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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ECLIPSE IP LLC, a Florida Limited
21 Liability Company,
22
23 Plaintiff,
24
25 v.
26 GOOGLE INC., a Delaware Corporation;
WAZE, INC., a Delaware Corporation,
27
28 Defendants.

Case No. 2:13-cv-09502-ODW(PLZx)

**AGREED JOINT PROTECTIVE
ORDER**

AGREED JOINT PROTECTIVE ORDER

1 At the joint request of Plaintiff Eclipse IP LLC (“Eclipse”) and Defendants Google
2 Inc. and Waze, Inc. (“Google”), through their undersigned counsel of record, who have
3 submitted an Agreed Joint Protective Order pursuant to the Court’s Case Management
4 Order (Dkt. No. 17), the Court hereby enters this Joint Protective Order.

5 In order to expedite the flow of discovery materials, facilitate the prompt resolution
6 of disputes over confidentiality of discovery materials, adequately protect information the
7 parties are entitled to keep confidential, ensure that only materials the parties are entitled to
8 keep confidential are subject to such treatment, and ensure that the parties are permitted
9 reasonably necessary uses of such materials in preparation for and in the conduct of trial,
10 pursuant to Fed. R. Civ. P. 26(c), it is hereby ORDERED THAT:

11 **I. INFORMATION SUBJECT TO THIS ORDER**

12 Discovery materials produced in this case may be labeled as one of three categories:
13 CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL ONLY and RESTRICTED
14 CONFIDENTIAL SOURCE CODE, as set forth in Items A through C below. All three of
15 the identified categories of information shall be identified collectively in this Order by the
16 title “Protected Information.”

17 **A. Information Designated as Confidential Information**

18 1. For purposes of this Order, “CONFIDENTIAL INFORMATION” shall mean
19 all information or material produced for or disclosed in connection with this action to a
20 receiving party that a producing party, including any party to this action and any non-party
21 producing information or material voluntarily or pursuant to a subpoena or a court order in
22 connection with this action, considers to comprise confidential technical, sales, marketing,
23 financial, or other commercially sensitive information, whether embodied in physical
24 objects, documents, or the factual knowledge of persons, and which has been so designated
25 by the producing party. Any CONFIDENTIAL INFORMATION obtained by any party
26 from any person pursuant to discovery in this litigation may be used only for purposes of
27 this litigation.

1 2. Any document or tangible thing containing or including any
2 CONFIDENTIAL INFORMATION may be designated as such by the producing party by
3 marking it “CONFIDENTIAL” prior to or at the time copies are furnished to the receiving
4 party.

5 3. All CONFIDENTIAL INFORMATION not reduced to documentary, tangible
6 or physical form or which cannot be conveniently designated as set forth in paragraph 2,
7 shall be designated by the producing party by informing the receiving party of the
8 designation in writing.

9 4. Any documents (including physical objects) made available for inspection by
10 counsel for the receiving party prior to producing copies of selected items shall initially be
11 considered, as a whole, to constitute CONFIDENTIAL INFORMATION (unless otherwise
12 designated at the time of inspection) and shall be subject to this Order. Thereafter, the
13 producing party shall have a reasonable time to review and designate the appropriate
14 documents as CONFIDENTIAL INFORMATION (or otherwise as appropriate) prior to
15 furnishing copies to the receiving party.

16 5. The following information is not CONFIDENTIAL INFORMATION:

- 17 a. Any information that is or, after its disclosure to a receiving party,
18 becomes part of the public domain as a result of publication not involving
19 a violation of this Order or other obligation to maintain the confidentiality
20 of such information;
- 21 b. Any information that the receiving party can show was already publicly
22 known prior to the disclosure; and,
- 23 c. Any information that the receiving party can show by written records was
24 received by it from a source who obtained the information lawfully and
25 under no obligation of confidentiality to the producing party.

26 6. Documents designated CONFIDENTIAL and information contained therein shall be
27 available only to:

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- 1 a. Outside litigation counsel of record and supporting personnel employed in
2 the law firm(s) of outside litigation counsel of record, such as attorneys,
3 paralegals, legal translators, legal secretaries, legal clerks and shorthand
4 reporters;
- 5 b. Technical advisers and their necessary support personnel, subject to the
6 provisions of paragraphs IV.A-IV.F herein, and who have signed the form
7 attached hereto as Attachment A; the term “technical adviser” shall mean
8 independent outside expert witnesses or consultants (i.e., not employees of
9 a party) with whom counsel may deem it necessary to consult and who
10 comply with paragraph VI;
- 11 c. Up to two in-house counsel, who are members of at least one state bar in
12 good standing, with responsibility for managing this litigation;
- 13 d. The Court, its personnel and stenographic reporters (under seal or with
14 other suitable precautions determined by the Court); and,
- 15 e. Independent legal translators retained to translate in connection with this
16 action; independent stenographic reporters and videographers retained to
17 record and transcribe testimony in connection with this action; graphics,
18 translation, or design services retained by counsel for purposes of
19 preparing demonstrative or other exhibits for deposition, trial, or other
20 court proceedings in the actions; non-technical jury or trial consulting
21 services not including mock jurors.

22 **B. Information Designated Confidential Outside Counsel Only**

23 1. The CONFIDENTIAL OUTSIDE COUNSEL ONLY designation is reserved
24 for CONFIDENTIAL INFORMATION that constitutes (a) marketing, financial, sales, web
25 traffic, research and development, or technical, data or information; (b) commercially
26 sensitive competitive information, including, without limitation, information obtained from
27 a nonparty pursuant to a current Nondisclosure Agreement (“NDA”); (c) information or
28 data relating to future products not yet commercially released and/or strategic plans; and,

1 (d) commercial agreements, settlement agreements or settlement communications, the
2 disclosure of which is likely to cause harm to the competitive position of the producing
3 party. Documents marked CONFIDENTIAL OUTSIDE ATTORNEYS' EYES ONLY,
4 HIGHLY CONFIDENTIAL or RESTRICTED CONFIDENTIAL shall be treated as if
5 designated CONFIDENTIAL OUTSIDE COUNSEL ONLY. In determining whether
6 information should be designated as CONFIDENTIAL OUTSIDE COUNSEL ONLY,
7 each party agrees to use such designation only in good faith.

8 2. Documents designated CONFIDENTIAL OUTSIDE COUNSEL ONLY and
9 information contained therein shall be available only to the persons or entities listed in
10 paragraphs I.A.6.a, b, d and e subject to any terms set forth or incorporated therein and not
11 any person or entity listed in paragraph I.A.6.c.

12 **C. Information Designated Restricted Confidential - Source Code**

13 1. The RESTRICTED CONFIDENTIAL - SOURCE CODE designation is
14 reserved for CONFIDENTIAL INFORMATION that contains or substantively relates to a
15 party's "Source Code," which shall mean documents containing or substantively relating to
16 confidential, proprietary and/or trade secret source code or technical design documentation.
17 The following conditions shall govern the production, review and use of source code or
18 design documentation information.

19 2. All such Source Code, and any other Protected Information designated as
20 "RESTRICTED CONFIDENTIAL —SOURCE CODE," shall be subject to the following
21 provisions:

- 22 a. Source Code, to the extent any producing party agrees to provide any such
23 information, shall ONLY be made available for inspection, not produced
24 except as provided for below, and shall be made available in electronic
25 format at one of the following locations chosen at the sole discretion of the
26 producing party: (1) the offices of the producing party's primary outside
27 counsel of record in this action; (2) a single, third-party site located within
28 Los Angeles, San Francisco, or Palo Alto in which the Source Code is

1 stored in the ordinary course of business (e.g., an escrow company); or (3)
2 a location mutually agreed upon by the receiving and producing parties.
3 Any location under (1), (2) or (3) above shall be in the continental United
4 States. Source Code will be loaded on a single, non-networked computer
5 that is password protected and maintained in a secure, locked area. Use or
6 possession of any input/output device (e.g., USB memory stick, cameras or
7 any camera-enabled device, CDs, floppy disk, portable hard drive, laptop,
8 etc.) is prohibited while accessing the computer containing the Source
9 Code. All persons entering the locked room containing the Source Code
10 must agree to submit to reasonable security measures to insure they are not
11 carrying any prohibited items before they will be given access to the locked
12 room. The computer containing Source Code will be made available for
13 inspection during regular business hours, upon reasonable notice to the
14 producing party, which shall not be less than 3 business days in advance of
15 the requested inspection.

- 16 b. The receiving party's outside counsel and/or experts may request that
17 commercially available licensed software tools for viewing and searching
18 Source Code be installed on the secured computer. The receiving party
19 must provide the producing party with the CD or DVD containing such
20 software tool(s) at least four business days in advance of the inspection.
- 21 c. The receiving party's outside counsel and/or expert shall be entitled to take
22 notes relating to the Source Code but may not copy any portion of the
23 Source Code into the notes. No copies of all or any portion of the Source
24 Code may leave the room in which the Source Code is inspected except as
25 otherwise provided herein. Further, no other written or electronic record of
26 the Source Code is permitted except as otherwise provided herein.
- 27 d. No person shall copy, e-mail, transmit, upload, download, print,
28 photograph or otherwise duplicate any portion of the designated Source

1 Code, except as the receiving party may request a reasonable number of
2 pages of Source Code to be printed by the producing party, but only if and
3 to the extent necessary for use in this action. In no event may the receiving
4 party print more than 25 consecutive pages, or an aggregate total of more
5 than 500 pages, of Source Code during the duration of the case without
6 prior written approval by the producing party, which shall not be
7 unreasonably withheld. Within 5 business days or such additional time as
8 necessary due to volume requested, the producing party will provide the
9 requested material on watermarked or colored paper bearing Bates numbers
10 and the legend “RESTRICTED CONFIDENTIAL - SOURCE CODE”
11 unless objected to pursuant to Federal Rule of Civil Procedure 26(c) within
12 five (5) business days. The printed pages shall constitute part of the Source
13 Code produced by the producing party in this action. At the inspecting
14 party’s request, up to three additional sets (or subsets) of printed Source
15 Code may be requested and provided by the producing party in a timely
16 fashion.

- 17 e. Any printed pages of Source Code, and any other documents or things
18 reflecting Source Code that have been designated by the producing party as
19 “RESTRICTED CONFIDENTIAL - SOURCE CODE” may not be copied,
20 digitally imaged or otherwise duplicated, except in limited excerpts
21 necessary to attach as exhibits to depositions, expert reports, or court
22 filings as discussed below.
- 23 f. Any paper copies designated “RESTRICTED CONFIDENTIAL -
24 SOURCE CODE” shall be stored or viewed only at (i) the offices of
25 outside counsel for the receiving party; (ii) the offices of outside experts or
26 consultants who have been approved to access Source Code; (iii) the site
27 where any deposition is taken; (iv) the Court; or (v) any intermediate
28 location necessary to transport the information to a hearing, trial or

1 deposition. Any such paper copies shall be maintained at all times in secure
2 location under the direct control of counsel responsible for maintaining the
3 security and confidentiality of the designated materials.

4 g. A list of names of persons who will view the Source Code will be provided
5 to the producing party in conjunction with any written (including email)
6 notice requesting inspection. The producing party shall maintain a daily
7 log of the names of persons who enter the locked room to view the Source
8 Code and when they enter and depart. The producing party shall be
9 entitled to have a person observe all entrances and exits from the Source
10 Code viewing room, and to a copy of the log.

11 h. Unless otherwise agreed in advance by the parties in writing, following
12 each inspection, the receiving party's outside counsel and/or experts shall
13 remove all notes, documents, and all other materials from the room that
14 may contain work product and/or attorney-client privileged information.
15 The producing party shall not be responsible for any items left in the room
16 following each inspection session.

17 i. The receiving party will not copy, remove, or otherwise transfer any
18 portion of the Source Code from the Source Code Computer including,
19 without limitation, copying, removing, or transferring any portion of the
20 Source Code onto any other computers or peripheral equipment. The
21 receiving party will not transmit any portion of the Source Code in any way
22 from the location of the Source Code inspection.

23 j. Only the following individuals shall have access to "RESTRICTED
24 CONFIDENTIAL - SOURCE CODE" materials, absent the express written
25 consent of the Producing Party or further court order:

- 26 i. Outside counsel of record for the parties to this action, including any
27 attorneys, paralegals, technology specialists and clerical employees of
28 their respective law firms;

- 1 ii. Up to three (3) concurrent outside experts or consultants per party,
2 pre-approved in accordance with Paragraphs IV.A-IV.F and
3 specifically identified as eligible to access Source Code;
4 iii. The Court, its technical advisor (if one is appointed), the jury, court
5 personnel, and court reporters or videographers recording testimony or
6 other proceedings in this action. Court reporters and/or videographers
7 shall not retain or be given copies of any portions of the Source Code.
8 If used during a deposition, the deposition record will identify the
9 exhibit by its production numbers;
10 iv. While testifying at deposition or trial in this action only: (i) any
11 current or former officer, director or employee of the producing party
12 or original source of the information; (ii) any person designated by the
13 producing party to provide testimony pursuant to Rule 30(b)(6) of the
14 Federal Rules of Civil Procedure; and/or (iii) any person who
15 authored, previously received (other than in connection with this
16 litigation), or was directly involved in creating, modifying, or editing
17 the Source Code, as evident from its face or reasonably certain in view
18 of other testimony or evidence. Persons authorized to view Source
19 Code pursuant to this sub-paragraph shall not retain or be given copies
20 of the Source Code except while so testifying.
21 k. The Receiving Party's outside counsel shall maintain a log of all copies of
22 the Source Code (received from a Producing Party) that are delivered by
23 the Receiving Party to any qualified person under Paragraph j above. The
24 log shall include the names of the recipients and reviewers of copies and
25 locations where the copies are stored. Upon request by the producing
26 party, the receiving party shall provide reasonable assurances and/or
27 descriptions of the security measures employed by the receiving party
28

1 and/or qualified person that receives a copy of any portion of the Source
2 Code;

