



1 **GOOD CAUSE STATEMENT**

2 The above-captioned action (the “Action”) is likely to involve discovery  
3 of documents and testimony containing trade secrets and other confidential and  
4 proprietary commercial information of the parties to this Action and non-parties  
5 who may be subpoenaed to provide deposition testimony and documents,  
6 specifically including confidential and commercially sensitive information  
7 relating to proprietary software, business strategies, goods and services  
8 capabilities, sales, costs, pricing, profitability, customers, suppliers, and other  
9 business and financial data, which, if disclosed other than as specified herein,  
10 will pose a significant risk of injury to the legitimate business interests of the  
11 disclosing party. This Order is necessary to protect the legitimate business  
12 interests of the disclosing parties in such information, and good cause exists for  
13 the entry of this Order. The parties to this Action, plaintiff and  
14 counterdefendant AutoAlert, Inc. (“AutoAlert”) and defendant and  
15 counterclaimant DealerSocket, Inc. (“DealerSocket”) (hereinafter, jointly, the  
16 “Parties,” and each singularly, “Party”) have agreed to be bound by the terms of  
17 this Order in this Action.

18 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and  
19 pursuant to the stipulation and agreement of the Parties,

20 IT IS HEREBY ORDERED, that if, in the course of these proceedings,  
21 any Party or non-party has the occasion to disclose information deemed in good  
22 faith to constitute confidential proprietary information of the type contemplated  
23 by Rule 26(c) of the Federal Rules of Civil Procedure, through formal discovery  
24 or otherwise, the following procedures shall be employed and the following  
25 restrictions shall govern the handling of documents, depositions, pleadings,  
26 exhibits, and all other information exchanged by the Parties in this Action, or  
27 provided by or obtained from non-parties to this Action.

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1           **1. PURPOSES AND LIMITATIONS**

2           1.1 Disclosure and discovery activities in this Action are likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than  
5 prosecuting and defending this litigation may be warranted. The Parties  
6 acknowledge that this Order does not confer blanket protections on all  
7 disclosures or responses to discovery and that the protection it affords from  
8 public disclosure and use extends only to the limited information or items that  
9 are entitled to confidential treatment under the applicable legal principles. The  
10 Parties further acknowledge, as set forth in Section 13.3, below, that this Order  
11 does not entitle them to file confidential information under seal; Civil Local  
12 Rule 79-5 and Docket Text Order On Notice of Under Seal Filing Procedures  
13 (Docket No. 30) set forth the procedures that shall be followed and the standards  
14 that will be applied when a Party seeks permission from the Court to file  
15 material under seal.

16           **2. DEFINITIONS**

17           2.1 “Challenging Party” shall mean a Party or Non-Party that challenges  
18 the designation of information or items under this Order.

19           2.2 “CONFIDENTIAL” information or items shall mean information  
20 (regardless of how it is generated, stored or maintained) or tangible things that  
21 qualify for protection under Federal Rule of Civil Procedure 26(c).

22           2.3 “Designating Party” shall mean a Party or Non-Party that designates  
23 information or items that it produces as “CONFIDENTIAL,” “HIGHLY  
24 CONFIDENTIAL–OUTSIDE COUNSELS’ EYES ONLY,” “HIGHLY  
25 CONFIDENTIAL–PROSECUTION BAR,” or “HIGHLY CONFIDENTIAL–  
26 SOURCE CODE.”

27           2.4 “Disclosure or Discovery Material” shall mean all items or  
28 information, regardless of the medium or manner in which it is generated,

1 stored, or maintained (including, among other things, documents, testimony,  
2 transcripts, and tangible things), that are produced or generated in disclosures,  
3 whether formal or informal, or responses to discovery in this matter.

4 2.5 “Expert” shall mean a person with specialized knowledge or  
5 experience in a matter pertinent to the litigation who has been retained by a  
6 Party or its counsel to serve as an expert witness or as a consultant in this  
7 Action.

8 2.6 “HIGHLY CONFIDENTIAL–OUTSIDE COUNSELS’ EYES  
9 ONLY” information or items shall mean extremely sensitive confidential  
10 information or items, for which the disclosure of the information or items to  
11 another Party or Non-Party would create a substantial risk of serious harm that  
12 could not be avoided by less restrictive means.

13 2.7 “HIGHLY CONFIDENTIAL–PROSECUTION BAR” information  
14 or items shall mean extremely sensitive confidential information or items, for  
15 which the disclosure of the information or items to another Party, another  
16 Party’s outside counsel engaging in Prosecution (as defined in Section 8), or a  
17 Non-Party would create a substantial risk of serious harm that could not be  
18 avoided by less restrictive means.

19 2.8 “HIGHLY CONFIDENTIAL–SOURCE CODE” information or  
20 items shall mean extremely sensitive confidential information or items  
21 comprising Source Code, including associated comments and revision histories,  
22 formulas, engineering specifications, or schematics that define or otherwise  
23 describe in detail the algorithms or structure of the Source Code, disclosure of  
24 which to another Party or Non-Party would create a substantial risk of serious  
25 harm that could not be avoided by less restrictive means.

