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17 Attorneys for Defendant GOOGLE INC.

18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20 SAN FRANCISCO DIVISION

21
22
23 OVERTURE SERVICES, INC., a Delaware Corporation,

24 Plaintiff,

25 vs.

26 GOOGLE INC., a California Corporation,

27 Defendant.
28

No. C02-01991 CRB

STIPULATED PROTECTIVE ORDER

1 **STIPULATED PROTECTIVE ORDER**

2 Pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure, upon the consent
3 and stipulation of the parties, Plaintiff Overture Services, Inc. (“Overture”) and Defendant
4 Google Inc. (“Google”), and for good cause shown,

5 IT IS HEREBY ORDERED BY THE COURT as follows:

6 1. Any document, or portion thereof, and any other form of evidence or
7 discovery contemplated under Rules 26 through 36 of the Federal Rules of Civil Procedure
8 which, in the good faith opinion of the Producing Party, contains any trade secret or other
9 confidential commercial information, may be designated by the Producing Party as
10 “Confidential.” Confidential information, designated as such in accordance with this Order,
11 shall be disclosed or made available only to persons specified in Paragraphs 4 and 5 herein.
12 All copies of materials properly designated as “Confidential,” and all extracts, abstracts,
13 charts, summaries, and notes made from materials properly designated as “Confidential,”
14 shall be Confidential information.

15 2. Any document, or portion thereof, and any other form of evidence or discovery
16 contemplated under Rules 26 through 36 of the Federal Rules of Civil Procedure which, in
17 the good faith opinion of the Producing Party, contains any trade secret or other
18 confidential or commercial information which the Producing Party believes in good faith
19 gives a competitive advantage over others who do not possess such information, which is
20 not generally known to others in the Producing Party's trade or business, which the
21 Producing Party would normally not reveal to third parties except in confidence or has
22 undertaken with others to maintain in confidence, and which is viewed by the Producing
23 Party as more sensitive than Confidential Information, may be designated by the Producing
24 Party as “Outside Counsel Only information.” Information designated as Outside Counsel
25 Only in accordance with this Order, shall be disclosed or made available only to persons as
26 described in Paragraphs 4 and 5 herein, and is not to be copied or otherwise reproduced
27 except for the limited purpose of conducting this litigation, including preparing exhibits for
28 affidavits, depositions, hearings, or for trial. All copies of materials properly designated as

1 “Outside Counsel Only,” and all extracts, abstracts, charts, summaries, and notes made
2 from materials properly designated as “Outside Counsel Only,” shall be Outside Counsel
3 Only information.

4 3. Confidential Information and Outside Counsel Only information may be made
5 subject to the Protective Order as follows:

6 (a) With respect to documents or copies provided by the Producing Party
7 to the party receiving the discovery responses (hereinafter “the Receiving Party”), by
8 marking the initial page and the page or pages on which any Confidential Information
9 appears with the legend “CONFIDENTIAL UNDER PROTECTIVE ORDER,” and by
10 marking the initial page and the page or pages on which any Outside Counsel Only
11 information appears with the legend “OUTSIDE COUNSEL ONLY UNDER PROTECTIVE
12 ORDER.” The Producing Party shall so mark documents or copies prior to or at the time of
13 supplying them to opposing counsel.

14 (b) With respect to documents or copies produced by the Producing Party
15 for inspection by opposing counsel, such documents are deemed to be, and shall be treated
16 as, Outside Counsel Only documents, whether or not so marked, unless and until opposing
17 counsel requests copies of such documents and the Producing Party supplies such copies to
18 opposing counsel. Copies of such documents supplied to opposing counsel shall be made
19 subject to this Order if, prior to or at the time of supplying them to opposing counsel, the
20 Producing Party marks such copies as “CONFIDENTIAL UNDER PROTECTIVE ORDER”
21 or “OUTSIDE COUNSEL ONLY UNDER PROTECTIVE ORDER,” as provided in
22 Paragraph 3(a) above.

23 (c) Testimony or information disclosed at a deposition may be designated
24 by a Producing Party as Confidential or Outside Counsel Only information by indicating on
25 the record at the deposition the specific testimony or subject matter of the testimony which
26 contains Confidential information or Outside Counsel Only information that is to be made
27 subject to the provisions of this Order. The parties will use their best efforts to make all
28 such designations during the deposition. A Producing Party may later designate testimony

1 or information disclosed at a deposition as Confidential or Outside Counsel Only by
2 notifying all parties in writing, within thirty days of receipt of the transcript, of the specific
3 pages and lines of the transcript, or the subject matter of the testimony that is to be
4 designated Confidential or Outside Counsel Only. Each party shall attach a copy of such
5 written statement to the face of the transcript and each copy thereof in its possession,
6 custody or control. If no confidentiality designation is made at the time of a deposition,
7 such deposition nonetheless shall be treated as Outside Counsel Only information from the
8 taking of the deposition until thirty days after receipt of the transcript, or until receipt of
9 the notice referred to in this paragraph, whichever occurs sooner.

10 (d) In the case of responses to interrogatories, or other discovery
11 requests, or responses, affidavits, briefs, memoranda or other papers filed with the Court,
12 information contained therein may be designated as Confidential or Outside Counsel Only
13 by prominently marking such paper "CONFIDENTIAL UNDER PROTECTIVE ORDER" or
14 "OUTSIDE COUNSEL ONLY UNDER PROTECTIVE ORDER"

15 (e) Tangible objects may be designated as Confidential or Outside
16 Counsel Only by affixing to the object or its container a label or tag marked
17 "CONFIDENTIAL UNDER PROTECTIVE ORDER" or "OUTSIDE COUNSEL ONLY
18 UNDER PROTECTIVE ORDER."

19 (f) To the extent that information has been produced prior to the entry of
20 this Order which a Producing Party desires to designate as Confidential or Outside Counsel
21 Only, the Producing Party may, within twenty days of the entry of this Order, designate any
22 information as Confidential or Outside Counsel Only by identifying in writing to the
23 Receiving Party which such documents, testimony or tangible objects should be treated as
24 Confidential or Outside Counsel Only.

25 4. (a) Except as provided in Paragraph 5 herein, Confidential information,
26 and any analysis or report containing Confidential information, may be made available to
27 and inspected by:

28 (i) up to six persons per party who have been designated as either

1 independent expert witnesses or independent consultants and personnel acting under their
2 direct or indirect supervision; and

3 (ii) the parties' outside counsel and personnel of outside counsel,
4 including specifically the following outside counsel set forth below and their personnel:

5
6 BRINKS HOFER GILSON & LIONE
7 NBC Tower - Suite 3600
8 455 Cityfront Plaza Drive
9 Chicago, Illinois 60611-5599

10 LATHAM & WATKINS
11 135 Commonwealth Drive
12 Menlo Park, California 94025

13 KEKER & VAN NEST, LLP
14 710 Sansome Street
15 San Francisco, California 94111

16 (iii) Trial and appellate courts for this action, and court reporters
17 and/or videographers and necessary support personnel of such court reporters and/or
18 videographers retained in connection with any hearing or trial of this action or in
19 connection with any depositions taken by any party in this litigation to the extent necessary
20 to transcribe and/or record the deposition testimony and identify exhibits marked in the
21 course of the deposition;

22 (iv) Mock jurors, focus group members, or research group
23 participants selected by trial consultants, jury consultants or by trial counsel in preparation
24 for trial, provided that no documents or physical things embodying Confidential
25 information or Outside Counsel Only information of another party shall be left in the
26 possession of any such person;

27 (v) Independent litigation support services, including legal
28 interpreters, document reproduction services, computer imaging services, and
demonstrative exhibit services, provided such individuals are merely performing clerical or
ministerial tasks;

1 (vi) Non-party individuals who are designated in the document or
2 material itself as an author or recipient of the designated document or material;

3 (vii) Up to three employees of the parties who are designated and
4 identified to the other party within thirty days of the effective date of this Stipulated
5 Protective Order; and

6 (viii) The following in-house counsel for the parties:

7 for Overture:

8 Joshua Metzger, Esq.

9 Lynn Loeb, Esq.

10 Jeanine L. Hayes, Esq.

11
12 For Google:

13 David Drummond, Esq.

14 Kulpreet Rana, Esq.

15 Karl Sun, Esq.
16

17 If one or more of the foregoing in-house counsel leaves the employ of his or her respective
18 employer, the affected party may designate, for purposes of this protective order,
19 replacement in-house counsel upon written notice to the other party.