- 3 1. Except as provided in this paragraph, the Receiving Party may not create
4 electronic images, or any other images, of the Source Code from the paper
5 copy for use on a computer (e.g., may not scan the source code to a PDF, or
6 photograph the code). The Receiving Party may create an electronic copy
7 or image of limited excerpts of Source Code only to the extent necessary in
8 a pleading, exhibit, expert report, discovery document, deposition
9 transcript, other Court document, or any drafts of these documents
10 (“SOURCE CODE DOCUMENTS”). The receiving party shall only
11 include such excerpts as are reasonably necessary for the purposes for
12 which such part of the Source Code is used. Images or copies of Source
13 Code shall not be included in correspondence between the parties
14 (references to production numbers shall be used instead) and shall be
15 omitted from pleadings and other papers except to the extent permitted
16 herein. The receiving party may create an electronic image of a selected
17 portion of the Source Code only when the electronic file containing such
18 image has been encrypted using commercially reasonable encryption
19 software including password protection. The communication and/or
20 disclosure of electronic files containing any portion of Source Code shall at
21 all times be limited to individuals who are authorized to see Source Code
22 under the provisions of this Protective Order. The receiving party shall
23 maintain a log of all electronic images and paper copies of Source Code in
24 its possession or in the possession of its retained consultants, including the
25 names of the recipients and reviewers of any electronic or paper copies and
26 the locations where the copies are stored. Additionally, all electronic
27 copies must be labeled “RESTRICTED CONFIDENTIAL - SOURCE
28 CODE.”

- 1 m. To the extent portions of Source Code are quoted in a SOURCE CODE
2 DOCUMENT, either (1) the entire document will be stamped and treated
3 as RESTRICTED CONFIDENTIAL-SOURCE CODE or (2) those pages
4 containing quoted Source Code will be separately bound, and stamped and
5 treated as RESTRICTED CONFIDENTIAL-SOURCE CODE.
- 6 n. All copies of any portion of the Source Code in whatever form shall be
7 securely destroyed if they are no longer in use. Copies of Source Code that
8 are marked as deposition exhibits shall not be provided to the Court
9 Reporter or attached to deposition transcripts; rather, the deposition record
10 will identify the exhibit by its production numbers.
- 11 o. The receiving party's outside counsel may only disclose a copy of the
12 Source Code to individuals specified in Paragraph j above (e.g., Source
13 Code may not be disclosed to in-house counsel).

14 **D. Use of Protected Information at Trial**

15 A party shall provide a minimum of two business day's notice to the producing party
16 in the event that a party intends to use any Protected Information during trial. In addition,
17 the parties will not oppose any request by the producing party that the courtroom should be
18 sealed, if allowed by the Court, during the presentation of any testimony relating to or
19 involving the use of any Protected Information.

20 **II. PROSECUTION BAR**

21 A. Any person reviewing any of an opposing party's Confidential Materials,
22 Confidential Outside Counsel Only Materials or Source Code (all of which shall also be
23 automatically designated as "Prosecution Bar Materials") shall not, for a period
24 commencing upon receipt of such information and ending three years following the
25 conclusion of this case (including any appeals) engage in any Prosecution Activity (as
26 defined below) on behalf of a party asserting a patent in this case. Furthermore, any person
27 reviewing any of an opposing party's Prosecution Bar Materials shall not, for a period
28 commencing upon receipt of such information and ending three years following the

1 conclusion of this case (including any appeals) engage in any Prosecution Activity
2 involving claims on a method, apparatus, or system relating to the field of mapping or
3 navigation in mobile devices or to track mobile things.

4 B. Prosecution Activity shall mean any activity related to the competitive
5 business decisions involving: (i) the preparation or prosecution (for any person or entity) of
6 patent applications relating to the field of mapping or navigation in mobile devices or to
7 track mobile things; or (ii) advising or counseling clients regarding the same, including but
8 not limited to providing any advice or counseling regarding, or participating in, the drafting
9 of claims for any patent application, reissue application, reexamination, inter partes review,
10 post grant review, covered business method review, or any other proceeding at the U.S.
11 Patent and Trademark Office. Nothing in this paragraph shall prevent any attorney from
12 sending non-confidential prior art to an attorney involved in patent prosecution for
13 purposes of ensuring that such prior art is submitted to the U.S. Patent and Trademark
14 Office (or any similar agency of a foreign government) to assist a patent applicant in
15 complying with its duty of candor. Nothing in this provision shall prohibit any attorney of
16 record in this litigation from discussing any aspect of this case that is reasonably necessary
17 for the prosecution or defense of any claim or counterclaim in this litigation with his/her
18 client.

19 **III. ACQUISITION BAR**

20 A. Any person reviewing any of an opposing party's Confidential Materials,
21 Confidential Outside Counsel Only Materials or Source Code shall not, for a period
22 commencing upon receipt of such information and ending three years following the
23 conclusion of this case (including any appeals) engage in any Acquisition Activity (as
24 defined below) on behalf of a party asserting a patent in this case.

25 B. Acquisition Activity shall mean any activity related to: (i) the acquisition of
26 patents or patent applications (for any person or entity) relating to the field of mapping or
27 navigation in mobile devices or to track mobile things; or (ii) advising or counseling clients
28 regarding the same.

1 **IV. DISCLOSURE OF TECHNICAL ADVISERS**

2 A. Information designated by the producing party under any category of
3 Protected Information and such copies of this information as are reasonably necessary for
4 maintaining, defending or evaluating this litigation may be furnished and disclosed to the
5 receiving party's technical advisers and their necessary support personnel.

