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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CALCAR, INC., a California  
corporation; and AMERICAN  
CALCAR, INC., a Delaware corporation,

Plaintiffs,

vs.

THE CALIFORNIA CARS  
INITIATIVE, INC., an unknown  
business entity; and FELIX KRAMER,  
an individual,

Defendants.

**Case No. 3:08-MC-80083 MHP**  
**(WDBx)**

**PLAINTIFFS' OPPOSITION TO**  
**GOOGLE'S MOTION FOR A**  
**PROTECTIVE ORDER**

**Date: May 14, 2008**  
**Time: 1:00 p.m.**  
**Courtroom: 4, Oakland**

**Hon. Wayne D. Brazil**

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1       **I. INTRODUCTION**

2           On May 2, 2008, over *six weeks* after being served with a deposition  
3 subpoena, and almost *four weeks* after the actual deposition date had come and  
4 gone, with Google refusing to appear for deposition, Google filed a motion for a  
5 protective order.

6           Google’s motion should be denied as untimely. A motion for protective  
7 order must be filed *prior* to the deposition date. Google offers no legal authority  
8 to support its position that a protective order filed almost four weeks *after* the  
9 deposition date is procedurally proper. Moreover, Google fails to establish any  
10 specific facts to demonstrate “good cause” for seeking a protective order as is  
11 required by Rule 26(c).

12           Calcar,<sup>1</sup> therefore, respectfully requests this Court to deny the motion.

13       **II. FACTUAL BACKGROUND**

14           Calcar is a plaintiff in a trademark infringement case pending in the Central  
15 District of California. Calcar owns United States Trademark Registration No.  
16 2,419,611 (the “‘611 Registration”) for the mark CALCAR. Since 1994, Calcar  
17 has marketed, distributed and sold products under the CALCAR mark, including  
18 Quick Tips® products.

19           Defendants The California Cars Initiative (“TCCI”) and Felix Kramer  
20 (“Kramer”) have adopted wholesale Calcar's registered mark CALCAR, adding  
21 the letter “s” to the mark and then using it to provide goods and services in the  
22 same business in which Calcar is engaged. TCCI also uses the registered domain  
23 name <http://www.calcars.org>, which is confusingly similar to Calcar’s domain  
24 name, <http://www.calcar.net>. Google is a business partner of TCCI and Kramer  
25 and has had numerous interactions with these infringing parties.

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26  
27       <sup>1</sup> Plaintiffs Calcar, Inc. and American Calcar Inc. are referred to collectively as  
28 “Calcar.”

1           On March 18, 2008, Calcar served Google with a deposition subpoena and  
2 a check for witness fees and anticipated mileage. (Bleeker Dec., ¶ 2; Ex. A.)

3 Calcar seeks testimony from Google regarding five topics:

- 4           1. Any agreements or contracts between Google and TCCI.
- 5           2. Any agreements or contracts between Google and Felix Kramer.
- 6           3. Any communications between Google and TCCI.
- 7           4. Any communications between Google and Felix Kramer.
- 8           5. The Google.org grant to TCCI to promote plug-in hybrid vehicle  
9 education.

10           (*Id.*)

11           Prior to the deposition date of April 7, Calcar contacted Google to  
12 determine who from Google would be attending the deposition. On Friday,  
13 April 4, Google employee Suzanne Abbott responded that Google generally did  
14 not sit for third party depositions and would probably not produce a witness for  
15 the deposition the following Monday. (*Id.* at ¶ 3.) Calcar requested that Google's  
16 litigation counsel contact Calcar to discuss the issue. (*Id.*)

17           Later in the afternoon of April 4, Google, again through Ms. Abbott, faxed  
18 written objections to Calcar's deposition subpoena noticed for Monday, April 7.  
19 Ms. Abbott also confirmed by telephone that Google would not produce any  
20 witness for deposition on April 7. (*Id.*, ¶ 4; Ex. B.) Calcar notified Google that,  
21 based on Ms. Abbot's representation that Google refused to make a representative  
22 available for deposition on April 7, Calcar would not incur the costs of traveling  
23 to San Francisco for the deposition. (*Id.* at ¶ 5; Ex. C.) Calcar, however,  
24 requested that Google counsel meet and confer to discuss whether Google would  
25 reconsider its position and produce a witness for deposition. (*Id.*)<sup>2</sup>

