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 8 Cognitive Code Corporation, and Defendants
 9 Leslie Spring, Mimi Chen, John Chen, and Sal DiFazio

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 JOSEPH ODISH; JOHN BOURBEAU;
 13 and CRANBROOK CAPITAL
 14 CONSULTING GROUP, LLC, a
 15 Michigan limited liability company,

16 Plaintiffs,

17 vs.

18 COGNITIVE CODE CORPORATION,
 19 a Delaware corporation; LESLIE
 20 SPRING; MIMI CHEN; JOHN CHEN;
 21 and SAL DIFAZIO,

22 Defendants.

23

COGNITIVE CODE CORPORATION,
 24 a Delaware corporation,

25 Counterclaimant,

26 vs.

27 JOSEPH ODISH; JOHN BOURBEAU;
 28 and CRANBROOK CAPITAL
 CONSULTING GROUP, LLC, a
 Michigan limited liability company,

Counterclaim Defendants.

) **Case No. CV 12-09069-SJO**
) **(JCGx)**

) **Hon. S. James Otero**

) **PROPOSED ORDER ON**
) **STIPULATION FOR**
) **PROTECTIVE ORDER**

1 The parties to this action, through their counsel of record, have stipulated and
2 agreed that an order under Federal Rule of Civil Procedure 26(c) is necessary and
3 useful to protect the confidentiality of documents and other information obtained in
4 the course of discovery in this action, and have stipulated and agreed to be bound
5 by the terms of this Protective Order (“Protective Order”). The materials to be
6 exchanged in the course of this litigation may contain confidential information
7 including but not limited to trade secret or other confidential research, marketing,
8 financial or other commercial information. The purpose of this Protective Order is
9 to protect the confidentiality of such materials during the litigation.
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11 DEFINITIONS

12 1. The term “Confidential Information” shall mean and include any
13 information disclosed in this litigation, regardless of the medium or manner in
14 which it is generated, stored, maintained, or produced (including, among other
15 things, testimony, transcripts, documents and other tangible things), which
16 constitutes trade secret, proprietary, or sensitive information of a party, including
17 but not limited to financial data, research and development information; customer
18 and supplier information; company personnel information; marketing strategies and
19 information; strategic business information (including but not limited to business
20 plans, forecasts, cost information, or logistical information); and any other
21 information that affords the disclosing party an actual or potential economic
22 advantage over others.

23 2. The term “Outside Counsel” shall mean outside counsel retained by a
24 party in connection with this matter, including paralegals, secretaries, and other
25 support staff employed by such outside counsel.

26 DESIGNATION

1 3. Each party to this litigation may designate information as
2 “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY” if, in the
3 good faith belief of such party and its counsel, the materials fall within the
4 Confidential Information definition herein and the disclosure of such information
5 (including, in the case of “CONFIDENTIAL - FOR COUNSEL ONLY,” disclosure
6 to anyone other than outside counsel) could be prejudicial to the business or
7 operations of such party, or would violate court orders and/or confidentiality
8 restrictions involving parties not involved in this litigation.

9 4. To designate as “CONFIDENTIAL” or “CONFIDENTIAL - FOR
10 COUNSEL ONLY,” the producing party must mark each page of the document
11 with the appropriate designation before producing it. However, for documents
12 produced by another party or a non-party, or any documents produced prior to entry
13 of this Protective Order, a party can assert confidentiality through correspondence
14 to all other parties that specifically identifies each document that will receive a
15 confidentiality designation.

16 5. Deposition testimony and/or deposition exhibits shall be designated on
17 the record during the deposition whenever possible. A party may also designate
18 such testimony and exhibits after transcription of the proceedings; a party shall
19 have until twenty (20) days after receipt of the deposition transcript to inform the
20 other party or parties of the portions of the transcript so designated.

21 6. The disclosing party shall have the right to exclude from attendance at
22 deposition, during such time as information designated as “CONFIDENTIAL -
23 FOR COUNSEL ONLY” is disclosed, any person other than the deponent, Outside
24 Counsel, the court reporter, the videographer, and the person(s) agreed upon
25 pursuant to paragraph 10 below.