26 2.9 “In-House Counsel” shall mean attorneys who are employees of a  
27 Party to this Action. In-House Counsel does not include outside counsel of  
28 record or any other outside counsel.

1           2.10 “Non-Party” shall mean any natural person, partnership, corporation,  
2 association, or other legal entity not named as a Party to this Action.

3           2.11 “Outside Counsel of Record” shall mean attorneys who are not  
4 employees of a Party to this Action, but are retained to represent or advise a  
5 Party to this Action and have appeared in this Action on behalf of that Party or  
6 are affiliated with a law firm which has appeared on behalf of that Party.

7           2.12 “Party” shall mean any party to this Action, including all of its  
8 officers, directors, employees, consultants, retained experts, and Outside  
9 Counsel of Record (and their support staffs).

10          2.13 “Producing Party” shall mean a Party or Non-Party that produces  
11 Disclosure or Discovery Material in this Action.

12          2.14 “Professional Vendors” shall mean persons or entities that provide  
13 litigation support services (e.g., photocopying, videotaping, translating,  
14 preparing exhibits or demonstrations, and organizing, storing, or retrieving data  
15 in any form or medium) and their employees and subcontractors.

16          2.15 “Protected Material” shall mean any Disclosure or Discovery  
17 Material that is designated as “CONFIDENTIAL,” “HIGHLY  
18 CONFIDENTIAL– OUTSIDE COUNSELS’ EYES ONLY,” HIGHLY  
19 CONFIDENTIAL–PROSECUTION BAR,” or “HIGHLY CONFIDENTIAL–  
20 SOURCE CODE.”

21          2.16 “Receiving Party” shall mean a Party that receives Disclosure or  
22 Discovery Material from a Producing Party.

23          2.17 “Source Code” means computer code, scripts, assembly, object  
24 code, source code listings and descriptions of source code, object code listings  
25 and descriptions of object code along with related files or other related  
26 information (e.g., configuration files, Makefiles, files storing input or output  
27 related to source code and/or the program that the source code underlies, files or  
28 web-based repository information related to source code management and/or

1 revision systems, read me files, etc.).

2 **3. SCOPE**

3 3.1 The protections conferred by this Order cover Protected Material, and  
4 also (1) any confidential information copied or extracted from Protected  
5 Material; (2) all copies, excerpts, summaries, or compilations of Protected  
6 Material; and (3) any deposition testimony, conversations, or presentations by  
7 Parties or their Outside Counsel of Record that reveal Protected Material.

8 3.2 The protections conferred by this Order do not cover the following  
9 information: (a) any information that is in the public domain at the time of  
10 disclosure to a Receiving Party or becomes part of the public domain after its  
11 disclosure to a Receiving Party as a result of public disclosure not involving a  
12 violation of this Order, including becoming part of the public record through  
13 trial or otherwise; and (b) any information known to the Receiving Party prior to  
14 the disclosure or obtained by the Receiving Party after the disclosure from a  
15 source who obtained the information lawfully and under no obligation of  
16 confidentiality to the Designating Party.

17 **4. DURATION**

18 4.1 Even after final disposition of this litigation, the confidentiality  
19 obligations imposed by this Order shall remain in effect until a Designating  
20 Party agrees otherwise in writing or a court order directs otherwise. Final  
21 disposition is deemed to be the later of (1) dismissal of all claims and defenses  
22 in this Action, with or without prejudice; and (2) final judgment after the  
23 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews  
24 of this Action, including the time limits for filing any motions or applications  
25 for extension of time pursuant to applicable law.

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1           **5. DESIGNATING PROTECTED MATERIAL**

2           5.1 *Exercise of Restraint and Care in Designating Material for*  
3 *Protection.* Each Party or Non-Party that designates information or items for  
4 protection under this Order shall take care to limit any such designation to  
5 specific material that qualifies under the appropriate standards. To the extent it  
6 is practical to do so, the Designating Party shall designate for protection only  
7 those parts of material, documents, items, or oral or written communications  
8 that qualify, so that other portions of the material, documents, items, or  
9 communications for which protection is not warranted are not swept  
10 unjustifiably within the ambit of this Order.

11           5.2 If it comes to a Designating Party’s attention that information or  
12 items that it designated for protection do not qualify for protection at all or do  
13 not qualify for the level of protection initially asserted, that Designating Party  
14 shall promptly notify the other Party that it is withdrawing the mistaken  
15 designation.