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26  
27 <sup>2</sup> On April 7, 2008, Judge Andrew J. Guilford, Central District Court Judge,  
28 extended the deposition discovery cut-off date from April 8 to May 19, 2008 to  
allow Calcar to request relevant documents and testimony from Google, among  
others. (Bleeker Dec. at ¶ 6; Ex. D.)

1           On April 7, Calcar again attempted to contact Google’s counsel to  
2 determine when and if Google would produce a witness for deposition. (*Id.* at ¶  
3 5; Ex. C.) On April 9, 2008, Google’s counsel finally responded and stated that  
4 Google wanted to defer the issue of complying with the deposition subpoena until  
5 after Google had produced documents in response to the separate subpoena for  
6 documents. Google produced documents on Friday, April 11. (*Id.* at ¶ 7.)  
7 Having reviewed the documents, Calcar again contacted Google’s counsel on  
8 April 14 and April 15. Due to Google’s counsel’s schedule, the parties were not  
9 able to discuss whether Google would comply with the subpoena until April 17.  
10 (*Id.*) On April 17, counsel for Google and Calcar met and conferred. Google  
11 again refused to provide a witness in compliance with the subpoena. (*Id.*)

12           On April 18, Calcar filed a motion to compel Google's deposition  
13 testimony and filed a motion to shorten time so that if the motion is granted, the  
14 deposition could take place before the May 19 deposition cutoff date. On May 2,  
15 2008, Google filed a motion for a protective order. Google did not file its own  
16 motion to shorten time until late in the evening on May 8. (*Id.* at ¶ 8.)

17 **III. GOOGLE’S MOTION FOR PROTECTIVE ORDER SHOULD BE**  
18 **DENIED AS UNTIMELY.**

19           A motion for protective order must be filed *before* the deposition date.  
20 “[I]t is for the court, not the deponent or his counsel, to relieve him of the duty to  
21 appear.” *Pioche Mines Consolidated, Inc. v. Dolman*, 333 F.2d 257, 269 (9th Cir.  
22 1964); *see also* Rutter Guide, Fed. Civ. Proc. Before Trial, §11:1166 (A motion  
23 for a protective order must be filed “*before the date set for the . . . deposition.*”)  
24 (emphasis in original). Under Rule 37(d), failure to appear for deposition “is not  
25 excused on the ground that the discovery sought was objectionable, unless the  
26 party failing to act has a *pending* motion for a protective order under Rule 26(c).”  
27 Fed. R. Civ. P. 37(d)(2) (emphasis added); *Paige v. Consumer Programs, Inc.*,  
28 2008 U.S. Dist. LEXIS 13106, \*7-\*8 (C.D. Cal. 2008). Thus, failure to appear at

1 a properly noticed deposition is not substantially justified if the motion for a  
2 protective order is not filed “before the date of the deposition.” *Paige*, 2008 U.S.  
3 Dist. LEXIS 13106, \*16 (C.D. Cal. 2008). District courts have denied motions  
4 for protective orders as untimely even when filed before the deposition date, but  
5 where the hearing date would not occur until after the deposition. *Grateful Dead*  
6 *Prods. v. Sagan*, 2007 U.S. Dist. LEXIS 56810, \*4-\*5 (N.D. Cal. 2007) (denying  
7 motion for protective order, in part, as untimely where motion would not be heard  
8 prior to the deposition date); *Kephart v. Nat'l Union Fire Ins. Co.*, 2007 U.S. Dist.  
9 LEXIS 51705, \*3 (D. Mont. 2007) (denying motion for protective order as  
10 untimely when filed 12 days prior to deposition date where moving party did not  
11 seek expedited hearing date prior to deposition date).