26 7. Designation of Confidential Information as “CONFIDENTIAL” or
27 “CONFIDENTIAL - FOR COUNSEL ONLY” shall extend to all copies, excerpts,
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1 data, summaries, and compilations derived from such Confidential Information, as
2 well as any testimony, conversations, or presentations by the parties hereto or their
3 counsel that discloses such Confidential Information.

4 8. If a party, through inadvertence, produces any Confidential
5 Information without designating it in accordance with this Protective Order, the
6 designating party may give written notice to the receiving party[ies] that the
7 information produced is deemed “CONFIDENTIAL” or “CONFIDENTIAL - FOR
8 COUNSEL ONLY” and should be treated in accordance with that designation
9 under this Protective Order. Upon receipt of such notice, the receiving party must
10 treat the Confidential Information as designated hereunder. If the receiving party
11 has already in good faith disclosed the information before receiving such notice, the
12 receiving party shall have no liability for such good faith disclosure, but shall notify
13 the designating party in writing of each such disclosure. Counsel for the parties
14 shall agree on a mutually acceptable manner of labeling or marking the
15 inadvertently produced materials as “CONFIDENTIAL” or “CONFIDENTIAL -
16 FOR COUNSEL ONLY.”

17 ACCESS AND USE OF PROTECTED MATERIAL

18 9. All Confidential Information designated as “CONFIDENTIAL” or
19 “CONFIDENTIAL - FOR COUNSEL ONLY” shall not be disclosed by the
20 receiving party to anyone other than those persons designated herein and shall be
21 used solely in connection with this litigation, and not for any other purpose,
22 including any business or competitive purpose or function.

23 10. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY”
24 shall be viewed only by (a) Outside Counsel; (b) in-house counsel; (c) outside
25 experts or consultants retained for purposes of this litigation, in accordance with the
26 provisions of paragraph 12; (d) court reporters and videographers in connection
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1 with transcribing or recording a deposition or hearing; (e) the Court and its
2 personnel; and (f) the jury.

3 11. Information designated "CONFIDENTIAL" shall be viewed only by
4 (a) those persons designated in paragraph 10 above, (b) the parties (or employees
5 thereof), and (c) a deponent who is or was an attorney for a party, or is a former
6 employee of a party, and the CONFIDENTIAL information is directly relevant to
7 his or her former job responsibilities, provided each such party, party employee,
8 and deponent has read this Protective Order in advance of disclosure and has agreed
9 in writing, by executing an Acknowledgment in the form attached hereto as Exhibit
10 "A," to be bound by its terms.

11 12. The right of any expert or consultant to receive any information
12 designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY"
13 shall be conditioned on the expert's prior execution of an Acknowledgment in the
14 form attached hereto as Exhibit "A." Notwithstanding the foregoing, any expert or
15 consultant who works for a competitor of the producing party may not receive
16 Confidential Information of that party.

17 13. Nothing herein shall prohibit a party, or its counsel, from disclosing a
18 document designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR
19 COUNSEL ONLY" to any person indicated on the face of the document to be its
20 originator, author or recipient.

21 14. Each person receiving Confidential Information designated hereunder
22 shall maintain it in a manner which ensures that access is limited to persons entitled
23 to receive it under this Protective Order. If such Confidential Information is
24 disclosed to any person other than a person authorized by this Protective Order, the
25 party responsible for the unauthorized disclosure must immediately bring all
26 pertinent facts relating to the unauthorized disclosure to the attention of the other
27 parties and, without prejudice to any rights and remedies of the other parties, make

1 every effort to prevent further disclosure by the party and by the person(s) receiving
2 the unauthorized disclosure.

3 CHALLENGING DESIGNATION

4 15. At any stage of these proceedings, any party may object to a
5 designation of information as “CONFIDENTIAL” or “CONFIDENTIAL - FOR
6 COUNSEL ONLY.” The party objecting to confidentiality shall notify counsel for
7 the designating party in writing of the objected-to materials and the grounds for the
8 objection. The parties shall first make a good faith effort to resolve the objection
9 informally and otherwise comply with Local Rules 37-1 and 37-2. If the dispute is
10 not resolved within ten (10) business days of receipt of such a notice of objections,
11 the objecting party may file a motion with the Court -- unless the dispute relates to
12 information designated as “CONFIDENTIAL - FOR COUNSEL ONLY,” in
13 which case the burden shall be on the designating party to file a motion with the
14 Court within twenty (20) business days of receipt of the notice of objection in order
15 to retain such designation. Until the Court rules on a motion brought pursuant to
16 this paragraph (or the matter is resolved between the parties), the materials at issue
17 shall be treated as Confidential Information as designated by the designating party.