16           5.3 Except as otherwise provided in this Order (*see, e.g.,* Section 5.3(b)  
17 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material  
18 that qualifies for protection under this Order shall be clearly so designated  
19 before the material is disclosed or produced. Designation in conformity with  
20 this Order requires:

21                   (a) For information in documentary form (e.g., paper or electronic  
22 documents, but excluding transcripts of depositions or other pretrial or trial  
23 proceedings):

24                           (i) The Producing Party shall affix the legend  
25 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL–OUTSIDE  
26 COUNSELS’ EYES ONLY,” “HIGHLY CONFIDENTIAL–  
27 PROSECUTION BAR,” or “HIGHLY CONFIDENTIAL – SOURCE  
28 CODE.” to each page that contains Protected Material. If portions of an

1 integrated, multi-page document, including a response to a discovery  
2 request, qualifies for protection, then the Producing Party shall affix the  
3 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL–OUTSIDE  
4 COUNSELS’ EYES ONLY,” “HIGHLY CONFIDENTIAL–  
5 PROSECUTION BAR,” “HIGHLY CONFIDENTIAL – SOURCE  
6 CODE.” on the first page of the document and then on each page of the  
7 document that qualifies for protection. If only a portion or portions of the  
8 material on a page qualifies for protection, the Producing Party shall  
9 identify the protected portion(s) (such as by making appropriate markings  
10 in the margins) and shall specify, for each portion, the level of protection  
11 being asserted.

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



1 margins) and shall specify, for each portion, the level of protection being  
2 asserted.

3 (b) For testimony given in deposition:

4 (i) When practical, a Designating Party may separately  
5 identify on the record, before the close of the deposition, each portion of  
6 testimony entitled to protection and specify the level of protection being  
7 asserted;

8 (ii) A Designating Party may also invoke on the record,  
9 before the close of the deposition, that the testimony includes Protected  
10 Material, and that the Designating Party is invoking its right to have  
11 twenty-one (21) days to (a) identify the specific portions of the testimony  
12 as to which protection is sought, and (b) specify the level(s) of protection  
13 being asserted. Only those portions of the testimony that are  
14 appropriately designated for protection in writing within the twenty-one  
15 (21) days shall be covered by the provisions of this Order.

16 (iii) Transcripts containing Protected Material shall have an  
17 obvious legend on the title page that the transcript contains Protected  
18 Material, and the title page shall be followed by a list of all pages  
19 (including line numbers as appropriate) that have been designated as  
20 Protected Material and the level of protection being asserted by the  
21 Designating Party. The Designating Party shall inform the court reporter  
22 of these requirements. Any transcript that is prepared before the  
23 expiration of a 21-day period for designation shall be treated during that  
24 period as if it had been designated “HIGHLY CONFIDENTIAL–  
25 OUTSIDE COUNSELS’ EYES ONLY” in its entirety unless otherwise  
26 agreed. After the expiration of that period, the transcript shall be treated  
27 only as actually designated.

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1 (c) For information produced in some form other than  
2 documentary and for any other tangible items, the Producing Party shall affix in  
3 a prominent place on the exterior of the container or containers in which the  
4 information or item is stored the legend “CONFIDENTIAL,” “HIGHLY  
5 CONFIDENTIAL–OUTSIDE COUNSELS’ EYES ONLY,” “HIGHLY  
6 CONFIDENTIAL–PROSECUTION BAR,” or “HIGHLY CONFIDENTIAL–  
7 SOURCE CODE.” If only a portion or portions of the information or item  
8 warrant protection, the Producing Party, to the extent practicable, shall identify  
9 the protected portion(s) and specify the level of protection being asserted.

10 5.4 *Inadvertent Failures to Designate.* If timely corrected, an inadvertent  
11 failure to designate qualified information or items does not, standing alone,  
12 waive the Designating Party’s right to secure protection under this Order for  
13 such material. Upon timely correction of a designation, the Receiving Party  
14 shall make reasonable efforts to ensure that the material is treated in accordance  
15 with the provisions of this Order.

## 16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 *Timing of Challenges.* Any Party or Non-Party may challenge a  
18 designation of confidentiality at any time. Unless a prompt challenge to a  
19 Designating Party’s confidentiality designation is necessary to avoid  
20 foreseeable, substantial unfairness, unnecessary economic burdens, or a  
21 significant disruption or delay of the litigation, a Party does not waive its right  
22 to challenge a confidentiality designation by electing not to mount a challenge  
23 promptly after the original designation is disclosed.

24 6.2 *Meet and Confer.* The Challenging Party shall initiate the dispute  
25 resolution process by providing written notice of each designation it is  
26 challenging and describing the basis for each challenge. The Parties shall  
27 attempt to resolve each challenge in good faith and shall begin the process by  
28 conferring within ten (10) days of the date of service of notice. In conferring,

1 the Challenging Party shall explain the basis for its belief that the confidentiality  
2 designation was not proper and shall give the Designating Party an opportunity  
3 to review the designated material, to reconsider the circumstances, and, if no  
4 change in designation is offered, to explain the basis for the chosen designation.  
5 The Parties shall comply with the requirements set forth in Local Rule 37-1  
6 before seeking judicial intervention.

