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 22 AT&T COMMUNICATIONS OF CALIFORNIA, INC., SBC
 23 TELECOM, INC., SHANE SPENCER AND ALAN BROWN

24 [Additional Attorneys on next page]

25 UNITED STATES DISTRICT COURT
 26 EASTERN DISTRICT OF CALIFORNIA

27 BLAKE SMITH,
 28 Plaintiff,

29 vs.

30 PACIFIC BELL TELEPHONE COMPANY,
 31 INC., AT&T COMMUNICATIONS OF
 32 CALIFORNIA, INC., SBC TELECOM, INC.,
 33 COMMUNICATIONS WORKERS OF
 34 AMERICA LOCAL 9333 UNION, AFL-CIO,
 35 COMMUNICATIONS WORKERS OF
 36 AMERICA DISTRICT 9 UNION AFL-CIO,
 37 SHANE SPENCER, an individual, ALAN
 38 BROWN, an individual and DOES 1-100,

39 Defendants.

CASE NO. 1:06-CV-01756-OWW-LJO

**STIPULATED CONFIDENTIALITY
 AGREEMENT AND PROTECTIVE
 ORDER**

Judge: Honorable Oliver W. Wanger
 Court: Courtroom 3

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LOCAL 9333 UNION AFL-CIO
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1 IT IS HEREBY STIPULATED by the Parties through their respective counsel
2 that, in order to facilitate document disclosure and production under the Local Rules of this Court
3 and the Federal Rules of Civil Procedure, the following Protective Order be entered by the Court.
4 This Order shall remain in effect through the conclusion of the litigation between the parties and
5 completion of obligations defined herein.

6
7 In support of this Order, this Court finds that:

8
9 Documents, things, materials or information containing confidential (such as
10 private customer and employee names and/or addresses) or proprietary technical, scientific or
11 business information and/or trade secrets (“Confidential Information”) that bear on the parties’
12 claims or defenses have been requested and are likely to be disclosed or produced during the
13 course of discovery in this litigation;

14
15 The parties to this litigation assert that public dissemination and disclosure of
16 Confidential Information could injure non-parties and/or the party disclosing or producing the
17 Confidential Information by exposing it to privacy or other claims;

18
19 Counsel for the party receiving Confidential Information is presently without
20 sufficient information to accept the representation(s) made by the party disclosing or producing
21 Confidential Information as to the confidential, proprietary, and/or trade secret nature of such
22 Confidential Information; and

23
24 To protect the respective interests of the parties and affected non-parties, such as
25 Defendants’ customers and employees, and to facilitate the progress of disclosure and discovery
26 in this litigation, the following Order should issue:

27
28 IT IS THEREFORE ORDERED THAT:

1 1. Documents or discovery responses containing Confidential Information
2 produced by a party to this litigation are referred to herein as “Protected Documents.” Except as
3 otherwise indicated below, all documents or discovery responses designated by the disclosing or
4 producing party as “CONFIDENTIAL” which are disclosed or produced to the attorneys for the
5 other party to this litigation shall be Protected Documents and are entitled to confidential
6 treatment as described below. Any party wishing to designate a document as confidential and
7 protected by this Order must stamp the word “CONFIDENTIAL” on the document.

8
9 2. Protected Documents designated as “CONFIDENTIAL” may include
10 confidential, customer, employee, business and trade information unknown to the public. The
11 identification of Protected Documents with this designation is referred to herein as “Confidential
12 Designation.”

13
14 3. Any party that produces documents, things, materials or information in
15 discovery in this litigation may make Confidential Designations on Protected Documents for
16 which the producing party believes in good faith that there is a right to confidential treatment
17 under Fed. R. Civ. P. 26(c). Defendants represent that Confidential Information exists, has been
18 requested, and Defendants have historically maintained such information confidential in the
19 ordinary course of its respective businesses, and will continue to do so.

20
21 4. At any time after the delivery of Protected Documents, counsel for the
22 party receiving the Protected Documents may challenge the Confidential Designation of all or any
23 portion thereof by providing written notice thereof to counsel for the party disclosing or
24 producing the Protected Documents. If the parties are unable to agree as to whether the
25 Confidential Designation of all or a portion of the Protected Documents is appropriate, the party
26 receiving the Protected Documents shall certify to the Court that the parties cannot reach an
27 agreement as to the confidential nature of all or a portion of the Protected Documents and submit
28 the issue to the Court. All Protected Documents are entitled to confidential treatment pursuant to

1 the terms of this Order until and unless the parties formally agree in writing to the contrary or a
2 contrary determination is made by the Court.

