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Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

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

LOCATA LBS LLC,

Plaintiff,

v.

YELLOWPAGES.COM LLC,

Defendant and
Counterclaimant.

CASE NO.: 2:13-cv-07664-JAK(SHx)
(LEAD CASE)

**PROTECTIVE ORDER
DISCOVERY MATTER**

LOCATA LBS LLC,

Plaintiff,

v.

FACTUAL INC.,

Defendant and
Counterclaimant.

Case No. 2:13-cv-07743-JAK(SHx)
(CONSOLIDATED CASE)

Discovery Cutoff: 01/30/2015
Motion Cutoff: 05/11/2015
Pretrial Conference: 06/01/2015
Trial Date: 06/16/2015

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, Plaintiff Locata LBS, LLC (“Plaintiff”) and
6 Defendants Yellowpages.com LLC and Factual Inc. (“Defendants”) (collectively, the
7 “parties”) hereby stipulate to and petition the court to enter the following Protective
8 Order. The parties acknowledge that this Order does not confer blanket protections on
9 all disclosures or responses to discovery and that the protection it affords from public
10 disclosure and use extends only to the limited information or items that are entitled to
11 confidential treatment under the applicable legal principles. The parties further
12 acknowledge, as set forth in Section 14.4 below, that this Protective Order does not
13 entitle them to file confidential information under seal; Civil Local Rule 79-5 and the
14 Court's Order re Pilot Program for Under Seal Documents (Dkt. No. 14) sets forth the
15 procedures that must be followed and the standards that will be applied when a party
16 seeks permission from the court to file material under seal.

17 2. DEFINITIONS

18 2.1 Challenging Party: a Party or Non-Party that challenges the designation
19 of information or items under this Order.

20 2.2 “CONFIDENTIAL” Information or Items: information designated as
21 “CONFIDENTIAL” (regardless of how it is generated, stored, or maintained) shall
22 mean and include any document, thing, deposition testimony, interrogatory answers,
23 responses to requests for admissions and requests for production, disclosures pursuant
24 to Federal Rule of Civil Procedure 26, or other information provided in discovery,
25 settlement communications, negotiations, or in any other manner in this Action,
26 which contains information that is non-public, confidential, and/or proprietary,
27 whether personal, such as information regarding employees’ personal and
28 employment information including without limitation social security numbers and

1 personal bank account numbers, or business related, such as information that
2 constitutes, reflects, or concerns trade secrets, know-how or proprietary data,
3 business, financial, or commercial information, the disclosure of which is likely to
4 cause harm to the competitive position of the party making the confidentiality
5 designation, including for example non-public customer lists, past product
6 development, past business/strategic plans, past sales projections, past marketing
7 plans, and non-public contracts. Certain limited types of “CONFIDENTIAL”
8 information may be further designated, as defined and detailed below, as “HIGHLY
9 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
10 – ATTORNEYS’ EYES ONLY – SOURCE CODE.”

11 2.3 Counsel (without qualifier): Outside Counsel of Record, House Counsel,
12 and/or House Representatives (as well as their support staff).

13 2.4 Designated House Counsel: House Counsel and/or House
14 Representatives who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY” information in this matter.

16 2.5 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
19 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE
20 CODE.”

21 2.6 Disclosure or Discovery Material: all items or information, regardless of
22 the medium or manner in which it is generated, stored, or maintained (including,
23 among other things, testimony, transcripts, and tangible things), that are produced or
24 generated in disclosures or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
27 as an expert witness or as a consultant in this action, (2) is not a past or current
28 employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not

1 anticipated to become an employee of a Party or of a Party's competitor.

2 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

3 Information or Items: extremely sensitive “Confidential Information or Items,”
4 disclosure of which to another Party or Non-Party would create a substantial risk of
5 serious harm that could not be avoided by less restrictive means. This type of
6 information and items includes, but is not limited to, pending patent applications,
7 products currently in development and not yet commercially released, technical
8 specifications, documents regarding the design or development of the accused product
9 or system, current business/strategic plans, future sales/financial projections, future
10 marketing plans, detailed sales and financial data, or other highly sensitive or
11 proprietary competitive or financial information.