7         6.3 *Judicial Assistance.* Prior to seeking judicial assistance, the Parties  
8 shall comply with Local Rule 37-1. If the Parties cannot resolve a challenge  
9 without court assistance, the Parties shall comply with Local Rule 37-2 and  
10 draft a joint stipulation pursuant to Local Rule 37-2.1. The Challenging Party  
11 may file a motion challenging a confidentiality designation at any time if there  
12 is good cause for doing so, including a challenge to the designation of a  
13 deposition transcript or any portions thereof. The burden of persuasion in any  
14 such challenge proceeding shall be on the Designating Party. All Parties shall  
15 continue to afford the material in question the level of protection to which it is  
16 entitled under the Producing Party's designation until the Court rules on the  
17 challenge. Either Party may challenge the Producing Party's designation on an  
18 *ex parte* basis if justice so requires without complying with Sections 6.2 and 6.3.  
19 Any *ex parte* application must comply with Local Rule 7-19.

## 20         **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

21         7.1 *Basic Principles.* A Receiving Party may use Protected Material that  
22 is disclosed or produced by another Party or by a Non-Party in connection with  
23 this Action only for prosecuting, defending, or attempting to settle this  
24 litigation. Such Protected Material may be disclosed only to the categories of  
25 persons and under the conditions described in this Order. When the litigation  
26 has been terminated, a Receiving Party shall comply with the provisions of  
27 Section 14 below (FINAL DISPOSITION). Protected Material shall be stored  
28 and maintained by a Receiving Party at a location and in a secure manner,

1 consistent with this Order, that ensures that access is limited to the persons  
2 authorized under this Order.

3           7.2 *Disclosure of “CONFIDENTIAL” Information or Items.* Unless  
4 otherwise ordered by the Court or permitted in writing by the Designating Party,  
5 a Receiving Party may disclose any information or item designated  
6 “CONFIDENTIAL” only to:

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

10           (b) the officers, directors, and employees (including In-House  
11 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for  
12 this litigation, who have reviewed and signed the “Acknowledgment and  
13 Agreement To Be Bound By Stipulated Protective Order” (Exhibit A);

14           (c) Experts of the Receiving Party to whom disclosure is  
15 reasonably necessary for this litigation, who have reviewed and signed the  
16 “Acknowledgment and Agreement To Be Bound By Stipulated Protective  
17 Order” (Exhibit A), and for whom the requirements of Section 7.5 have been  
18 satisfied;

19           (d) any neutral retained in connection with alternative dispute  
20 resolution proceedings related to this litigation;

21           (e) any court or other shorthand reporter or typist recording or  
22 transcribing testimony and its personnel;

23           (f) jury consultants who have signed the “Acknowledgment and  
24 Agreement To Be Bound By Stipulated Protective Order” (Exhibit A);

25           (g) Professional Vendors to whom disclosure is reasonably  
26 necessary for this litigation;

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1 (h) the author or recipient of a document containing the  
2 information or a custodian or other person who otherwise possessed or knew the  
3 information.

4 7.3 *Disclosure of “HIGHLY CONFIDENTIAL–OUTSIDE COUNSELS’*  
5 *EYES ONLY” information or items.* Unless otherwise ordered by the Court or  
6 permitted in writing by the Designating Party, a Receiving Party may disclose  
7 any information or item designated of “HIGHLY CONFIDENTIAL–OUTSIDE  
8 COUNSELS’ EYES ONLY” only to:

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

12 (b) Experts of the Receiving Party to whom disclosure is  
13 reasonably necessary for this litigation, who have reviewed and signed the  
14 “Acknowledgment and Agreement To Be Bound By Stipulated Protective  
15 Order” (Exhibit A), and for whom the requirements of Section 7.5 have been  
16 satisfied;

17 (c) any neutral retained in connection with alternative dispute  
18 resolution proceedings related to this litigation;

19 (d) any court or other shorthand reporter or typist recording or  
20 transcribing testimony and its personnel;

21 (e) jury consultants who have signed the “Acknowledgment and  
22 Agreement To Be Bound By Stipulated Protective Order” (Exhibit A);

23 (f) Professional Vendors to whom disclosure is reasonably  
24 necessary for this litigation;

25 (g) the author or recipient of a document containing the  
26 information or a custodian or other person who otherwise possessed or knew the  
27 information.

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1           7.4 *Disclosure of “HIGHLY CONFIDENTIAL–PROSECUTION BAR”*  
2 *and “HIGHLY CONFIDENTIAL–SOURCE CODE” information or items.*

3 Unless otherwise ordered by the Court or permitted in writing by the  
4 Designating Party, a Receiving Party may disclose any information or item  
5 designated of “HIGHLY CONFIDENTIAL–PROSECUTION BAR” or  
6 “HIGHLY CONFIDENTIAL–SOURCE CODE” only to:

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

11           (b) Experts of the Receiving Party to whom disclosure is  
12 reasonably necessary for this litigation, who have reviewed and signed the  
13 “Acknowledgment and Agreement To Be Bound By Stipulated Protective  
14 Order” (Exhibit A), and for whom the requirements of Section 7.5 have been  
15 satisfied;

16           (c) any neutral retained in connection with alternative dispute  
17 resolution proceedings related to this litigation;

18           (d) any court or other shorthand reporter or typist recording or  
19 transcribing testimony and its personnel;

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

23           7.5 *The following procedures shall apply for approving or objecting to*  
24 *the disclosure of Protected Material to an Expert.*

25           (a) Unless otherwise ordered by the Court or agreed to in writing  
26 by the Designating Party, a Party that seeks to disclose Protected Material to an  
27 Expert shall first make a written request to the Designating Party that (1) sets  
28 forth the full name of the Expert and the city and state of his or her primary

1 residence, (2) attaches a copy of the Expert's current resume, (3) identifies the  
2 Expert's current employer(s), (4) identifies each person or entity from whom the  
3 Expert has received compensation or funding for work in his or her areas of  
4 expertise or to whom the expert has provided professional services, including in  
5 connection with a litigation, at any time during the preceding three years, and  
6 (5) identifies any litigation in connection with which the Expert has offered  
7 expert testimony, including through a declaration, report, or testimony at a  
8 deposition or trial, during the preceding three years. The written request shall  
9 be accompanied by an "Acknowledgment and Agreement To Be Bound By  
10 Stipulated Protective Order" (Exhibit A) executed by the Expert.

11 (b) A Party that makes a request and provides the information  
12 specified in Section 7.5(a) may disclose the subject Protected Material to the  
13 identified Expert unless, within ten (10) days of delivering the request, the Party  
14 receives a written objection from the Designating Party. Any such objection  
15 shall set forth in detail the grounds on which the objection is based.

16 (c) A Party that receives a timely written objection shall meet and  
17 confer with the Designating Party to try to resolve the matter by agreement  
18 within ten (10) days of the written objection. The Parties shall meet and confer  
19 pursuant to Local Rule 37-1. If the Parties cannot resolve the objection without  
20 court intervention, the Parties shall comply with Local Rule 37-2 and draft a  
21 joint stipulation pursuant to Local Rule 37-2. In any such proceeding, the Party  
22 opposing disclosure to the Expert shall bear the burden of proving that the risk  
23 of harm that the disclosure would entail (under the safeguards proposed)  
24 outweighs the Receiving Party's need to disclose the Protected Material to its  
25 Expert. Either Party may seek *ex parte* relief related to an objection to disclose  
26 Protected Material to an Expert if justice so requires without complying with  
27 Sections 7.5(b) and 7.5(c). Any *ex parte* application must comply with Local  
28 Rule 7-19.

1           **8. PROSECUTION BAR**

2           8.1 Any individual that actually reviews materials designated “HIGHLY  
3 CONFIDENTIAL–PROSECUTION BAR” or “HIGHLY CONFIDENTIAL–  
4 SOURCE CODE” shall not be involved in the Prosecution of any patent or  
5 application claiming priority to or otherwise related to the patents asserted in  
6 this action, before any foreign or domestic agency, including the United States  
7 Patent and Trademark Office. For purposes of this paragraph, “Prosecution”  
8 means preparing, drafting, amending, or otherwise affecting the scope of patent  
9 claims. “Prosecution” as used in this paragraph does not include representing a  
10 party before a domestic or foreign agency in connection with a protest, ex parte  
11 reexamination, inter partes review, third-party submission, covered business  
12 method, post grant review, or similar such proceeding.

13           8.2 The Prosecution Bar described herein shall begin when “HIGHLY  
14 CONFIDENTIAL–PROSECUTION BAR” or “HIGHLY CONFIDENTIAL –  
15 SOURCE CODE” information is first reviewed by the affected individual and  
16 shall end two (2) years after the final resolution of this action, including all  
17 appeals. This Prosecution Bar is limited to the “HIGHLY CONFIDENTIAL–  
18 PROSECUTION BAR” or “HIGHLY CONFIDENTIAL – SOURCE CODE”  
19 material actually reviewed by the individual, is personal to that individual, and  
20 shall not be imputed to any other person or entity.

21           **9. SOURCE CODE**

22           (a) To the extent production of Source Code becomes necessary in this  
23 case, a Producing Party may designate Source Code as “HIGHLY  
24 CONFIDENTIAL–SOURCE CODE” if it satisfies the definition of “HIGHLY  
25 CONFIDENTIAL–SOURCE CODE” given in Section 2.8, above.

26           (b) Protected Material designated as “HIGHLY CONFIDENTIAL–  
27 SOURCE CODE” shall be subject to all of the protections afforded to  
28 “HIGHLY CONFIDENTIAL–ATTORNEYS’ EYES ONLY” information,



1 including the Prosecution Bar set forth in Section 8, and may be disclosed only  
2 to the individuals set forth in Section 7.4.

3 (c) Any Source Code produced in discovery shall be made available  
4 for inspection in its native format if possible, or if not it shall be made available  
5 in a format allowing it to be reasonably reviewed and searched.