3
4 5. Protected Documents and any information contained therein shall not be
5 used or revealed, shown, disseminated, copied, or in any way communicated to anyone for any
6 purpose whatsoever, except as provided for below.

7
8 6. Protected Documents designated as “CONFIDENTIAL” and any
9 information contained therein shall be revealed or shown only to the following persons involved
10 in this litigation:

11
12 (a) Counsel of Record for the party receiving Protected Documents or
13 any information contained therein.

14 (b) Employees of such counsel (excluding experts and investigators)
15 assigned to and necessary to assist such counsel in the preparation and trial of this litigation;

16 (c) Officers, Directors, or employees of Defendants in this lawsuit who
17 are assisting counsel in the prosecution or defense of this litigation;

18 (d) Parties to the litigation;

19 (e) Any author, recipient (actual or reasonably believed) or producing
20 party of such Protected Documents

21 (f) The Court and Court personnel;

22 (g) Employees of any professional photocopy service, graphics design
23 service, legal interpreters or translators, or jury consultants (including mock jurors, focus group
24 members, and the like) used by counsel; and

25 (h) Any independent expert retained by the receiving party to assist in
26 the preparation for this litigation or to testify at trial, provided that the Protected Documents
27 received or any information contained therein that is revealed or shown to an independent expert
28 pertains to the expected consultation or testimony of such independent expert and the party

1 receiving Protected Documents complies with Paragraph 10. The Protected Documents may be
2 shown to secretarial and clerical employees and technical staff associated with and acting under
3 the supervision of such independent expert.

4
5 7. Prior to revealing or showing any Protected Documents designated
6 “CONFIDENTIAL” under this Protective Order or any information contained therein to anyone
7 in Paragraph 6, counsel for the receiving party of such Protected Documents shall cause such
8 person to sign a copy of Exhibit A attached hereto and shall serve a copy of Exhibit A on counsel
9 for the other party. Counsel shall maintain the original of Exhibit A and shall provide a copy
10 thereof to the Court, if required.

11
12 8. To the extent that Protected Documents or information contained therein
13 are used in depositions, such documents or information shall remain subject to the provisions of
14 this Order, along with the transcript pages of the deposition testimony referring to the Protected
15 Documents or information contained therein. Additionally, the parties may, within thirty (30)
16 calendar days of receipt of the final transcript of a deposition, designate documents, things,
17 materials or information disclosed in that deposition as “CONFIDENTIAL” as the nature of the
18 information involved requires. If any party designates testimony given at a deposition
19 “CONFIDENTIAL” during the deposition, all persons not qualified to receive such information
20 shall leave the deposition for that portion of the testimony.

21
22 9. Any court reporter or transcriber who reports or transcribes testimony in
23 this litigation is hereby admonished that all Protected Documents and information designated as
24 such under this Order shall remain “CONFIDENTIAL” and shall not be disclosed by them,
25 except under the terms of this Order, and that any notes or transcriptions of such testimony (and
26 any accompanying exhibits) will be retained by the reporter or delivered to counsel of record.

1 10. Inadvertent or unintentional production of documents, things, materials or
2 information containing Confidential Information which are not designated “CONFIDENTIAL”
3 shall not be deemed a waiver in whole or in part of a claim for confidential treatment.
4

5 11. Inadvertent or unintentional production of privileged documents shall not
6 constitute a waiver of the attorney-client privilege or attorney work product doctrine as they apply
7 to those documents specifically or to the subject matter of those documents generally. If a party
8 produces documents that it believes should have been withheld as privileged, such party shall
9 provide a written request for the return of those documents within a reasonable time after having
10 actual knowledge that said documents have been produced. The receiving party must then return
11 those documents, along with any copies thereof, to the producing party within ten (10) calendar
12 days of receiving such notice. The receiving party may challenge the privileged nature of the
13 recalled documents by filing a motion with the Court and requesting an in camera review of the
14 documents in question.
15

16 12. Nothing herein is intended in any way to restrict the ability of counsel to
17 use “CONFIDENTIAL” material in examining or cross-examining any employee, future
18 employee, agent, expert or consultant of the producing party, or any person who authored,
19 received or is a named recipient of the “CONFIDENTIAL” material.
20