20 (b) Except as provided in Paragraph 5 herein, Outside Counsel Only
21 information, and any analysis or report containing Outside Counsel Only information, may
22 be made available to and inspected by persons described in Paragraph 4(a)(i)-(vi)
23

24 For purposes of persons designated as independent expert witnesses or independent
25 consultants pursuant to Paragraph 4(a)(i), each party shall disclose to the other party, by
26 facsimile and first class mail, the identity, residence, signed undertaking, and curriculum
27 vitae of each independent expert witness or independent consultant at least five (5) business
28 days prior only to the first disclosure of Confidential information or Outside Counsel Only

1 information to that independent expert witness or independent consultant. If a party objects
2 to the identified expert or consultant, it shall make its objections known in writing within
3 five (5) business days of notification. If agreement on the independent expert or consultant
4 cannot be reached, the objecting party shall have ten (10) business days after making its
5 objections known to seek a protective order from the Court. In such case, no disclosure
6 shall be made to the expert until the Court has ruled on the motion for a protective order. If
7 the objecting party fails to seek a protective order within that time, the objection shall be
8 deemed waived and Confidential information or Outside Counsel Only information may be
9 disclosed to the independent expert subject only to this Protective Order.

10 It is the specific intent of this subparagraph that Outside Counsel Only information
11 shall not be available to other individuals including the parties, or their employees, except
12 as may be permitted pursuant to Paragraph 5 herein.

13 (c) No Confidential information or Outside Counsel Only information
14 shall be revealed or disclosed, in whole or in part, directly or indirectly, to any individual
15 described in Paragraphs 4(a) or 4(b), with the exception of outside counsel and the
16 personnel of outside counsel as set forth in Paragraph 4(a), or to any individual who is
17 otherwise authorized to receive or view such information pursuant to Paragraph 5, unless
18 and until that individual has been given a copy of this Order and has duly completed and
19 signed an undertaking in the form attached as Exhibit A, any and all of which signed
20 undertakings shall be retained in duplicate by outside counsel of record for the Receiving
21 Party.

22 (d) The limitations on the disclosure of Confidential information apply to
23 all Confidential information, including but not limited to draft memoranda, expert reports,
24 and briefs. The limitations on the disclosure of Outside Counsel Only information apply to
25 all Outside Counsel Only information, including but not limited to draft memoranda, expert
26 reports, and briefs.

1 (e) The parties will meet and confer regarding further restrictions
2 applicable to source code. Pending such discussions, the parties need not produce source
3 code that would otherwise be designated Outside Counsel Only.
4

5 5. In the event that counsel for a party deems it necessary to disclose any
6 information of the Producing Party designated Confidential or Outside Counsel Only to any
7 person not specified in Paragraph 4 herein, said counsel first shall notify counsel for the
8 Producing Party in writing of (a) the information or documents to be disclosed, and (b) the
9 person(s) to whom such disclosure is to be made, and shall attempt to reach agreement
10 regarding such disclosure. If agreement cannot be reached, the party wishing such
11 disclosure shall make an appropriate motion. In the event of such motion, this Court shall
12 rule as to whether such disclosure may be made and whether any restrictions or limitations
13 should be placed on such disclosure. Until such motion is decided finally by this Court, no
14 disclosure shall be made.

15 6. The Clerk of the Court is provisionally directed to maintain under seal all
16 information, documents, objects and other materials filed with the Court that have been
17 designated by a party to this action as Confidential or Outside Counsel Only. To assist the
18 Clerk, any document or object that a party wishes to have placed under seal pursuant to this
19 Order shall be filed in the Clerk's Office in a sealed envelope or other appropriate sealed
20 container on which shall be endorsed the title and docket number of this action, an
21 identification of the nature of the contents of the sealed envelope or container, the words
22 "CONFIDENTIAL UNDER PROTECTIVE ORDER" or "OUTSIDE COUNSEL ONLY
23 UNDER PROTECTIVE ORDER," and a statement substantially in the following form:

24 SUBJECT TO PROTECTIVE ORDER ENTERED IN CASE NO.
25 C02-01991 CRB. This envelope, containing documents that
26 are filed in this case by [name of party], is not to be opened nor
27 are the contents thereof to be displayed or revealed except by
28 order of the Court.

1 A second copy of any pleading or paper specifically intended for review by the Court may
2 be hand-delivered to the Court's chambers appropriately marked, in order to assure that the
3 same is brought promptly to the Court's attention. Any party desiring to file any
4 Confidential information or Outside Counsel Only information under seal must comply
5 fully with the Local Rules concerning such filings.

