

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 *Attorneys for Defendants j2 Global, Inc. and*
Advanced Messaging Technologies, Inc.

8 Matthew D. Spohn (SBN 269636)
 mspohn@fulbright.com
 9 FULBRIGHT & JAWORSKI LLP
 10 1200 17th Street, Suite 1000
 Denver, Colorado 80202-5835
 11 Tel.: (303) 801-2760
 Tax: (303) 801-2777

12 *Attorneys for Plaintiff EC Data Systems, Inc.*

13
 14
 15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17
 18 EC DATA SYSTEMS, INC.,
 19 Plaintiff,

20 v.

21 j2 GLOBAL, INC. and
 22 ADVANCED MESSAGING
 TECHNOLOGIES, INC.,
 23 Defendants.

Case No. CV 12-07544 DDP (AJWx)

**STIPULATED PROTECTIVE
 ORDER**

24
 25
 26
 27
 28

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.

27 ///

28 ///

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
9 “Receiving Person”) shall use Confidential or Restricted Confidential information
10 (together, “Protected Information”) only to conduct this litigation or any other
11 litigation between or among parties to this action, provided that such other
12 litigation does not 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
19 and 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;
- 28 b. in-house counsel of corporate named parties;

- 1 c. independent experts or consultants retained by outside litigation
- 2 counsel;
- 3 d. 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 e. the Court, its personnel and any court reporters involved in taking or
- 9 transcribing testimony in this action; and
- 10 f. 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.
2 Absent a timely written objection, the Receiving Person may share Protected
3 Information with the independent expert. If the Producing Person makes a timely
4 written objection, the Receiving Person shall not share Protected Information with
5 the independent expert until the objection is resolved by agreement or by the
6 Court. If the parties cannot resolve this dispute, they may proceed under the Local
7 Rules addressing discovery disputes, with the Producing Person bearing the burden
8 of promptly filing a motion and establishing good cause to support its objection.

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

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

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

28

1 13. In the event a party produces documents subject to the attorney-
2 client privilege or work product doctrine through inadvertence, mistake, or other
3 error, such production shall not be a waiver of privilege or immunity. The
4 producing party must promptly give notice to all other parties of the inadvertent
5 production. Upon such notice, the Receiving Person promptly shall make best
6 efforts to collect all copies of the documents and destroy them or return them to the
7 Producing Person.

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

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

28 16. Nothing in this Order precludes any person from disclosing or

1 using in any manner its own information, or information not obtained under this
2 Order, even if the same information is also produced under this Order.

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

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

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

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

20. Within sixty days of the termination of litigation between the parties, all Protected Information shall be destroyed or returned to the Producing Person, except that one designated outside litigation counsel of record for each party may maintain in its files one copy of each deposition transcript, each document filed with the Court, and each correspondence transmitted between outside counsel for the parties to this action.

So **ORDERED AND SIGNED** this 28th day of March 2013.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 *EC Data Systems, Inc. v. j2 Global, Inc. and Advanced Messaging Technologies, Inc.* United States District Court for the Central District of California, Case No. CV 12-07544 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)