18 FILING UNDER SEAL

19 16. In accordance with Local Rule 79-5.1, if any papers to be filed with
20 the Court contain information and/or documents that have been designated as
21 CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY,” the proposed
22 filing shall be accompanied by an application to file the papers or the portion
23 thereof containing the designated information or documents (if such portion is
24 segregable) under seal; and the application shall be directed to the judge to whom
25 the papers are directed. For motions, the parties shall publicly file a redacted
26 version of the motion and supporting papers.

1 other than as a result of disclosure by the receiving party, its employees, or its
2 agents in violation of this Protective Order; or (d) has come or shall come into the
3 receiving party's knowledge lawfully and independently of the production by the
4 designating party.

5 21. All provisions of this Protective Order shall survive the conclusion of
6 this action, and shall continue to be binding after the conclusion of this action
7 unless subsequently modified by agreement of the parties or further order of this
8 Court. For the purposes of enforcing this Protective Order and resolving any
9 disputes thereunder, the Court retains jurisdiction over the parties and all persons
10 provided access to Confidential Information under the terms of this Protective
11 Order.

12 22. All persons bound by this Protective Order are hereby notified that if
13 this Protective Order is violated in any manner, all persons and entities who commit
14 such violations are subject to any and all monetary and other sanctions as the Court,
15 after a hearing, deems to be just.

16 23. The Court may modify the terms and conditions of this Protective
17 Order for good cause, or in the interest of justice, or on its own order at any time in
18 these proceedings. Additionally, this Protective Order may be modified by
19 agreement of the parties, subject to approval by the Court.

20 24. The terms and provisions of this Protective Order, and designation of
21 any Confidential Information hereunder, shall also apply to and bind any party who
22 appears in this action subsequent to the entry of this Protective Order.

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IT IS SO STIPULATED:

DATED: January 15, 2013

FREDMAN | LIEBERMAN LLP

By: /s/ Howard S Fredman

HOWARD S FREDMAN
Attorneys for Defendant and Counterclaimant
Cognitive Code Corporation, and Defendants
Leslie Spring, Mimi Chen, John Chen, and Sal
DiFazio

DATED: January 14, 2013

ROSEN & ASSOCIATES, P.C.

By: /s/ John B. Wallace for

ROBERT C. ROSEN
Attorneys for Plaintiffs and Counterclaim
Defendants Joseph Odish, John Bourbeau and
Cranbrook Cabital Consulting Group, LLC, a
Michigan limited liability Company

IT IS SO ORDERED:

Dated: January 16, 2013



HON. JAY C. GANDHI
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A TO PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSEPH ODISH; JOHN BOURBEAU;
and CRANBROOK CAPITAL
CONSULTING GROUP, LLC, a
Michigan limited liability company,

Plaintiffs,

vs.

COGNITIVE CODE CORPORATION,
a Delaware corporation; LESLIE
SPRING; MIMI CHEN; JOHN CHEN;
and SAL DIFAZIO,

Defendants.

COGNITIVE CODE CORPORATION,
a Delaware corporation,

Counterclaimant,

vs.

JOSEPH ODISH; JOHN BOURBEAU;
and CRANBROOK CAPITAL
CONSULTING GROUP, LLC, a
Michigan limited liability company,

Counterclaim Defendants.

Case No. CV 12-09069-SJO
(JCGx)

Hon. S. James Otero

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

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I, _____, declare and say that:

1. I am employed as _____
by _____.

2. I have read and understood the Protective Order entered in the above entitled cases, and have received a copy of the Protective Order.

3. I promise that I will use any and all “Confidential” or “Confidential - For Counsel Only” information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order.

4. I promise that I will not disclose or discuss such “Confidential” or “Confidential - For Counsel Only” information with anyone other than the persons with whom I am permitted to discuss such information, as designated, under the terms of the Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Central District of California, and all courts in which appeals may be filed in these actions, with respect to enforcement of the Protective Order.

6. I understand that any disclosure or use of “Confidential” or “Confidential - For Counsel Only” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____, 2013 _____