21 13. Whenever any writing, testimony, information or material designated as
22 “CONFIDENTIAL” is used or submitted to the court in conjunction with any filing or proceeding
23 in this litigation, it shall be so marked and shall be filed separately under seal with the Clerk of
24 the Court consistent with the filing procedures for the U.S. District Court for the Eastern District
25 of California.
26

27 14. Any receiving party that knows that it intends to present confidential
28 information of another party in oral form at trial, or during any pre- or post-trial hearing, shall

1 first notify the court and the producing party a reasonable amount of time in advance. Because of
2 the policy favoring public attendance at judicial proceedings, the parties agree to cooperate on
3 minimizing the presentation of protected information in open court. The Court does not here
4 determine which, if any, procedures for reducing the presentation of protected information may
5 be suitable.

6
7 15. The Court reserves the power and authority to remove documents and
8 materials from the scope of this Order if it finds documents or materials designated by the parties
9 do not constitute material properly described as protectable by Fed. R. Civ. P. 26(c) or this Order.

10
11 16. In the event any party having possession, custody or control of any
12 Protected Documents receives a subpoena or other process or order to produce such information
13 in another, unrelated legal proceeding, from a non-party to this action, such party shall promptly
14 notify counsel for the producing party of the subpoena or other process or order, such that the
15 producing party may take the necessary steps to quash or otherwise object to the subpoena or
16 other process or order. The party receiving the subpoena or other process or order shall be
17 entitled to comply with it except to the extent the producing party has promptly notified the party
18 receiving the subpoena or other process or order of its intent to take immediate legal action to
19 quash or otherwise object to the subpoena or other process or order, in which case the party will
20 not produce such Protected Documents while such legal proceeding are pending.

21
22 17. After termination of the litigation between the parties, the provisions of this
23 Order shall continue to be binding, except with respect to those documents and information that
24 become a matter of public record. This Court retains and shall have continuing jurisdiction over
25 the parties and recipients of the Protected Documents for enforcement of the provisions of this
26 Order following termination of the litigation between the parties.

1 18. Within 30 days of termination of this litigation, counsel for the party
2 receiving Protected Documents shall return or destroy all originals and copies of Protected
3 Documents unless otherwise ordered by the Court. Each party shall certify in writing to the other
4 party that Protected Documents have been returned to the producing or providing party and all
5 work product abstracts or summaries containing or referring to confidential documents or
6 information have been destroyed, as appropriate under this section. The party receiving Protected
7 Documents shall not use such Protected Documents or any information contained therein for any
8 purpose whatsoever other than this litigation between the parties.

9
10 19. This Order shall be binding upon the parties and their attorneys, successors,
11 executors, personal representatives, administrators, heirs, legal representatives, assigns,
12 subsidiaries, divisions, employees, agents, independent contractors, or other persons or
13 organizations over which they have control.

14
15 IT IS SO ORDERED:

16 January 31, 2008

/s/ OLIVER W. WANGER
Honorable Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

17
18
19 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

20
21 DATED: January 17, 2008

LAW OFFICES OF ALLEN & MARLES, APLC

22
23 By: /s/ Justin Thomas Allen
JUSTIN THOMAS ALLEN

24 Attorneys for Plaintiff
25 BLAKE SMITH

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DATED: January 25, 2008

J. AL LATHAM, JR.
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By: /s/ Barry J. Bennett
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Attorneys for Defendants
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I have been designated as a person who may have access to information designated as “CONFIDENTIAL” as that term is defined in the Protective Order dated _____, 2008 in the action entitled *Smith v. Pacific Bell Telephone Company, et al.*, Case No. 1:06-CV-01756 OWW-LJO. Having read that Protective Order, I agree to comply fully with it and to be bound by its terms with respect to all information designated “CONFIDENTIAL” as defined therein. I agree to maintain such information in strict confidence and not to disclose such information to any other person, or make use of such information, except in accordance with the terms of the Protective Order.

I agree to, and hereby do, submit myself to the jurisdiction of the United States District Court for the Eastern District of California, for the purpose of enforcement of the terms of the Protective Order. I understand that any violation of the Protective Order is punishable by the contempt powers of the Court and that such punishment may include imposition of a fine in the amount of the damages sustained by my violation and an award of costs and attorneys’ fees.

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

Executed at _____ (location) on _____ (date).

(signature)

Print name and address:

