced, all other  
2 physical objects and documents which contain Protected Information, except that  
3 each Party's Outside Counsel may maintain all documents, things, copies, and  
4 samples to the extent they include or reflect a Receiving Party's work product. In  
5 addition, each Party shall certify in writing to each Producing Party that such  
6 Protected Information has been returned or destroyed as required above.  
7  
8 Notwithstanding the foregoing, Outside Counsel shall be entitled to maintain copies  
9 of all pleadings, motions and trial briefs (including all supporting and opposing  
10 papers and exhibits thereto), written discovery requests and responses (and exhibits  
11 thereto), deposition transcripts (and exhibits thereto), trial transcripts, exhibits  
12 offered or introduced into evidence at trial, and any work-product containing  
13 Protected Information provided, however, that any Protected Information contained  
14 in any such documents retained by Outside Counsel shall remain subject to the  
15 protections of this Order. Notwithstanding this provision, counsel for the Parties  
16 are not required to delete information that may reside on the respective back-up  
17 systems of the firms which are over-written in the normal course of business;  
18 however, the counsel for the Parties agree that no Protected Information shall be  
19 retrieved from the electronic back-up systems after conclusion of this action.  
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25 31. If at any time documents containing Protected Information are  
26 subpoenaed by any court, arbitral, administrative, or legislative body, the person to  
27 whom the subpoena or other request is directed shall immediately give written  
28



1 notice thereof to the Producing Party and to its counsel and shall provide the  
2 Producing Party with an opportunity to object to the production of such documents.

3  
4 If a Producing Party does not take steps to prevent disclosure of such documents  
5 within ten (10) business days of the date written notice is given, the Party to whom  
6 the referenced subpoena is directed may produce such documents in response  
7 thereto. Nothing in this order shall preclude a Party from providing information as  
8 required by subpoena, court order, or law after making reasonable best efforts to  
9 promptly notify the Producing Party.  
10

11  
12 32. In the event a Party wishes to use any Protected Information in any  
13 affidavits, briefs, memoranda of law, or other papers filed with the Court in this  
14 action, the Party must request approval from the Court to file such Protected  
15 Information under seal pursuant to L.R.79-5.1. Upon approval by the Court, such  
16 Protected Information shall be filed under seal with the Court in the manner  
17 prescribed by L.R. 79-5.  
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19  
20 33. Nothing in this Order shall limit any Party's use of its own documents  
21 and information, nor shall it prevent any Party from disclosing its own Protected  
22 Information or documents to any person. Such disclosure shall not affect any  
23 designations made pursuant to the terms of this Order, so long as the disclosure is  
24 made in a manner that is reasonably calculated to maintain the confidentiality of the  
25 information.  
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1           34. Nothing in this Order shall prevent or otherwise restrict counsel from  
2 rendering advice to their clients and, in the course of rendering such advice, relying  
3 upon the examination of designated material. In rendering such advice and  
4 otherwise communicating with the client, however, counsel shall not make specific  
5 disclosure of any Protected Information, except as permitted by this Order.  
6  
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8           35. This Order shall govern as of the filing date of this lawsuit until  
9 modified or superseded by a further Order of this Court and is without prejudice to  
10 any Party moving to amend this Order at a later time. This Order may be altered by  
11 written agreement of the Parties or, as applicable, the Parties and any non-Party.  
12 No such modification will have the force or effect of a Court order unless and until  
13 approved by the Court.  
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16           36. This Order shall also apply to any and all documents, materials, items,  
17 and information produced and/or provided in connection with the Parties' past,  
18 present, and future settlement negotiations and/or discussions, including, but not  
19 limited to, negotiations and/or discussions covered under Rule 408 of the Federal  
20 Rules of Evidence.  
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1           37. This Order shall remain in full force and effect after the termination of  
2 this action, or until canceled or otherwise modified by Order of this Court.  
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5 **So ORDERED and SIGNED this 16<sup>th</sup> day of September, 2013.**

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Hon. Jean P. Rosenbluth  
United States Magistrate Judge

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

DIGITAL CBT LLC,  
Plaintiff,  
v.  
AT&T SERVICES, INC.,  
Defendant  
AT&T SERVICES, INC.,  
Counterclaimant,  
v.  
DIGITAL CBT LLC,  
Counterdefendant.

CASE NO.: 2:12-cv-06421-CJC-JPR  
**PROTECTIVE ORDER  
JURY TRIAL DEMANDED**

The Honorable Cormac J. Carney  
United States District Court Judge

**EXHIBIT A - UNDERTAKING**

I have read and understand the Agreed Protective Order (the "Order") in the above-captioned case (a copy of which is attached and whose definitions are incorporated herein) and I attest to my understanding that access to information

1 designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEY  
2 EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" may be  
3 provided to me and that such access shall be governed by the terms and conditions  
4 and restrictions of the Order. I agree to be bound by the terms of the Order and  
5 hereby subject myself to the jurisdiction of the Court for all purposes related to the  
6 Order.  
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8  
9 I shall not use or disclose any "CONFIDENTIAL," "HIGHLY  
10 CONFIDENTIAL – ATTORNEY EYES ONLY," or "RESTRICTED  
11 CONFIDENTIAL SOURCE CODE" information to others, except in accordance  
12 with the Order. I also understand that, in the event that I fail to abide by the terms  
13 of this Undertaking or the Order, I may be subject to sanctions by way of contempt  
14 of court and to separate legal and equitable recourse by the adversely affected  
15 Producing Party.  
16

17  
18  
19 Date: \_\_\_\_\_

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

21 Printed

22 Name: \_\_\_\_\_

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