12 2.9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY –

13 SOURCE CODE” Information or Items: extremely sensitive “Confidential
14 Information or Items” representing computer code and associated comments and
15 revision histories, formulas, engineering specifications, or schematics that define or
16 otherwise describe in detail the algorithms or structure of software or hardware
17 designs, disclosure of which to another Party or Non-Party would create a substantial
18 risk of serious harm that could not be avoided by less restrictive means.

19 2.10 House Counsel: attorneys who are employees of (i) a party to this
20 action, (ii) a parent company or other company that owns a controlling interest of a
21 party to this action . House Counsel does not include Outside Counsel of Record or
22 any other outside counsel.

23 2.11 House Representative: for matters relating solely to Case No. 2:13-cv-
24 07743, where no House Counsel exists, an employee of Defendant Factual Inc. who is
25 not involved in competitive decision-making on behalf of that party. For avoidance
26 of doubt, references herein to House Representatives, are made only with respect to
27 Discovery Material attributable to Defendant Factual Inc..

28 2.12 Indemnitor Counsel: attorneys who are (i) employees of a potential

1 indemnitor of a Defendant to this action or (ii) not employees of a Defendant to this
2 action or a potential indemnitor of a Defendant to this action but are retained to
3 represent or advise a potential indemnitor of a Defendant to this action.

4 2.13 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.14 Outside Counsel of Record: attorneys who are not employees of a party
7 to this action but are retained to represent or advise a party to this action and have
8 appeared in this action on behalf of that party or are affiliated with a law firm which
9 has appeared on behalf of that party.

10 2.15 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.16 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.17 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.18 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY –
22 SOURCE CODE.”

23 2.19 Receiving Party: a Party that receives Disclosure or Discovery Material
24 from a Producing Party.

25 3. SCOPE

26 The protections conferred by this Protective Order cover not only Protected
27 Material (as defined above), but also (1) any information copied or extracted from
28 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected

1 Material; and (3) any testimony, conversations, or presentations by Parties or their
2 Counsel that might reveal Protected Material. However, the protections conferred by
3 this Protective Order do not cover the following information: (a) any information that
4 is in the public domain at the time of disclosure to a Receiving Party or becomes part
5 of the public domain after its disclosure to a Receiving Party as a result of publication
6 not involving a violation of this Order, including becoming part of the public record
7 through trial or otherwise; and (b) any information known to the Receiving Party
8 prior to the disclosure or obtained by the Receiving Party after the disclosure from a
9 source who obtained the information lawfully and under no obligation of
10 confidentiality to the Designating Party. Any use of Protected Material at trial shall be
11 governed by a separate agreement or order.

12 4. DURATION

13 Even after final disposition of this litigation and the applicability of the
14 requirements of Section 15, the confidentiality obligations imposed by this Order
15 shall remain in effect until a Designating Party agrees otherwise in writing, a court
16 order otherwise directs, or the confidentiality obligations expire pursuant to this
17 Order. Final disposition shall be deemed to be the later of (1) dismissal of all claims
18 and defenses in this action, with or without prejudice; and (2) final judgment herein
19 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
20 reviews of this action, including the time limits for filing any motions or applications
21 for extension of time pursuant to applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection
25 under this Order must take care to limit any such designation to specific material that
26 qualifies under the appropriate standards.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations
28 that are shown to be clearly unjustified or that have been made for an improper

1 purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to
2 impose unnecessary expenses and burdens on other parties) expose the Designating
3 Party to sanctions.

4 If it comes to a Designating Party’s attention that information or items that it
5 designated for protection do not qualify for protection at all or do not qualify for the
6 level of protection initially asserted, that Designating Party must promptly notify all
7 other Parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in
9 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
10 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
11 under this Order must be clearly so designated before the material is disclosed or
12 produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (*e.g.*, paper or electronic documents,
15 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
16 Producing Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL
17 – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
18 EYES ONLY – SOURCE CODE” to each page that contains protected material.

19 A Party or Non-Party that makes original documents or materials available for
20 inspection need not designate them for protection until after the inspecting Party has
21 indicated which material it would like copied and produced. During the inspection
22 and before the designation, all of the material made available for inspection shall be
23 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
24 inspecting Party has identified the documents it wants copied and produced, the
25 Producing Party must determine which documents qualify for protection under this
26 Order. Then, before producing the specified documents, the Producing Party must
27 affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY – SOURCE CODE”) to each page that contains Protected Material.