12 Here, Google waited over six weeks after service of process and almost  
13 four weeks after the deposition date to file any motion. Calcar is aware of no case  
14 law, and Google certainly offers none, holding that a motion for a protective order  
15 is timely filed over *six weeks* after service of process and almost a month after the  
16 deposition date has passed. Instead, Google cites Section 11:1162 of the Rutter  
17 Group Federal Civil Procedure Before Trial for the proposition that a protective  
18 order must be filed as early as practicable. Google fails to provide the full  
19 proposition stated by Section 11:1162, which states: “A motion for protective  
20 order ordinarily should be noticed at the earliest possible time and *certainly*  
21 *before* the discovery procedure is set to occur.” (emphasis added). In the cited  
22 case, *National Indep. Theatre Exhibitors, Inc. v. Buena Vista Distrib. Co.*, 748  
23 F.2d 602, 609 (11th Cir. 1984) (also cited by Google), the third party deponent  
24 filed a motion for a protective order *before* the deposition, not weeks later as  
25 Google has done.

26 The only other authority cited by Google, *Allendar v. Raytheon Aircraft*  
27 *Co.*, 220 F.R.D. 661 (D. Kan. 2004), does not support Google’s position. In  
28 *Allendar*, the district court denied a motion to quash regarding a subpoena *duces*



1 *tecum* because the motion was filed *after* the date of the document production,  
2 and thus “there is nothing to ‘quash.’” *Id.* at 665. The district court also issued a  
3 “protective” (*i.e.*, confidentiality) order to apply to medical records, where both  
4 parties stipulated that the records were to be limited to that case and must be  
5 returned or destroyed at the conclusion of the case. *Id.* Nothing in this decision  
6 supports Google’s claim that a protective order challenging a deposition subpoena  
7 is timely a month after the deposition was to occur.

8 If Google wanted to file a motion for protective order, it was incumbent on  
9 it to file its motion before April 7, 2008. Google chose to ignore the subpoena,  
10 and in so doing waived the right to seek a motion for protective order. Under  
11 Rule 37 of the Federal Rules of Civil Procedure, Google’s refusal to appear for  
12 deposition was not justified, and it should be compelled to attend its deposition,  
13 prepared to offer meaningful testimony, before May 19, 2008.

14 **IV. GOOGLE HAS FAILED TO CARRY ITS BURDEN TO**  
15 **DEMONSTRATE GOOD CAUSE THAT A PROTECTIVE ORDER**  
16 **SHOULD BE ISSUED.**

17 A party seeking a protective order under Rule 26(c) is required to show  
18 “good cause” for its issuance. Specifically, Google is required to make a clear  
19 showing of a particular and specific need for the order. *Blankenship v. Hearst*  
20 *Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). “[B]road allegations of harm,  
21 unsubstantiated by specific examples or articulated reasoning, do not satisfy the  
22 Rule 26(c) test.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130  
23 (9th Cir. 2003). Moreover, “[a] strong showing is required before a party will be  
24 denied entirely the right to take a deposition.” *Blankenship v. Hearst Corp.*, 519  
25 F.2d 418, 429 (9th Cir. 1975).

26 Google fails to articulate any good cause why it should be excused from  
27 complying with the deposition subpoena.

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**A. The Deposition Subpoena Seeks Information Reasonably Calculated To Lead To The Discovery Of Admissible Evidence.**

Calcar is entitled to discover nonprivileged information relevant to any party's claim or defense. Fed. R. Civ. P. 26(b)(1). This includes information that a party may use to support its denial or rebuttal of any claim or defense of another party. *Id.*

Calcar identified five straightforward deposition topics in its Rule 30(b)(6) subpoena: (1) communications between Google and Defendant Kramer; (2) communications between Google and Defendant TCCI; (3) any agreements or contracts between Google and Defendant TCCI; (4) any agreements or contracts between Google and Defendant Kramer and Google; and (5) the Google.org grant to TCCI.

