

MYERS BERSTEIN LLP
4 EXECUTIVE CIRCLE, SUITE 100
IRVINE, CALIFORNIA 92614

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

CONSULTICA SOFTWARE
SERVICES, INC., a Canadian
corporation,

Plaintiff,

v.

LOOTSIE, INC., a Delaware
corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 2:16-cv-08984-SS

Assigned to the Hon. Suzanne H. Segal

Courtroom 590

STIPULATED PROTECTIVE ORDER

JURY TRIAL DEMANDED

Complaint Filed: December 5, 2016

LOOTSIE, INC., a Delaware
corporation,

Counter-Claimant,

v.

CONSULTICA SOFTWARE
SERVICES, INC., a Canadian
corporation, and ROES 1 through 20,
inclusive,

Counter-Defendants.

1 The Court having read the Stipulation for Protective Order of the parties, and good
2 cause appearing thereof,

3 IT IS ORDERED AS FOLLOWS:

4 **PROTECTIVE ORDER**

5 1. **A. PURPOSES AND LIMITATIONS**

6 Disclosure and discovery activity in this action are likely to involve production of
7 confidential, proprietary, or information considered by the producing party as a trade
8 secret for which special protection from public disclosure and from use for any purpose
9 other than prosecuting this or related litigation would be warranted. Accordingly, the
10 parties hereby agree to enter the following Protective Order. The parties acknowledge
11 that this Protective Order does not confer blanket protections on all disclosures or
12 responses to discovery and that the protection it affords extends only to the limited
13 information or items that are entitled under the applicable legal principles to treatment as
14 confidential. The parties further acknowledge, as set forth in Section 9, below, that this
15 Protective Order creates no entitlement to file confidential information under seal; the
16 Central District of California Local Rule 79-5.1 sets forth the procedures that must be
17 followed and reflects the standards that will be applied when a party seeks permission
18 from the court to file material under seal. Nothing in this Order shall be construed as
19 authorizing a party to disobey a lawful subpoena issued in another action.

20 **B. GOOD CAUSE STATEMENT**

21 This action is likely to involve trade secrets and other valuable research,
22 development, commercial, technical and/or proprietary information for which special
23 protection from public disclosure and from use for any purpose other than prosecution of
24 this action is warranted. Such confidential and proprietary materials and information
25 consist of, among other things, confidential business information regarding confidential
26 business practices, or other confidential research, development, or commercial
27 information (including information implicating privacy rights of third parties),
28 information otherwise generally unavailable to the public, or which may be privilege or

1 otherwise protected from disclosure under state or federal statutes, court rules, case
2 decisions, or common law. Accordingly, to expedite the flow of information, to facilitate
3 the prompt resolution of disputes over confidentiality of discovery materials, to
4 adequately protect information the parties are entitled to keep confidential, to ensure that
5 the parties are permitted reasonable necessary uses of such material in preparation for
6 and in the conduct of trial, to address their handling at the end of the litigation, and serve
7 the ends of justice, a protective order for such information is justified in this matter. It is
8 the intent of the parties that information will not be designated as confidential for tactical
9 reasons and that nothing be so designated without a good faith belief that it has been
10 maintained in a confidential non-public manner, and there is good cause why it should
11 not be part of the public record of this case.

12 2. DEFINITIONS

13 2.1 Action: this pending federal law suit entitled *Consultica Software Services,*
14 *Inc. v. Lootsie, Inc.*, Case No. 2:16-cv-08984-SS.

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.3 “Confidential” Information or Items: information (regardless of how
18 generated, stored, or maintained) or tangible things that contain non-public financial,
19 personal, or business information.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
21 support staff).

22 2.5 Designating Party: a Party or non-party that designates information or items
23 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

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1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.9 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
9 this Action but are retained to represent or advise a party to the Action and have appeared
10 in this Action on behalf of that party or affiliated with a law firm which has appeared on
11 behalf of that party, and includes support staff.

12 2.11 Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this action.

17 2.13 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
20 their employees and subcontractors.

21 2.14 Protected Material: any Disclosure or Discovery Material that is designated
22 as "CONFIDENTIAL."

23 2.15 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.

3 Any use of Protected Material at trial shall be governed by the orders of the trial
4 judge. This Order does not govern the used of Protected Material at trial.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
8 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
9 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
10 and (2) final judgment herein after the completion and exhaustion of all appeals,
11 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
12 any motions or applications for extension of time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

15 Each Party or Non-Party that designates information or items for protection under
16 this Order must take care to limit any such designation to specific material that qualifies
17 under the appropriate standards. The Designating Party must designate for protection
18 only those parts of material, documents, items, or oral or written communications that
19 qualify so that other portions of the material, documents, items, or communications for
20 which protection is not warranted are not swept unjustifiably within the ambit of this
21 Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that
23 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
24 to unnecessarily encumber the case development process or to impose unnecessary
25 expenses and burdens on other parties) may expose the Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it
27 designation for protection do not qualify for protection, that Designating Party must
28 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
4 must be clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) For information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
8 that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
9 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
10 portion or portions of the material on a page qualifies for protection, the Producing Party
11 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
12 in the margins).

13 A Party or Non-Party that makes original documents available for inspection
14 need not to designate them for protection until after the inspecting Party has indicated
15 which documents it would like copied and produced. During the inspection and before
16 the designation, all of the material made available for inspection shall be deemed
17 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
18 copied and produced, the Producing Party must determine which documents, or portions
19 thereof, qualify for protection under this Order. Then, before producing the specified
20 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
21 that contains Protected Material. If only a portion or portions of the materials on a page
22 qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins.)