6 B. No disclosure of Protected Information to a technical adviser or their
7 necessary support personnel shall occur until that person has signed the form attached
8 hereto as Attachment A, and a signed copy has been provided to the producing party; and
9 to the extent there has been an objection under paragraph IV.C., that objection is resolved
10 according to the procedures set forth below.

11 C. A party desiring to disclose Protected Information to a technical adviser shall
12 also give prior written notice of the intended disclosure by email to all counsel of record in
13 the litigation, and the producing party shall have ten business days after such notice is
14 given to object in writing to the disclosure. The party desiring to disclose Protected
15 Information to a technical adviser must provide the following information for each
16 technical adviser: name, address, curriculum vitae, current employer, employment history
17 for the past ten years, a listing of cases in which the witness has testified as an expert at
18 trial or by deposition within the preceding five years, and a identification of any patents or
19 patent applications in which the technical adviser is identified as an inventor or applicant,
20 is involved in prosecuting or maintaining, or has any pecuniary interest. No Protected
21 Information shall be disclosed to such expert(s) or consultant(s) until after the expiration of
22 the foregoing notice period and resolution of any objection.

23 D. A party objecting to disclosure of Protected Information to a technical adviser
24 shall state with particularity the ground(s) of the objection. The objecting party's consent
25 to the disclosure of Protected Information to a technical adviser shall not be unreasonably
26 withheld, and its objection must be based on that party's good faith belief that disclosure of
27 its Protected Information to the technical adviser will result in specific business or
28 economic harm to that party.

1 E. If after consideration of the objection, the party desiring to disclose the
2 Protected Information to a technical adviser refuses to withdraw the technical adviser, that
3 party shall provide notice to the objecting party. Thereafter, the objecting party shall move
4 the Court, within ten business days of receiving such notice, for a ruling on its objection.
5 A failure to file a motion within the ten business day period, absent an agreement of the
6 parties to the contrary or for an extension of such ten business day period, shall operate as
7 an approval of Protected Information to the technical adviser. The parties agree to
8 cooperate in good faith to shorten the time frames set forth in this paragraph if necessary to
9 abide by any discovery or briefing schedules.

10 F. The objecting party shall have the burden of showing to the Court "good
11 cause" for preventing the disclosure of its Protected Information to the technical adviser.
12 This "good cause" shall include a particularized showing that: (1) the Protected
13 Information is confidential commercial information, (2) disclosure of the Protected
14 Information likely would result in a clearly defined and serious injury to the objecting
15 party's business, (3) the proposed technical advisor is in a position to allow the Protected
16 Information to be disclosed to or become known by the objecting party's competitors, and
17 (4) that the technical advisor's access to Protected Information may create other
18 confidentiality or legal risks in connection with other patent-related activities or interests
19 tied to the technical advisor.

20 G. A party who has not previously objected to disclosure of Protected
21 Information to a technical adviser or whose objection has been resolved with respect to
22 previously produced information shall not be precluded from raising an objection to a
23 technical adviser at a later time with respect to materials or information that are produced
24 after the time for objecting to such a technical adviser has expired. Any such objection
25 shall be handled in accordance with the provisions set forth above in paragraph IV.B
26 through IV.F.

1 **V. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

2 A. The parties shall use reasonable care when designating documents or
3 information as Protected Information. Nothing in this Order shall prevent a receiving party
4 from contending that any documents or information designated as Protected Information
5 have been improperly designated. A receiving party may at any time request that the
6 producing party cancel or modify the Protected Information designation with respect to any
7 document or information contained therein.

8 B. A party shall not be obligated to challenge the propriety of a designation of
9 any category of Protected Information at the time of production, and a failure to do so shall
10 not preclude a subsequent challenge thereto. Such a challenge shall be written, shall be
11 served on counsel for the producing party, and shall particularly identify the documents or
12 information that the receiving party contends should be differently designated. The parties
13 shall use their best efforts to resolve promptly and informally such disputes. If an
14 agreement cannot be reached, the receiving party shall request that the Court cancel or
15 modify a designation. The burden of demonstrating the confidential nature of any
16 information shall at all times be and remain on the designating party.

17 C. Until a determination by the Court, the information in issue shall be treated as
18 having been properly designated and subject to the terms of this Order.

19 **VI. LIMITATIONS ON THE USE OF PROTECTED INFORMATION**

20 A. All Protected Information shall be held in confidence by each person to whom
21 it is disclosed, shall be used only for purposes of this litigation, shall not be used for any
22 business purpose or in connection with any other legal proceeding, and shall not be
23 disclosed to any person who is not entitled to receive such information as herein provided.
24 All produced Protected Information shall be carefully maintained so as to preclude access
25 by persons who are not entitled to receive such information.