Google concedes that it maintains a business relationship with TCCI and Kramer. The documents produced by Google indicate that Google had numerous communications with Defendants and that Defendants applied for at least one grant, which it received. Calcar is entitled to conduct deposition inquiry into the substance of these communications and any phone conversations or in-person meetings, and the substance of the grant agreement and any other agreements, formal or informal, between Google and Defendants. TCCI, which refers to itself as "Calcars," likely made numerous representations relating to its use of the infringing Calcars mark, including how it proposed to use the Google grant money, and whether it intended to expand its use of the Calcars mark (which incorporates 100% of Calcar's own federally registered trademark). Calcar also has the right to inquire whether Google and TCCI/Kramer have any agreements or understandings regarding website hits for TCCI's infringing website, www.calcars.org, which relate to use of the mark. These topics are directly

1 relevant to the first and eighth *Sleekcraft* factors.<sup>3</sup> In addition, Calcar is entitled  
2 to learn if during any communications, the issue of actual confusion (the fourth  
3 *Sleekcraft* factor) was raised. These communications and agreements are also  
4 likely to reveal evidence regarding how TCCI and Kramer market their products,  
5 which is relevant to marketing channels used (the fifth *Sleekcraft* factor). Any  
6 discussions between Google and Defendants relating to Calcar's preexisting  
7 trademark rights, and this litigation, also are discoverable, going to Defendants'  
8 intent and willfulness in infringing Calcar's mark.

9 TCCI and Kramer have taken the position in the underlying litigation, that  
10 because TCCI is purportedly a "non-profit," TCCI does not receive any "profits."  
11 This issue is currently pending in a discovery dispute pending in the underlying  
12 matter. (Bleeker Dec., ¶ 9.) Any communications or representations by TCCI  
13 and Kramer to Google regarding TCCI's status as a non-profit is therefore  
14 relevant to a claim or defense in the underlying action.

15 In its moving papers, Google incorporates its argument from its opposition  
16 to Calcar's motion to compel that the five listed topics do not seek relevant  
17 information. If anything, Google's opposition demonstrates a fundamental  
18 misunderstanding (or intentional misstatement) of trademark law. Google asserts  
19 that the "key issue" in a trademark infringement matter is "consumer confusion."  
20 In reality, the key issue is "*likelihood* of confusion" which is measured by eight  
21 separate factors. Actual customer confusion, which is one of the eight factors, is  
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23 <sup>3</sup> In *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-349 (9th Cir. 1979), the  
24 Ninth Circuit provided the following, "non-exhaustive" list of factors that are  
25 relevant in "determining whether confusion between related goods is likely":  
26 1. strength of the mark; 2. proximity or relatedness of the goods; 3. similarity of  
27 the marks; 4. evidence of actual confusion; 5. marketing channels used; 6. type of  
28 goods and the degree of care likely to be exercised by the purchaser;  
7. defendant's intent in selecting the mark; and 8. likelihood of expansion of the  
product lines.

1 not the only relevant issue. In most infringement actions, evidence of actual  
2 consumer confusion is not available. The Ninth Circuit has held that *each* of the  
3 eight *Sleekcraft* factors should be considered in a trademark infringement action.  
4 Not all of the *Sleekcraft* factors have equal weight. *See Thane International, Inc.*  
5 *v. Trek Bicycle Corporation*, 305 F.3d 894, 901 (9th Cir. 2002). And finding  
6 confusion involves more than just counting how many *Sleekcraft* factors favor  
7 each party: a court should instead use those factors for guidance as part of an  
8 overall analysis of whether the alleged trademark infringement is likely to  
9 confuse. *Id.* (“[t]he list of factors is not a scorecard — whether a party ‘wins’ a  
10 majority of the factors is not the point”).