24 (b) For testimony given in depositions that the Designating Party identify
25 the Disclosure or Discovery Material on the record, before the close of the deposition all
26 protected testimony.

27 (c) For information produced in some form other than documentary and
28 for any other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information is stored the legend
2 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
3 the Producing Party, to the extent practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
5 to designate qualified information or items does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material. Upon
7 timely correction of a designation, the Receiving Party must make reasonable efforts to
8 assure that the material is treated in accordance with the provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
11 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
13 process under Local Rule 37.1 et seq.

14 6.3 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
16 to harass or impose unnecessary expenses and burdens on other parties) may expose the
17 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
18 the confidentiality designation, all parties shall continue to afford the materials in
19 question the level of protection to which it is entitled under the Producing Party’s
20 designation until the Court rules on the challenge.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a non-party in connection with this Action
24 only for prosecuting, defending, or attempting to settle this Action. Such Protected
25 Material may be disclosed only to the categories of persons and under the conditions
26 described in this Protective Order. When the Action has been terminated, a Receiving
27 Party must comply with the provisions of Section 13, below (FINAL DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
6 may disclose any information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of record in this Action, as
8 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
9 to disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of
11 the Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgement and Agreement to Be Bound” (Exhibit A);

15 (d) the Court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have signed
19 the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

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

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
24 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not
25 be permitted to keep any confidential information unless they sign the
26 “Acknowledgement and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
27 by the Designating Party or ordered by the court. Pages of transcribed deposition
28 testimony or exhibits to depositions that reveal Protected Material may be separately

1 bound by the court reporter and may not be disclosed to anyone except as permitted under
2 this Stipulated Protective Order; and

3 (i) any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
6 OTHER LITIGATION.

7 If a Party is served with a subpoena or a court order issued in other litigation that
8 compels disclosure of any information or items designated in this Action as
9 “CONFIDENTIAL,” that Party must:

10 (a) Promptly notify in writing the Designating Party. Such notification
11 shall include a copy of the subpoena or court order.

12 (b) Promptly notify in writing the party who caused the subpoena or order
13 to issue in the other litigation that some or all of the material covered by the subpoena or
14 order is subject to this Protective Order. Such notification shall include a copy of this
15 Stipulated Protective Order.

16 (c) Cooperate with respect to all reasonable procedures sought to be
17 pursued by the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 “CONFIDENTIAL” before a determination by the court from which the subpoena or
21 order issued, unless the Party has obtained the Designating Party’s permission. The
22 Designating Party shall bear the burden and expense of seeking protection in that court
23 of its confidential material and nothing in these provisions should be construed as
24 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
25 from another court.

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

3 (a) The terms of this Order are applicable to information produced by a Non-Party
4 in this Action and designated as “CONFIDENTIAL.” Such information produced by
5 Non-Parties in connection with this litigation is protected by the remedies and relief
6 provided by this Order. Nothing in these provisions should be construed as prohibiting a
7 Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce a
9 Non-Party’s confidential information in its possession, and the Party is subject to an
10 agreement with the Non-Party not to produce the Non-Party’s confidential information,
11 then the Party shall.:

12 (1) promptly notify in writing the Requesting Party and the Non-Party that
13 some or all of the information requested is subject to a confidentiality agreement with a
14 Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
16 Order in this Action, the relevant discovery request(s), and a reasonably specific
17 description of the information requested; and

18 (3) make the information requested available for inspection by the Non-
19 Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within 14 days
21 of receiving the notice and accompanying information, the Receiving Party may produce
22 the Non-Party’s confidential information responsive to the discovery request. If the Non-
23 Party timely seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement
25 with the Non-Party before a determination by the court. Absent a court order to the
26 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
27 court of its Protected Material.

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10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

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

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

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

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

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

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1 14. Any violation of this Order may be punished by any and all appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.
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4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 DATED: May 16, 2017
7

8 /s/Timothy A. Schneider
9 Attorneys for Plaintiff and
10 Counterdefendant
11 Consultica Software Services, Inc.
12

12 DATED: May 16, 2017
13

14 /s/Ashley M. Conlogue
15 Attorneys for Defendant and
16 Counterclaimant
17 Lootsie, Inc.
18

19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
20

21 DATED: 5/16/17
22

23 /S/
24 Honorable Judge Suzanne H. Segal
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28

EXHIBIT A

ACKNOWLEDGEMENT 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 Stipulated Protective
Order that was issued by the District Court for the Central District of California on [date]
in the case of *Consultica Software Services, Inc. v. Lootsie, Inc.*, Case No. 2:16-cv-08984-
SS. I agree to comply with and to be bound by all the terms of this Stipulated 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 Stipulated 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 Stipulated
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
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

1 **Central District of California Case No. 2:16-cv-08984-SS**

2 Service of the attached document was accomplished pursuant to Central District of
3 California, Order Authorizing Electronic Filing, General Order No. 08-03 and Local Rule
4 5.3-3, which provide in part: “Upon the electronic filing of a document, a Notice of
5 Electronic Filing (NEF) is automatically generated by the CM/ECF system and sent by
6 e-mail to all attorneys in the case who are registered as CM/ECF Users and have
7 consented to electronic service. Service by this electronic NEF constitutes service
8 pursuant to the Federal Rules of Civil and Criminal Procedure for all attorneys who have
9 consented to electronic service.”

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

12 Executed on April 27, 2017, at Irvine, California.

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14 By: /s/ Timothy A. Schneider
15 Timothy A. Schneider
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MYERS BERSTEIN LLP
4 EXECUTIVE CIRCLE, SUITE 100
IRVINE, CALIFORNIA 92614