6 (d) The Source Code shall be made available for inspection during  
7 normal business hours (*i.e.*, 9 am to 5 pm, Monday through Friday (excluding  
8 holidays)) or at other mutually agreeable times, at an office of the Producing  
9 Party's counsel or another mutually agreed upon location.

10 (e) The Source Code shall be made available for inspection on a  
11 secured computer in a secured room without Internet access or network access  
12 to other computers. The secured computer shall be equipped with a modern  
13 QWERTY keyboard, an optical mouse, mouse pad, two display screens, and  
14 sufficient USB or other ports enabled for such configuration. The secured  
15 computer shall be equipped with Windows XP or a later version of the  
16 Windows operating system, at least 100 GB of hard disk storage, at least 2 GB  
17 of RAM, and a modern processor.

18 (f) The secured computer shall contain the tools used for viewing,  
19 searching, and compiling the Source Code that are presently used in the ordinary  
20 course of the Producing Party's business, including any version control tools  
21 and software development tools used by the Producing Party. In addition, the  
22 Receiving Party shall notify the Producing Party of any additional commercially  
23 available software tools reasonably requested by the Receiving Party or its  
24 experts to be used exclusively for assisting the reviewing and searching of the  
25 source code. Upon request by the Producing Party, the Receiving Party shall  
26 provide to the Producing Party the additional commercially available software  
27 tools to be used on the secured computer. The Receiving Party shall provide  
28 and pay for the commercially available software tools it requests.

1 (g) The Receiving Party shall not copy, remove, or otherwise transfer  
2 any portion of the Source Code onto any recordable media or recordable device.  
3 Notwithstanding the foregoing, the Receiving Party may bring notepads into the  
4 secured room for the sole purpose of taking and reviewing his or her notes. The  
5 Receiving Party's representatives may take notes relating to the source code, but  
6 may not copy the source code into the notes (other than small snippets of code  
7 when narrowly tailored and reasonably necessary to facilitate the Receiving  
8 Party's furtherance of its claims or defenses in the case). The notes shall be  
9 marked "HIGHLY CONFIDENTIAL-SOURCE CODE."

10 (h) The Producing Party may visually monitor the activities of the  
11 Receiving Party's representatives during any Source Code review, but only to  
12 ensure that there is no unauthorized recording, copying, or transmission of the  
13 source code.

14 (i) The Receiving Party may print paper copies of limited portions of  
15 Source Code that are reasonably necessary for the preparation of court filings,  
16 pleadings, expert reports, or other papers, or for deposition or trial, but shall not  
17 print paper copies for the purpose of reviewing the source code other than  
18 electronically as set forth in paragraph (c) in the first instance. The Producing  
19 Party shall make available a color laser printer with commercially reasonable  
20 printing speeds for on-site color printing during inspections of the Source Code.  
21 The Producing Party shall provide paper for use in printing Source Code, pre-  
22 marked to include bates numbers and the label "HIGHLY CONFIDENTIAL-  
23 SOURCE CODE." The Producing Party shall keep the originals of the printed  
24 Source Code, and color copies shall be made for the Receiving Party within one  
25 business day.

26 (j) Except as otherwise provided herein, no more than 750 pages of  
27 the total Source Code for a software release may be in printed form at any one  
28 time. Additionally, except as otherwise provided herein, the Receiving Party

1 shall not print out any continuous block of Source Code that results in more than  
2 thirty (30) consecutive printed pages. If necessary, the Receiving Party may  
3 request to print additional pages in excess of the 750 pages of total Source Code  
4 for a software release, or continuous blocks that exceed thirty (30) consecutive  
5 pages, which the Producing Party shall not unreasonably deny.

6 (k) The Producing Party may challenge the amount of Source Code  
7 printed in hard copy form in excess of 750 pages of the total Source Code for  
8 any software release or continuous blocks that exceed thirty (30) consecutive  
9 pages. Any challenge shall be made pursuant to the dispute resolution  
10 procedure and timeframes set forth in Section 6 with the Producing Party as the  
11 “Challenging Party” and the Receiving Party as the “Designating Party” for  
12 purposes of dispute resolution.

13 (l) The Receiving Party shall maintain a record of any individual who  
14 has inspected any portion of the Source Code in electronic or paper form. The  
15 Receiving Party shall maintain all paper copies that it makes or allows to be  
16 made of any printed portions of the source code in a secured, locked area. The  
17 Receiving Party shall not create or allow to be created any electronic or other  
18 images of the paper copies and shall not convert or allow to be converted into  
19 any electronic format any of the information contained in the paper copies. The  
20 Receiving Party shall only make additional paper copies if such additional  
21 copies are (1) necessary to prepare court filings, pleadings, or other papers  
22 (including a testifying expert’s expert report), (2) necessary for deposition, or  
23 (3) otherwise necessary for the preparation of its case. Any paper copies used  
24 during a deposition shall be retrieved by the Producing Party at the end of each  
25 day and must not be given to or left with a court reporter or any other  
26 unauthorized individual.

27 ///

28 ///

1           **10.PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2           **PRODUCED IN OTHER LITIGATION**

3           10.1 If a Party is served with a subpoena or a court order issued in other  
4 litigation that compels disclosure of any information or items designated in this  
5 Action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL–OUTSIDE  
6 COUNSELS’ EYES ONLY,” “HIGHLY CONFIDENTIAL–PROSECUTION  
7 BAR,” or “HIGHLY CONFIDENTIAL–SOURCE CODE” that Party shall:

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

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

14           (c) Cooperate with respect to all reasonable procedures sought to be  
15 pursued by the Designating Party whose Protected Material may be affected. If  
16 the Designating Party timely seeks a protective order, the Party served with the  
17 subpoena or court order shall not produce, unless otherwise ordered, any  
18 information designated in this Action as “CONFIDENTIAL,” “HIGHLY  
19 CONFIDENTIAL–OUTSIDE COUNSELS’ EYES ONLY,” “HIGHLY  
20 CONFIDENTIAL–PROSECUTION BAR,” or “HIGHLY CONFIDENTIAL–  
21 SOURCE CODE” before a determination by the court from which the subpoena  
22 or order issued or where compliance is required, unless the Party has obtained  
23 the Designating Party’s written permission. The Designating Party shall bear  
24 the burden and expense of seeking protection in that court of its confidential  
25 material, and nothing in these provisions should be construed as authorizing or  
26 encouraging a Receiving Party in this Action to disobey a lawful directive from  
27 another court.

28           ///

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2           10.2 The provisions set forth herein are not intended to, and do not,  
3 restrict in any way the procedures set forth in Federal Rule of Civil Procedure  
4 45(d)(3) or (f).

5           **11.NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
6           **PRODUCED IN THIS LITIGATION**

7           11.1 The terms of this Order are applicable to information produced by a  
8 Non-Party in this Action and designated as “CONFIDENTIAL,” “HIGHLY  
9 CONFIDENTIAL–OUTSIDE COUNSELS’ EYES ONLY,” “HIGHLY  
10 CONFIDENTIAL–PROSECUTION BAR,” or “HIGHLY CONFIDENTIAL–  
11 SOURCE CODE.” Such information produced by Non-Parties in connection  
12 with this litigation is protected by the remedies and relief provided by this  
13 Order. Nothing in these provisions should be construed as prohibiting a Non-  
14 Party from seeking additional protections.

15           11.2 In the event that a Party is required by a valid discovery request to  
16 produce a Non-Party’s confidential information in its possession and the Party is  
17 subject to an agreement with the Non-Party not to produce the Non-Party’s  
18 confidential information, then the Party shall:

19                   (a) Promptly notify in writing the Requesting Party and the Non-  
20 Party that some or all of the information requested is subject to a confidentiality  
21 agreement with a Non-Party; and

22                   (b) Promptly provide the Non-Party with a copy of this Order, the  
23 relevant discovery request(s), and a reasonably specific description of the  
24 information requested.

25           11.3 If the Non-Party fails to object or seek a protective order from this  
26 Court within fourteen (14) days of receiving the notice and accompanying  
27 information, the Receiving Party may produce the Non-Party’s confidential  
28 information responsive to the discovery request. If the Non-Party timely seeks a

1 protective order, the Receiving Party shall not produce any information in its  
2 possession or control that is subject to the confidentiality agreement with the  
3 Non-Party before a determination by the Court. Absent a court order to the  
4 contrary, the Non-Party shall bear the burden and expense of seeking protection  
5 in this Court of its Protected Material.

## 6 **12.UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 12.1 If a Receiving Party learns that, by inadvertence or otherwise, it has  
8 disclosed Protected Material to any person or in any circumstance not  
9 authorized under this Order, the Receiving Party shall immediately:

10 (a) Notify in writing the Designating Party of the unauthorized  
11 disclosures,

12 (b) Use its best efforts to retrieve all unauthorized copies of the Protected  
13 Material, and

14 (c) Inform the person or persons to whom unauthorized disclosures were  
15 made of all the terms of this Order, and

16 (d) request such person or persons to execute the “Acknowledgment and  
17 Agreement To Be Bound By Stipulated Protective Order” that is attached hereto  
18 as Exhibit A.

## 19 **13.MISCELLANEOUS**

20 13.1 *Right to Further Relief.* Nothing in this Order abridges the right of  
21 any person to seek its modification by the Court in the future.

22 13.2 *Right to Assert Other Objections.* By stipulating to the entry of this  
23 Order no Party waives any right it otherwise would have to object to disclosing  
24 or producing any information or item on any ground not addressed in this Order.  
25 Similarly, no Party waives any right to object on any ground to use in evidence  
26 of any of the material covered by this Order.