6 7. (a) The parties shall provide, when practicable, advance notice to the
7 Court and other parties when they intend to use Confidential information or Outside
8 Counsel Only information in court proceedings. Nothing in this Order shall prevent a party
9 from using, during depositions, hearings, trial, or other proceedings held in this action, any
10 information or materials designated as Confidential or Outside Counsel Only..

11 (b) At the deposition of a third party, such third party may be shown any
12 document or other material designated as Confidential or Outside Counsel Only, provided
13 that: (i) the third party authored, created, received, or knows of the document or other
14 material; or (ii) the third party is made subject to this Order, pursuant to Paragraphs 4
15 and/or 5 herein.

16 8. The information produced by the parties pursuant to pretrial discovery in this
17 action may be used and disclosed only for purposes of this action. No party or person shall
18 make any other use of any such information, including, but not limited to, use for
19 commercial or competitive purposes or use in any other legal proceeding, except as
20 permitted by a court order.

21 9. No copies of Confidential information or Outside Counsel Only information
22 shall be made except by or on behalf of attorneys of record in this case or persons
23 otherwise bound by this Order. Any attorneys or other persons bound by this Order who
24 make or cause to be made copies of Confidential information or Outside Counsel Only
25 information shall maintain all such copies within their possession or the possession of
26 others who are entitled to access to such Confidential information or Outside Counsel Only
27 information under this Order.

1 10. Nothing in this order shall be deemed to preclude any party from seeking and
2 obtaining modifications of this Order, including, but not limited to, modifications which
3 would provide additional protection with respect to the confidentiality of documents or
4 other discovery materials.

5 11. Nothing herein shall be construed as preventing any party from using or
6 continuing to use any information designated as Confidential or Highly Confidential under
7 this Order if the Receiving Party, its counsel or independent consultants can show as a
8 matter of written record that the information (a) was already known to the Receiving Party
9 from legitimate sources, (b) was independently developed by the Receiving Party, (c) was
10 obtained from the Producing Party without having been identified as Confidential or
11 Outside Counsel Only, or (d) was received after the time of disclosure hereunder from a
12 third party having the right to make such disclosure and was not required to be held in
13 confidence. Should a dispute arise as to any specific information or materials, the burden
14 shall be upon the party claiming that such information or materials is or was publicly known
15 or was lawfully obtained other than through discovery of the Producing Party.

16 12. Nothing herein shall be construed as an agreement or admission: (a) that any
17 information, document or the like designated as Confidential or Outside Counsel Only is in
18 fact confidential or a trade secret; or (b) with respect to the competency, relevance or
19 materiality of any such information, document, testimony, or tangible object. The parties
20 reserve the right to make any and all objections as to the admissibility of the documents
21 produced subject to this Order until trial of this case.

22 13. A party shall not be obligated to challenge the propriety of a Confidential or
23 Outside Counsel Only designation at the time made, and a failure to do so shall not preclude
24 a subsequent challenge thereto. In the event that any party to this litigation disagrees at any
25 point in these proceedings with the designation by the Producing Party of any information
26 as Confidential or Outside Counsel Only, the parties shall try first to dispose, of such
27 dispute in good faith on an informal basis. If the dispute cannot be resolved, the party shall
28 inform the opposing party or third party in writing that the document should not be deemed

1 confidential and shall cite this paragraph. The party objecting to the “Confidential” or
2 “Outside Counsel Only” status of a document must present a motion to the Court objecting
3 to such status. On any such motion, the proponent of the “Confidential” or “Outside
4 Counsel Only” designation shall bear the burden of proof. The document shall continue to
5 have such status unless and until such a motion is presented, and during the pendency of any
6 such motion.

7 14. Within sixty (60) days after the conclusion of this action, all documents,
8 objects, and other materials produced or designated as Confidential or Outside Counsel
9 Only, and all reproductions thereof, shall be returned to the Producing Party or shall be
10 destroyed, at the option of the Producing Party. If the Producing Party directs the Receiving
11 Party to destroy such Confidential or Outside Counsel Only materials and copies, then the
12 Receiving Party, within ten days of destroying such materials and copies, must certify in
13 writing that it has destroyed such materials and copies, and serve said certification upon the
14 Producing Party.