2 (b) for testimony given in deposition or in other pretrial or trial proceedings,
3 that the Designating Party identify on the record, before the close of the deposition,
4 hearing, or other proceeding, all protected testimony and specify the level of
5 protection being asserted. When it is impractical to identify separately each portion of
6 testimony that is entitled to protection and it appears that substantial portions of the
7 testimony may qualify for protection, the Designating Party may invoke on the record
8 (before the deposition, hearing, or other proceeding is concluded) a right to have up to
9 21 days to identify the specific portions of the testimony as to which protection is
10 sought and to specify the level of protection being asserted. Only those portions of the
11 testimony that are appropriately designated for protection within the 21 days shall be
12 covered by the provisions of this Protective Order. Alternatively, a Designating Party
13 may specify, at the deposition or up to 21 days afterwards if that period is properly
14 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 Parties shall give the other parties notice if they reasonably expect a deposition,
17 hearing, or other proceeding to include Protected Material so that the other parties can
18 ensure that only authorized individuals who have signed the “Acknowledgment and
19 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
20 document as an exhibit at a deposition shall not in any way affect the document’s
21 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the
24 title page that the transcript contains Protected Material, and the title page shall be
25 followed by a list of all pages (including line numbers as appropriate) that have been
26 designated as Protected Material and the level of protection being asserted by the
27 Designating Party. The Designating Party shall inform the court reporter of these
28 requirements. Any transcript that is prepared before the expiration of a 21-day period

1 for designation shall be treated during that period as if it had been designated
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
3 otherwise agreed. After the expiration of that period, the transcript shall be treated
4 only as actually designated.

5 (c) for information produced in some form other than documentary and for any
6 other tangible items, that the Producing Party affix in a prominent place on the
7 exterior of the container or containers in which the information or item is stored the
8 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY –
10 SOURCE CODE.”

11 5.3 Inadvertent Failures to Designate. If timely corrected following the
12 Designating Party’s discovery of an inadvertent failure to designate, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive the
14 Designating Party’s right to secure protection under this Order for such material.
15 Upon timely correction of a designation, the Receiving Party must make reasonable
16 efforts to assure that the material is treated in accordance with the provisions of this
17 Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time. Unless a prompt challenge to a Designating
21 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
22 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
23 litigation, a Party does not waive its right to challenge a confidentiality designation by
24 electing not to mount a challenge promptly after the original designation is disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process by providing written notice of each designation it is challenging
27 and describing the basis for each challenge. To avoid ambiguity as to whether a
28 challenge has been made, the written notice must recite that the challenge to

1 confidentiality is being made in accordance with this specific paragraph of the
2 Protective Order. The parties shall attempt to resolve each challenge in good faith and
3 must begin the process by conferring directly (in voice to voice dialogue; other forms
4 of communication are not sufficient) within 10 days of the date of service of notice. In
5 conferring, the Challenging Party must explain the basis for its belief that the
6 confidentiality designation was not proper and must give the Designating Party an
7 opportunity to review the designated material, to reconsider the circumstances, and, if
8 no change in designation is offered, to explain the basis for the chosen designation. A
9 Challenging Party may proceed to the next stage of the challenge process only if it
10 has engaged in this meet and confer process first or establishes that the Designating
11 Party is unwilling to participate in the meet and confer process in a timely manner.
12 Nothing in this Order shall be construed as releasing a Party from its obligation to
13 resolve discovery disputes, including a dispute over a confidentiality designation,
14 pursuant to Central District of California Local Rule 37.

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
16 court intervention, the Challenging Party shall file and serve a motion to challenge the
17 confidentiality designation under Civil Local Rule 37 (and in compliance with Civil
18 Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
19 within 14 days of the parties agreeing that the meet and confer process will not
20 resolve their dispute, whichever is later. Each such motion must be accompanied by a
21 competent declaration affirming that the movant has complied with the meet and
22 confer requirements imposed in the preceding paragraph.