27 13.3 *Filing Protected Material.* Without written permission from the  
28 Designating Party or a court order secured after appropriate notice to all

1 interested persons, a Party may not file in the public record in this Action any  
2 Protected Material. A Party that seeks to file under seal any Protected Material  
3 shall comply with Civil Local Rule 79-5 and Docket Text Order On Notice of  
4 Under Seal Filing Procedures (D.I. 30).

5 13.4 Nothing in this Order shall bar or otherwise restrict Outside Counsel  
6 of Record from rendering advice to his or her client with respect to this Action  
7 and, in the course thereof, relying in a general way upon his or her examination  
8 of Protected Material produced or exchanged in this Action; provided, however,  
9 that in rendering such advice and in otherwise communicating with his or her  
10 client, the attorney shall not disclose the contents of Protected Material  
11 produced by any other Party or Non-Party.

#### 12 **14.FINAL DISPOSITION**

13 14.1 Within sixty (60) days after the final disposition of this Action, as  
14 defined in Section 4, each Receiving Party shall return all Protected Material to  
15 the Producing Party or destroy such material. As used in this subdivision, “all  
16 Protected Material” includes all copies, abstracts, compilations, summaries, and  
17 any other format reproducing or capturing any of the Protected Material.  
18 Whether the Protected Material is returned or destroyed, the Receiving Party  
19 shall submit a written certification to the Producing Party (and, if not the same  
20 person or entity, to the Designating Party) by the 60-day deadline that:

21 (a) Identifies (by category, where appropriate) all the Protected Material  
22 that was returned or destroyed; and

23 (b) Affirms that the Receiving Party has not retained any copies,  
24 abstracts, compilations, summaries or any other format reproducing or capturing  
25 any of the Protected Material. Notwithstanding this provision, Outside Counsel  
26 of Record are entitled to retain an archival copy of all pleadings, motion papers,  
27 trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
28 deposition and trial exhibits, expert reports, attorney work product, and

1 consultant and expert work product, even if such materials contain Protected  
2 Material. Any such archival copies that contain or constitute Protected Material  
3 remain subject to this Order as set forth in Section 4.  
4

5 **IT IS SO ORDERED.**

6 

7  
8 Dated: May 14, 2014

9 Hon. Jean P. Rosenbluth  
10 United States Magistrate Judge

11 **APPROVED AS TO FORM AND CONTENT:**

12  
13 Date: May 7, 2014

Date: May 7, 2014

14 /s/ Cheryl T. Burgess  
15 Craig S. Summers  
16 David G. Jankowski  
17 Cheryl T. Burgess  
18 **KNOBBE, MARTENS, OLSON  
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2040 Main Street, 14th Floor  
Irvine, CA 92614

14 /s/ Tyson K. Hottinger (with permission)  
15 Sterling A. Brennan  
16 Tyson K. Hottinger  
17 **MASCHOFF BRENNAN**  
20 Pacifica  
Suite 1130  
Irvine, CA 92618

19 Attorneys for Plaintiff and  
20 Counterdefendant  
21 **AUTOALERT, INC.**

Attorneys for Defendant and  
Counterclaimant  
**DEALERSOCKET, INC.**



**EXHIBIT A**

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 \_\_\_\_\_ )  
4 AUTOALERT, INC., ) Case No. SACV 13-00657 SJO (JPRx)  
5 Plaintiff, )  
6 v. ) **ACKNOWLEDGMENT AND**  
7 DEALERSOCKET, INC., ) **AGREEMENT TO BE BOUND BY**  
8 Defendant. ) **STIPULATED PROTECTIVE**  
9 ) **ORDER**  
\_\_\_\_\_ ) The Hon. S. James Otero,  
District Judge  
\_\_\_\_\_ ) The Hon. Jean P. Rosenbluth,  
Magistrate Judge

10  
11 I certify I have read and am familiar with the terms of the Stipulated  
12 Protective Order entered in the above-captioned lawsuit, a copy of which is  
13 attached. I agree to be bound by the terms of that Order, and I agree I will use  
14 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL–OUTSIDE COUNSELS’  
15 EYES ONLY,” “HIGHLY CONFIDENTIAL–PROSECUTION BAR,” or  
16 “HIGHLY CONFIDENTIAL–SOURCE CODE” information only in a manner  
17 authorized by the Order, and only to assist counsel in this lawsuit. I agree that I  
18 will not disclose or discuss “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL–  
19 OUTSIDE COUNSELS’ EYES ONLY,” “HIGHLY CONFIDENTIAL–  
20 PROSECUTION BAR,” or “HIGHLY CONFIDENTIAL–SOURCE CODE”  
21 information with anyone except as authorized by the terms of the Order.

22 I further understand my obligation to return and/or destroy documents as  
23 set forth in Section 14 of the Order and agree to be bound thereto. I hereby  
24 submit to the jurisdiction of the Court for the purpose of ensuring compliance  
25 with this Order.

26  
27 Dated: \_\_\_\_\_ Signature: \_\_\_\_\_  
28 Printed Name: \_\_\_\_\_