11 Google also argues that its knowledge is not relevant to any issue in the  
12 underlying trademark action, citing to the *Cacique* decision of the Ninth Circuit.  
13 *See Cacique, Inc. v. Robert Reiser & Co, Inc.*, 169 F.3d 619 (9th. Cir. 1999).  
14 Google’s reliance on *Cacique* is misplaced. In *Cacique*, the Ninth Circuit held  
15 that a plaintiff in a trade secret case was not entitled to a reasonable royalty.  
16 Therefore, the Court determined that discovery seeking sales information from a  
17 third party, though relevant to a reasonable royalty, should not be produced where  
18 the plaintiff is not entitled to a reasonable royalty as a matter of law. *Id.* at 623-  
19 25. That holding has no application here. Calcar’s infringement claims are  
20 pending, and the information sought from Google is related to those claims and  
21 TCCI’s and Kramer’s contentions and defenses.

22 **B. Calcar’s Deposition Subject Matters Are Proper.**

23 Google also argues that the five designated topics do not mention, by name,  
24 the *Sleekcraft* factors, and therefore the deposition cannot encompass these  
25 factors. Google’s position ignores all common sense. The five topics, which  
26 seek testimony on communications, agreements, and contracts between Google  
27 and Defendants, obviously encompass the *Sleekcraft* factors and other relevant  
28 claims and defenses. Calcar has described with reasonable particularity (as is

1 required by Rule 30(b)(6)), the subject *matters* for deposition. Calcar is not  
2 required to list every deposition question in its subpoena.<sup>4</sup> Based on the plain  
3 language of the five topics, Calcar is certainly entitled to inquire about any  
4 agreements or communications that touch upon TCCI's use of the infringing  
5 mark, any intentions to expand its product line, any actual customer confusion,  
6 TCCI's purported "non-profit" status, and TCCI's placement of the infringing  
7 mark in Google's search engine, to name a few.

8 **C. Google Is In Possession of Information Relevant To The Claims**  
9 **And Defenses of the Parties**

10 Google also argues that Calcar has made no "showing" that Google has  
11 such knowledge of the listed topics. Of course, there is no requirement that  
12 Calcar must make a showing of Google's actual knowledge *prior* to taking the  
13 deposition. Google, however, admits it had communications with TCCI and  
14 Kramer and even produced certain e-mail traffic evidencing these  
15 communications (*See* Google Opposition to Motion to Compel at 3:21-22  
16 (admitting producing "a handful of assorted emails"). Google also admitted at  
17 least one agreement exists between the parties, and has produced the grant  
18 agreement between Google and TCCI which demonstrates that Google is one of  
19 TCCI's largest donors. (*See* Google Opposition to Motion to Compel at 2:22-23  
20 (" . . .Google.org. provided a philanthropic grant to TCCI in 2007.")) Google,  
21 therefore, concedes it has communicated with TCCI/Kramer and entered at least  
22 one agreement with TCCI/Kramer, all of which are very closely linked to  
23 Defendants' infringing use of Calcar's mark. It is clear then that Google does  
24 have knowledge of the listed topics.

25 \_\_\_\_\_  
26 <sup>4</sup> If Calcar had listed every deposition question or "subcategory" of the listed  
27 deposition topics, Google no doubt would complain that such an extensive list  
28 would impose an undue "burden" on it that is even great than the burden that  
Google falsely claims the existing subpoena imposes.

1 Google also attempts to explain away any other involvement with TCCI  
2 besides the grant. Calcar, however, is entitled under Rules 26 and 45 to depose  
3 Google, under oath, to learn of the extent of Google's involvement with TCCI.  
4 Google baldly asserts, for example, that "Google has already produced the  
5 documents related to the grant." Calcar, however, has the right to determine if the  
6 documents produced are, in fact, the only responsive documents, to determine if  
7 Google performed a reasonable search for these documents related to the grant, to  
8 authenticate the documents, and to find out if there are additional documents that  
9 should have been produced (either by Google or by TCCI/Kramer). Calcar  
10 cannot make these determinations from simply reviewing the documents.