23 The burden of persuasion in any such challenge proceeding shall be on the
24 Designating Party. Frivolous challenges and those made for an improper purpose
25 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
26 expose the Challenging Party to sanctions. All parties shall continue to afford the
27 material in question the level of protection to which it is entitled under the Producing
28 Party's designation until the court rules on the challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this case
4 only for prosecuting, defending, or attempting to settle this litigation¹, unless
5 otherwise permitted by this Protective Order. Such Protected Material may be
6 disclosed only to the categories of persons and under the conditions described in this
7 Order. When the litigation has been terminated, a Receiving Party must comply with
8 the provisions of section 15 below (FINAL DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
17 as employees of said Outside Counsel of Record to whom it is reasonably necessary ;

18 (b) the officers, directors, and employees (including House Counsel and/or
19 House Representatives) of the Receiving Party to whom disclosure is reasonably
20 necessary for this litigation and who have signed the “Acknowledgment and
21 Agreement to Be Bound” (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this litigation and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) the court and its personnel;

26 _____
27 ¹ For purposes of the Protective Order, “this litigation” does not include any
28 proceeding other than the above captioned matters. That is, “this litigation” does not
include proceedings before the U.S. Patent and Trademark Office, or any other
judicial, administrative, or other body.

1 (e) court reporters and their staff, professional jury or trial consultants, and
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation
3 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
4 A);

5 (f) during their depositions, witnesses in the action to whom disclosure is
6 reasonably necessary and who have signed the “Acknowledgment and Agreement to
7 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
8 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
9 reveal Protected Material must be separately bound by the court reporter and may not
10 be disclosed to anyone except as permitted under this Protective Order;

11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information; and

13 (h) Indemnitor Counsel to whom disclosure is reasonably necessary for this
14 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A).

16 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” and “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY –
18 SOURCE CODE” Information or Items. Unless otherwise ordered by the court or
19 permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE
22 CODE” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
24 as employees of said Outside Counsel of Record to whom it is reasonably necessary
25 to disclose the information for this litigation;

26 (b) Designated House Counsel of the Receiving Party and/or Indemnitor
27 Counsel (1) who has no involvement in competitive decision-making, (2) to whom
28 disclosure is reasonably necessary for this litigation, (3) who has signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the
2 procedures set forth in paragraph 7.4(a)(1), below, have been followed;²

3 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
4 necessary for this litigation, (2) who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
6 paragraph 7.4(a)(2), below, have been followed, including assistants, employees and
7 contractors of such Experts, on behalf of whom the Expert has signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, and
11 Professional Vendors to whom disclosure is reasonably necessary for this litigation
12 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
13 A); and

14 (f) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
18 – ATTORNEYS’ EYES ONLY – SOURCE CODE” Information or Items to
19 Designated House Counsel, Indemnitor Counsel, or Experts.

20 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
21 Designating Party, a Party that seeks to disclose to Designated House Counsel any
22 information or item that has been designated “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written
24 request to the Designating Party that (1) sets forth the full name of the Designated
25 House Counsel or Indemnitor Counsel and the city and state of his or her residence
26

27 ² This Order contemplates that Designated House Counsel shall not have access to
28 any information or items designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
EYES ONLY – SOURCE CODE.”

1 and (2) describes the Designated House Counsel’s or Indemnitor Counsel's current
2 and reasonably foreseeable future primary job duties and responsibilities in sufficient
3 detail to determine if Designated House Counsel or Indemnitor Counsel is involved,
4 or may become involved, in any competitive decision-making.

5 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
6 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
7 Order) any information or item that has been designated “HIGHLY CONFIDENTIAL
8 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a
10 written disclosure to the Designating Party that (1) identifies the general categories of
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” information
13 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the
14 full name of the Expert and the city and state of his or her primary residence, (3)
15 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
16 employer(s), (5) identifies each person or entity from whom the Expert has received
17 compensation or funding for work in his or her areas of expertise or to whom the
18 expert has provided professional services, including in connection with a litigation, at
19 any time during the preceding five years,³ and (6) identifies (by name and number of
20 the case, filing date, and location of court) any litigation in connection with which the
21 Expert has offered expert testimony, including through a declaration, report, or
22 testimony at a deposition or trial, during the preceding five years.

23 (b) A Party that makes a request and provides the information specified in
24 the preceding respective paragraphs may disclose the subject Protected Material to the

25 _____
26 ³ If the Expert believes any of this information is subject to a confidentiality
27 obligation to a third-party, then the Expert should provide whatever information the
28 Expert believes can be disclosed without violating any confidentiality agreements,
and the Party seeking to disclose to the Expert shall be available to meet and confer
with the Designating Party regarding any such engagement.

1 identified Designated House Counsel, Indemnitor Counsel, or Expert unless, within
2 seven (7) calendar days of delivering the request, the Party receives a written
3 objection from the Designating Party. Any such objection must set forth in detail the
4 grounds on which it is based.

5 (c) A Party that receives a timely written objection must meet and confer
6 with the Designating Party (through direct voice to voice dialogue) to try to resolve
7 the matter by agreement within seven (7) calendar days of the written objection. If no
8 agreement is reached, the Party seeking to make the disclosure to Designated House
9 Counsel, Indemnitor Counsel, or the Expert may file a motion as provided in Civil
10 Local Rule 37 (and in compliance with Civil Local Rule 79-5, if applicable) seeking
11 permission from the court to do so. Any such motion must describe the circumstances
12 with specificity, set forth in detail the reasons why disclosure to Designated House
13 Counsel, Indemnitor Counsel, or the Expert is reasonably necessary, assess the risk of
14 harm that the disclosure would entail, and suggest any additional means that could be
15 used to reduce that risk. In addition, any such motion must be accompanied by a
16 competent declaration describing the parties' efforts to resolve the matter by
17 agreement (*i.e.*, the extent and the content of the meet and confer discussions) and
18 setting forth the reasons advanced by the Designating Party for its refusal to approve
19 the disclosure.

20 In any such proceeding, the Party opposing disclosure to Designated House
21 Counsel, Indemnitor Counsel, or the Expert shall bear the burden of proving that the
22 risk of harm that the disclosure would entail (under the safeguards proposed)
23 outweighs the Receiving Party's need to disclose the Protected Material to its
24 Designated House Counsel, Indemnitor Counsel, or Expert.

25 The Party opposing disclosure to the Designated House Counsel, Indemnitor
26 Counsel, or the Expert shall use its best efforts to make any objection under this
27 provision as early as possible to ensure that the other Party does not lose the ability to
28 file a motion regarding a dispute under this provision. If a Party objects to a

1 Designated House Counsel, Indemnitor Counsel, or an Expert under this provision at
2 such a time that does not leave enough time under the Court’s schedule for the other
3 Party to file a discovery motion to resolve the dispute, the parties shall jointly move to
4 shorten time on any such motion.

5 **8. PROSECUTION BAR**

6 Absent written consent from the Producing Party, any individual acting on
7 behalf of Locata who actually receives information marked “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
9 – ATTORNEYS’ EYES ONLY – SOURCE CODE” shall not prosecute or assist in
10 the prosecution of a patent application directed to BARRED SUBJECT MATTER
11 before any foreign or domestic agency, including the United States Patent and
12 Trademark Office (“the Patent Office”). BARRED SUBJECT MATTER shall mean
13 the subject matter of this action, including without limitation, the products accused of
14 infringement and the patent asserted in this action or any patent or application
15 claiming priority to or otherwise related to the patent asserted in this action. For
16 purposes of this paragraph, "prosecution" includes directly or indirectly drafting,
17 amending, advising, or otherwise affecting the scope or maintenance of patent
18 claims.⁴

19 Notwithstanding the foregoing paragraph, persons subject to the prosecution
20 bar may participate in or assist in any *inter partes* review proceedings involving the
21 Patent-in-Suit, so long as such counsel do not participate or assist in the drafting of
22 claim amendments.

23 This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL
24 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY – SOURCE CODE” information is first received by the affected
26 individual and shall end two (2) years from termination of this action.

27 _____
28 ⁴ Prosecution includes, for example, original prosecution, reissue, and reexamination proceedings.

1 9. SOURCE CODE

2 (a) To the extent production of source code becomes necessary in this case,
3 a Producing Party may designate source code as “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY – SOURCE CODE” if it comprises or includes
5 confidential, proprietary or trade secret source code.

6 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY –SOURCE CODE” shall be subject to all of the
8 protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY” information, including the Prosecution and Acquisition Bar set forth in
10 Paragraph 8, and may be disclosed only to the individuals to whom “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as
12 set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.

13 (c) Provided that the Producing Party is given at least seven (7) business
14 days’ notice of the first proposed inspection and at least three (3) business days for
15 any later proposed inspections, any source code produced in discovery shall be made
16 available for inspection, in a format allowing it to be reasonably reviewed and
17 searched, during normal business hours or at other mutually agreeable times, at a
18 location within 20 miles of this Court or, if a Party has neither a business location or
19 office of counsel within 20 miles of this Court, then another mutually agreed upon
20 location. Such inspection shall occur in the United States of America. The source
21 code shall be made available for inspection on a secured computer in a secured room
22 without Internet access or network access to other computers, and the Receiving Party
23 shall not copy, remove, or otherwise transfer any portion of the source code onto any
24 recordable media or recordable device. The Producing Party may visually monitor the
25 activities of the Receiving Party’s representatives during any source code review, but
26 only to ensure that there is no unauthorized recording, copying, or transmission of the
27 source code. The Producing Party may keep a paper log recording the names of any
28 individuals inspecting the source code and dates and times of inspection.

1 (d) The Receiving Party may request paper copies of portions of source
2 code that are reasonably necessary for the preparation of court filings, pleadings,
3 expert reports, or other papers necessary for this action, or for deposition or trial, but
4 shall not request paper copies for the purpose of reviewing the source code other than
5 electronically as set forth in paragraph (c) in the first instance. The Producing Party
6 shall provide all such source code in paper form, including bates numbers and the
7 label “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE
8 CODE.” The Receiving Party may request up to 500 printed pages of source code
9 with no more than 35 printed pages of continuous source code. In the event the
10 Receiving Party believes it is reasonably necessary to request more than 500 printed
11 pages of source code or more than 35 printed pages of continuous source code, the
12 Receiving Party shall notify the Producing Party of such request. Within 3 business
13 days after such notification, the parties shall meet and confer to discuss the Receiving
14 Party’s request, which shall not be unreasonably denied. If after meeting and
15 conferring the parties are unable to reach an agreement, the Receiving Party may
16 challenge the Producing Party’s objection pursuant to Paragraph 6.3 whereby the
17 Receiving Party is the “Challenging Party” and the Producing Party is the
18 “Designating Party” for purposes of dispute resolution.

19 (e) The Producing Party may request the Receiving Party to identify any
20 individual who has inspected any portion of the source code in paper form. The
21 Receiving Party shall maintain all paper copies of any printed portions of the source
22 code in a secured, locked area accessible only to those authorized under this
23 Protective Order to view such code. The Receiving Party shall not permit any printed
24 portions of the source code, or copies thereof, to leave the United States of America.
25 The Receiving Party shall not create any electronic or other images of the paper
26 copies and shall not convert any of the information contained in the paper copies into
27 any electronic format, except as necessary for permitted court or other filings. The
28 Receiving Party shall be permitted to make additional paper copies only where such

1 additional copies are (1) necessary to prepare court filings, pleadings, or other papers
2 (including a testifying expert’s expert report), (2) necessary for deposition, or (3)
3 otherwise necessary for the preparation of its case. Any paper copies used during a
4 deposition shall be retrieved by the Producing Party at the end of each day and must
5 not be given to or left with a court reporter or any other unauthorized individual.
6 Source code shall be referred to by production number, line number, and, where
7 possible source code file name, during depositions.

8 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
9 OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this action as
12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
13 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE
14 CODE,” that Party must:

15 (a) promptly notify in writing the Designating Party. Such notification shall
16 include a copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order to
18 issue in the other litigation that some or all of the material covered by the subpoena or
19 order is subject to this Protective Order. Such notification shall include a copy of this
20 Protective Order; and

21 (c) cooperate with respect to all reasonable procedures sought to be pursued
22 by the Designating Party whose Protected Material may be affected.⁵

23 If the Designating Party seeks a protective order within a reasonable period
24 after receiving the notification in subsection (a) above, the Party served with the
25 subpoena or court order shall not produce any information designated in this action as

26 _____
27 ⁵ The purpose of imposing these duties is to alert the interested parties to the existence
28 of this Protective Order and to afford the Designating Party in this case an opportunity
to try to protect its confidentiality interests in the court from which the subpoena or
order issued.

1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
2 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE”
3 before a determination by the court from which the subpoena or order issued, unless
4 the Party has obtained the Designating Party’s permission. The Designating Party
5 shall bear the burden and expense of seeking protection in that court of its
6 confidential material – and nothing in these provisions should be construed as
7 authorizing or encouraging a Receiving Party in this action to disobey a lawful
8 directive from another court.

9 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
10 PRODUCED IN THIS LITIGATION

11 The terms of this Order are applicable to information produced by a
12 Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL
14 – ATTORNEYS’ EYES ONLY – SOURCE CODE.” Such information produced by
15 Non-Parties in connection with this litigation is protected by the remedies and relief
16 provided by this Order. Nothing in these provisions should be construed as
17 prohibiting a Non-Party from seeking additional protections.

18 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
20 Protected Material to any person or in any circumstance not authorized under this
21 Protective Order, the Receiving Party must immediately (a) notify in writing the
22 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
23 all unauthorized copies of the Protected Material, (c) inform the person or persons to
24 whom unauthorized disclosures were made of all the terms of this Order, and (d)
25 request such person or persons to execute the “Acknowledgment and Agreement to
26 Be Bound” that is attached hereto as Exhibit A.

27 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
28 PROTECTED MATERIAL

1 When a Producing Party gives notice to Receiving Parties that certain
2 inadvertently produced material is subject to a claim of privilege or other protection,
3 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
4 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
5 may be established in an e-discovery order that provides for production without prior
6 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
7 parties reach an agreement on the effect of disclosure of a communication or
8 information covered by the attorney-client privilege or work product protection, the
9 parties may incorporate their agreement in the stipulated protective order submitted to
10 the court.

11 **14. MISCELLANEOUS**

12 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the court in the future.

14 14.2 Right to Assert Other Objections. By stipulating to the entry of this
15 Protective Order no Party waives any right it otherwise would have to object to
16 disclosing or producing any information or item on any ground not addressed in this
17 Protective Order. Similarly, no Party waives any right to object on any ground to use
18 in evidence of any of the material covered by this Protective Order.

19 14.3 Export Control. Disclosure of Protected Material shall be subject to all
20 applicable laws and regulations relating to the export of technical data contained in
21 such Protected Material, including the release of such technical data to foreign
22 persons or nationals in the United States or elsewhere. The Producing Party shall be
23 responsible for identifying any such controlled technical data, and the Receiving Party
24 shall take measures necessary to ensure compliance.

25 14.4 Filing Protected Material. Without written permission from the
26 Designating Party or a court order secured after appropriate notice to all interested
27 persons, a Party may not file in the public record in this action any Protected Material.
28 A Party that seeks to file under seal any Protected Material must comply with Civil

1 Local Rule 79-5 and the Court’s Order re Pilot Program for Under Seal documents.
2 Protected Material may only be filed under seal pursuant to a court order authorizing
3 the sealing of the specific Protected Material at issue. If a Receiving Party's request to
4 file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by
5 the Court on the merits, then the Receiving Party may file the Protected Material in
6 the public record unless otherwise instructed by the Court.

7 15. FINAL DISPOSITION

8 Within 60 days after the final disposition of this action, as defined in paragraph
9 4, each Receiving Party must return all Protected Material to the Producing Party or
10 destroy such material. As used in this subdivision, “all Protected Material” includes
11 all copies, abstracts, compilations, summaries, and any other format reproducing or
12 capturing any of the Protected Material. Whether the Protected Material is returned or
13 destroyed, the Receiving Party must submit a written certification to the Producing
14 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
15 deadline that (1) identifies (by category, where appropriate) all the Protected Material
16 that was returned or destroyed and (2) affirms that the Receiving Party has not
17 retained any copies, abstracts, compilations, summaries or any other format
18 reproducing or capturing any of the Protected Material. Notwithstanding this
19 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
20 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and
22 expert work product, even if such materials contain Protected Material. Any such
23 archival copies that contain or constitute Protected Material remain subject to this
24 Protective Order as set forth in Section 4 (DURATION).

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED: June 09, 2014



Hon. Stephen J. Hillman
United States Magistrate Judge

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Protective Order that was issued by the
United States District Court for the Central District of California on _____ [date] in
the case of _____ [**insert formal name of the case and the number and
initials assigned to it by the court**]. I agree to comply with and to be bound by all
the terms of this Protective Order, and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that
is subject to this Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Protective Order, even if such enforcement proceedings occur after termination of this
action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]