15 Insofar as the provisions of this and any other Protective Orders entered in this
16 action restrict the communication and use of information produced thereunder, such Orders
17 shall continue to be binding after the conclusion of this litigation except (a) that there shall
18 be no restrictions on documents that are used as exhibits in Court (unless such exhibits
19 were filed under seal); and (b) that a party may seek the written permission of the Producing
20 Party or further order of the Court with respect to dissolution or modification of any such
21 Protective Orders.

22 15. This Order has been entered to facilitate discovery and presentation of
23 evidence to the Court. Neither the designation of any information, document, testimony or
24 tangible object as Confidential or Outside Counsel Only, nor the failure to make such
25 designation, shall constitute evidence with respect to any issue in this action.

26 16. The terms of this Protective Order shall be applicable to any third party who
27 produces information that is designated by such third party or a party hereto as Confidential
28 or Outside Counsel Only.

1 17. This Order shall not prevent any party from applying to the Court for a further
2 order of injunctive or other relief, and shall not preclude any party from enforcing its rights
3 at law or in equity with respect to any information, document, or thing against any other
4 person, including another party, believed to be violating the rights of any party.

5 It is so Ordered.

6
7 /s/
United States District Judge

8 December 16, 2002
9 Date

10 **STIPULATED TO:**
OVERTURE SERVICES, INC., Plaintiff

11 By: /s/ Charles M. McMahon

12 **BRINKS HOFER GILSON & LIONE**
13 Jack C. Berenzweig (*Pro Hac Vice*)
14 William H. Frankel (*Pro Hac Vice*)
15 Jason C. White (*Pro Hac Vice*)
16 Charles M. McMahon (*Pro Hac Vice*)
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17 **LATHAM & WATKINS**
18 Anthony I. Fenwick (Bar No. 158667)
19 Allon Stabinsky (Bar No. 197642)
20 135 Commonwealth Drive
Menlo Park, California 94025
Telephone: (650) 328-4600
21 Facsimile: (650) 463-2600

22 **GOOGLE INC., Defendant**

23 By: /s/ Michael S. Kwun

24 **KEKER & VAN NEST, L.L.P.**
25 John W. Keker (Bar No. 49092)
26 Jon B. Streeter (Bar No. 101970)
27 Daralyn J. Durie (Bar No. 169825)
28 Michael S. Kwun (Bar No. 198945)
710 Sansome Street
San Francisco, California 94111
Telephone: (415) 391-5400
Facsimile: (415) 397-7188

1 I hereby attest, pursuant to section X of General Order 45, that concurrence in the
2 filing of this document has been obtained from Michael S. Kwun.

3
4 Dated: December 13, 2002

By: /s/ Charles M. McMahon
Charles M. McMahon
BRINKS HOFER GILSON & LIONE
Attorney for Plaintiff
OVERTURE SERVICES, INC.

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1 **EXHIBIT A**

2 **UNDERTAKING**

3 1. I have carefully read and understand the attached Confidentiality Protective
4 Order (the "Order") which has been entered by the United States District Court for the
5 Northern District of California in an action captioned *Overture Services, Inc., v. Google*
6 *Inc.* Case No. C02-01991 CRB. The initially capitalized terms in this Undertaking shall
7 have the meanings supplied in the Order.

8 2. Pursuant to the Order, I may be given access to Confidential information
9 and/or Outside Counsel Only information in the above-referenced action. As a condition of
10 access to that Confidential information and/or Outside Counsel Only information, and in
11 consideration of that access; (a) I agree that I shall be bound by and comply with all the
12 terms of the Order, including those limiting disclosure and use of the Confidential
13 information and Outside Counsel Only information, and (b) I submit to the jurisdiction of
14 the United States District Court for the Northern District of California for the enforcement
15 of the Order.

16 3. By reason of this Undertaking, the obligations imposed on me by the Order
17 shall be enforceable by the Producing Party to redress any breach of the Order or this
18 Undertaking.

19 4. I have executed this Undertaking in duplicate on
20 _____ whereupon it becomes binding in accordance with its
21 terms.

22 5. My current address is _____, and my
23 current occupation/job description is as
24 follows: _____

25 _____
26 6. I have no prior or current affiliation with either of the parties to this action,
27 OR [explain any prior or current affiliation other than expert consultation in connection
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with this
litigation] _____

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

Executed this _____ day of _____, 200_ in

_____.