26 B. Except as may be otherwise ordered by the Court, any person may be
27 examined as a witness at depositions and trial and may testify concerning all Protected
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1 Information of which such person has prior knowledge. Without in any way limiting the
2 generality of the foregoing:

3 1. A present director, officer, and/or employee of a producing party may be
4 examined and may testify concerning all Protected Information which has been produced
5 by that party and of which the witness has personal knowledge.

6 2. A former director, officer, agent and/or employee of a producing party may be
7 interviewed, examined and may testify concerning all Protected Information of which he or
8 she has personal knowledge, including any Protected Information that refers to matters of
9 which the witness has personal knowledge, which has been produced by that party and
10 which pertains to the period or periods of his or her employment.

11 3. Non-parties may be examined or testify concerning any document containing
12 Protected Information of a producing party which appears on its face or from other
13 documents or testimony to have been received from or communicated to the non-party as a
14 result of any contact or relationship with the producing party or a representative of the
15 producing party. Any person other than the witness, his or her attorney(s), or any person
16 qualified to receive Protected Information under this Order shall be excluded from the
17 portion of the examination concerning such information, unless the producing party
18 consents to persons other than qualified recipients being present at the examination. If the
19 witness is represented by an attorney who is not qualified under this Order to receive such
20 information, then prior to the examination, the attorney must provide a signed statement, in
21 the form of Attachment A hereto, that he or she will comply with the terms of this Order
22 and maintain the confidentiality of Protected Information disclosed during the course of the
23 examination. In the event that such attorney declines to sign such a statement prior to the
24 examination, the parties, by their attorneys, shall jointly seek a protective order from the
25 Court prohibiting the attorney from disclosing Protected Information.

26 4. All transcripts of depositions, exhibits, answers to interrogatories, pleadings,
27 briefs, and other documents submitted to the Court which have been designated as
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1 Protected Information, or which contain information so designated, shall be filed under
2 seal in a manner prescribed by the Court for such filings.

3 5. Outside attorneys of record for the parties are hereby authorized to be the
4 persons who may retrieve confidential exhibits and/or other confidential matters filed with
5 the Court upon termination of this litigation without further order of this Court, and are the
6 persons to whom such confidential exhibits or other confidential matters may be returned
7 by the Clerk of the Court, if they are not so retrieved. No material or copies thereof so
8 filed shall be released except by order of the Court, to outside counsel of record, or as
9 otherwise provided for hereunder. Notwithstanding the foregoing and with regard to
10 material designated as Restricted Confidential - Source Code, the provisions of Paragraph
11 I.C. are controlling to the extent those provisions differ from this paragraph.

12 6. Protected Information shall not be copied or otherwise produced by a
13 receiving party, except for transmission to qualified recipients, without the written
14 permission of the producing party, or, in the alternative, by further order of the Court.
15 Nothing herein shall, however, restrict a qualified recipient from making working copies,
16 abstracts, digests and analyses of CONFIDENTIAL and CONFIDENTIAL OUTSIDE
17 COUNSEL ONLY information for use in connection with this litigation and such working
18 copies, abstracts, digests and analyses shall be deemed Protected Information under the
19 terms of this Order. Further, nothing herein shall restrict a qualified recipient from
20 converting or translating CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL
21 ONLY information into machine readable form for incorporation into a data retrieval
22 system used in connection with this action, provided that access to that Protected
23 Information, in whatever form stored or reproduced, shall be limited to qualified recipients.

24 7. At the request of any party, the original and all copies of any deposition
25 transcript, in whole or in part, shall be marked "CONFIDENTIAL" by the reporter. This
26 request may be made orally during the deposition or in writing within fifteen (15) days of
27 receipt of the final certified transcript. Deposition transcripts shall be treated by default as
28 CONFIDENTIAL OUTSIDE COUNSEL ONLY until the expiration of the time to make a

1 confidentiality designation. Any portions so designated shall thereafter be treated in
2 accordance with the terms of this Order.

3 C. Each party receiving Protected Information shall comply with all applicable
4 export control statutes and regulations. *See, e.g.*, 15 C.F.R. § 734.2(b). No Protected
5 Information may leave the territorial boundaries of the United States of America or be
6 made available to any foreign national who is not (i) lawfully admitted for permanent
7 residence in the United States or (ii) identified as a protected individual under the
8 Immigration and Naturalization Act (8 U.S.C. § 1324b(a)(3)). No Protected Information
9 may leave the territorial boundaries of the United States of America. Without limitation,
10 this prohibition extends to Protected Information (including copies) in physical and
11 electronic form. The viewing of Protected Information through electronic means outside
12 the territorial limits of the United States of America is similarly prohibited.
13 Notwithstanding this prohibition, Protected Information, exclusive of material designated
14 RESTRICTED CONFIDENTIAL SOURCE CODE, and to the extent otherwise permitted
15 by law, may be taken outside the territorial limits of the United States if it is reasonably
16 necessary for a deposition taken in a foreign country. The restrictions contained within this
17 paragraph may be amended through the consent of the producing Party to the extent that
18 such agreed to procedures conform with applicable export control laws and regulations.

19 **VII. NON-PARTY USE OF THIS PROTECTIVE ORDER**

20 A. A nonparty producing information or material voluntarily or pursuant to a
21 subpoena or a court order may designate such material or information as Protected
22 Information pursuant to the terms of this Protective Order.

23 B. A nonparty's use of this Protective Order to protect its Protected Information
24 does not entitle that nonparty access to the Protected Information produced by any party in
25 this case.

26 **VIII. NO WAIVER OF PRIVILEGE**

27 Nothing in this Protective Order shall require production of information that a party
28 contends is protected from disclosure by the attorney-client privilege, the work product

1 immunity or other privilege, doctrine, right, or immunity. If information subject to a claim
2 of attorney-client privilege, work product immunity, or other privilege, doctrine, right, or
3 immunity is nevertheless inadvertently or unintentionally produced, such production shall
4 in no way prejudice or otherwise constitute a waiver or estoppel as to any such privilege,
5 doctrine, right or immunity. Any party that inadvertently produces materials protected the
6 attorney-client privilege, work product privilege, or other privilege, doctrine, right, or
7 immunity may obtain the return of those materials by promptly notifying the recipient(s)
8 and providing a privilege log for the inadvertently produced materials. The recipient(s)
9 shall gather and return all copies of the privileged material to the producing party, except
10 for any pages containing privileged markings by the recipient, which pages shall instead be
11 destroyed and certified as such by the recipient to the producing party. Notwithstanding
12 this provision, outside litigation counsel of record are not required to delete information
13 that may reside on their respective firm's electronic back-up systems that are over-written
14 in the normal course of business.

15 **IX. MISCELLANEOUS PROVISIONS**

16 A. Any of the notice requirements herein may be waived, in whole or in part, but
17 only in writing signed by the attorney-in-charge for the party against whom such waiver
18 will be effective.

19 B. Inadvertent or unintentional production of documents or things containing
20 Protected Information which are not designated as one or more of the three categories of
21 Protected Information at the time of production shall not be deemed a waiver in whole or
22 in part of a claim for confidential treatment. With respect to documents, the producing
23 party shall immediately upon discovery notify the other parties of the error in writing and
24 provide replacement pages bearing the appropriate confidentiality legend. In the event of
25 any disclosure of Protected Information other than in a manner authorized by this
26 Protective Order, including any unintentional or inadvertent disclosure, counsel for the
27 party responsible for the disclosure shall immediately notify opposing counsel of all of the
28 pertinent facts, and make every effort to further prevent unauthorized disclosure including,

1 retrieving all copies of the Protected Information from the recipient(s) thereof, and
2 securing the agreement of the recipients not to further disseminate the Protected
3 Information in any form. Compliance with the foregoing shall not prevent the producing
4 party from seeking further relief from the Court.

5 C. Within sixty days after the entry of a final non-appealable judgment or order,
6 or the complete settlement of all claims asserted against all parties in this action, each party
7 shall, at the option of the producing party, either return or destroy all physical objects and
8 documents which embody Protected Information it has received, and shall destroy in
9 whatever form stored or reproduced, all physical objects and documents, including but not
10 limited to, correspondence, memoranda, notes and other work product materials, which
11 contain or refer to any category of Protected Information. All Protected Information, not
12 embodied in physical objects and documents shall remain subject to this Order. In the
13 event that a party is dismissed before the entry of a final non-appealable judgment or order,
14 this same procedure shall apply to any Protected Information received from or produced to
15 the dismissed party. Notwithstanding this provision, outside litigation counsel of record
16 are not required to delete information that may reside on their respective firm's electronic
17 back-up systems that are over-written in the normal course of business. Notwithstanding
18 the foregoing, outside counsel shall be entitled to maintain two (2) copies of all pleadings,
19 motions and trial briefs (including all supporting and opposing papers and exhibits thereto),
20 written discovery requests and responses (and exhibits thereto), deposition transcripts (and
21 exhibits thereto), trial transcripts, and exhibits offered or introduced into evidence at any
22 hearing or trial, and their attorney work product which refers or is related to any
23 CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information for
24 archival purposes only. If a party opts to destroy CONFIDENTIAL or CONFIDENTIAL
25 OUTSIDE COUNSEL ONLY information, the party must provide a Certificate of
26 Destruction to the producing party.

27 D. If at any time documents containing Protected Information are subpoenaed by
28 any court, arbitral, administrative or legislative body, or are otherwise requested in

1 discovery, the person to whom the subpoena or other request is directed shall immediately
2 give written notice thereof to every party who has produced such documents and to its
3 counsel and shall provide each such party with an opportunity to object to the production
4 of such documents. If a producing party does not take steps to prevent disclosure of such
5 documents within ten 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 thereto, but
7 shall take all reasonable measures to have such documents treated in accordance with terms
8 of this Protective Order.

9 E. Testifying experts shall not be subject to discovery of any draft of their reports
10 in this case and such draft reports, notes, outlines, or any other writings leading up to an
11 issued report(s) in this litigation are exempt from discovery. In addition, all
12 communications between counsel for a party and that party's testifying expert, and all
13 materials generated by a testifying expert with respect to that person's work, are exempt
14 from discovery unless they relate to the expert's compensation or identify facts, data or
15 assumptions relied upon by the expert in forming any opinions in this litigation and such
16 information is not already disclosed in the expert's report.

17 F. No party shall be required to identify on their respective privilege log any
18 document or communication dated on or after the filing of the lawsuit, which absent this
19 provision, the party would have been obligated to so identify on said privilege log. The
20 parties shall exchange their respective privilege document logs at a time to be agreed upon
21 by the parties following the production of documents.

22 G. This Order is entered without prejudice to the right of any party to apply to the
23 Court at any time for additional protection, or to relax or rescind the restrictions of this
24 Order, when convenience or necessity requires. Furthermore, without application to this
25 Court, any party that is a beneficiary of the protections of this Order may enter a written
26 agreement releasing any other party hereto from one or more requirements of this Order
27 even if the conduct subject to the release would otherwise violate the terms herein.

28

1 H. The United States District Court for the Central District of California is
2 responsible for the interpretation and enforcement of this Agreed Protective Order. After
3 termination of this litigation, the provisions of this Agreed Protective Order shall continue
4 to be binding except with respect to those documents and information that become a matter
5 of public record. This Court retains and shall have continuing jurisdiction over the parties
6 and recipients of the Protected Information for enforcement of the provision of this Agreed
7 Protective Order following termination of this litigation. All disputes concerning Protected
8 Information produced under the protection of this Agreed Protective Order shall be
9 resolved by the United States District Court for the Central District of California.

10 I. Nothing in this Protective Order shall preclude or impede outside litigation
11 counsel of record's ability to communicate with or advise their client in connection with
12 this litigation only based on such counsel's review and evaluation of Protected
13 Information, provided however, that such communications or advice shall not disclose or
14 reveal the substance or content of any Protected Information other than as permitted under
15 this Protective Order.

16 J. Each of the parties agrees to be bound by the terms of this Protective Order as
17 of the date counsel for such party executes this Protective Order, even if prior to entry of
18 this order by the Court and even if this order is never entered by the Court.

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Dated: April 28, 2014

OLAVI DUNNE LLP

By: /s/ Matt Olavi
Matt Olavi
Attorneys for Plaintiff,
Eclipse IP LLC

Dated: April 28, 2014

ARNOLD & PORTER LLP

By: /s/ Michael A. Berta
Michael A. Berta
Attorneys for Defendants,
Google Inc. and Waze, Inc.

IT IS SO ORDERED.



Dated: April 28, 2014

Hon. Otis D. Wright
United States District Judge

1 **ATTACHMENT A TO THE AGREED JOINT PROTECTIVE ORDER**
2 **CONFIDENTIAL AGREEMENT**

- 3
4 1. My name is _____.
- 5 2. I reside at _____.
- 6 3. My present employer is _____.
- 7 4. My present occupation or job description is _____.
- 8 5. I have read the Agreed Protective Order dated _____,2014 and

9 have been engaged as _____ on behalf of
10 _____ in the preparation and conduct of litigation styled
11 *Eclipse IP LLC v. Google Inc. & Waze, Inc.*, Case No. 2:13-cv-09502-ODW(PLZx) (C.D.
12 Cal.).

13 6. I am fully familiar with and agree to comply with and be bound by the
14 provisions of said Order. I understand that I am to retain all copies of any documents
15 designated as CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL ONLY and/or
16 RESTRICTED CONFIDENTIAL-SOURCE CODE, or any similar designation, in a secure
17 manner, and that all copies are to remain in my personal custody until I have completed my
18 assigned duties, whereupon the copies and any writings prepared by me containing any
19 information designated CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL
20 ONLY and/or RESTRICTED CONFIDENTIAL-SOURCE CODE, or any similar
21 designation, are to be returned to counsel who provided me with such material.

22 7. I will not divulge to persons other than those specifically authorized by said
23 Order, and will not copy or use except solely for the purpose of this action, any information
24 obtained pursuant to said Order, except as provided in said Order. I also agree to notify
25 any stenographic or clerical personnel who are required to assist me of the terms of said
26 Order.

27 8. In accordance with paragraph IV.C of the Agreed Protective Order (if
28 applicable), I have attached my resume, curriculum vitae or other information to this

1 executed Confidentiality Agreement sufficient to identify my current employer and
2 employment history for the past ten years, and the cases in which I have testified as an
3 expert at trial or by deposition within the preceding five years.

4 9. I state under penalty of perjury under the laws of the United States of America
5 that the foregoing is true and correct.

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7 By: _____
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9 Executed on _____, 20____.
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