11 Google also claims that it has no other relationship with TCCI. Again,  
12 Calcar has the right to depose Google to determine what other agreements or  
13 understandings might exist between Google and TCCI/Kramer. Further, Google  
14 states that "TCCI does not buy advertising from Google," "Google is not a  
15 customer of TCCI," and that TCCI does not "participate in any of Google's  
16 advertising programs." Even if this is the case, Calcar has the right to obtain this  
17 testimony by way of deposition, as part of its discovery into the true nature and  
18 extent of Google's relationship with TCCI.

19 **D. The Deposition Subpoena Is Not "Duplicative"**

20 Google also claims that its deposition testimony would be duplicative of  
21 other evidence in the case. Calcar's discovery requests are not duplicative. Only  
22 Google has personal knowledge of its dealings with TCCI and Kramer. No one  
23 else can provide such testimony. Google, in fact, has already produced highly  
24 relevant documents that had not been produced by the Defendants in the matter.  
25 For example, Google produced a "CalCars Due Diligence Report" that had never  
26 been produced by TCCI or Kramer. (Bleeker Dec., ¶ 11; Ex. F.) This report is  
27 further evidence of TCCI's use of the infringing mark. It identifies "key funders"  
28 of TCCI. It identifies marketing channels. It also includes an IRS document

1 relevant to TCCI's purported non-profit status. Calcar has the right to depose  
2 Google regarding this newly discovered document, as well as the other  
3 documents produced by Google.

4 Also, Calcar has a right under Rules 26 and 45 to obtain information  
5 regarding Google's knowledge of meetings and events where TCCI and Kramer  
6 were present, including those at which Calcar, and/or Defendants' infringing use  
7 of the Calcar's mark, were discussed. This deposition testimony goes beyond  
8 mere corroboration, even though corroboration, by itself, is a proper purpose of  
9 third party discovery. *Pfizer, Inc. v. Mylan Labs., Inc.*, 2003 U.S. Dist. LEXIS  
10 24806, at \*6 (S.D.N.Y. Dec. 17, 2003) (a party "has a right to seek to corroborate  
11 the information given it by its party-opponent."). Google cites to no authority to  
12 support its position that corroborating evidence is merely duplicative. Kramer's  
13 and TCCI's memory or knowledge may be incomplete or inaccurate in certain  
14 respects. Calcar has the right to learn the entire story, and to keep TCCI and  
15 Kramer honest, by examining third parties to learn those third parties' knowledge  
16 or understanding regarding communications and agreements, and to fill in  
17 missing information and key facts.

18 **E. The Five Deposition Topics Are Not Overly Burdensome**

19 Google's "burdensome" argument has no merit, and is internally  
20 inconsistent. For example, Google argues *both* that it has "little to no knowledge"  
21 of the designated subject matters, *and* that "the burden of preparation for a  
22 30(b)(6) deposition is substantial..." (Google's Motion For Protective Order, at  
23 8:5-6 and 9:17-18.) Google does not explain how the burden of preparing for a  
24 deposition on topics as to which it supposedly has "little to no knowledge" could  
25 possibly be "substantial." If Google's knowledge truly is limited, the preparation  
26 for the deposition and the deposition itself could both be completed in a few  
27 hours. The only way the time required to prepare for and attending the deposition  
28 could be "substantial" is if Google in fact does have a great deal of relevant

1 knowledge. Whether Google is telling the truth about its limited knowledge, or  
2 whether it is telling the truth about the “substantial” amount of work required to  
3 prepare for and attend a deposition, the deposition is justified. And Google has  
4 offered no specific facts — not even a time estimate as to the amount of  
5 preparation that would be required — supporting the claim that the subpoena  
6 imposes an undue burden.

7 Google’s conclusory “burden” argument is further undercut by Google’s  
8 scorched-earth, if untimely, motion practice. As explained above, after initially  
9 ignoring the deposition subpoena, Google then took every step possible to  
10 prolong the dispute and escalate the costs required to resolve it. Google initially  
11 prolonged the meet and confer process, refusing to make a final determination of  
12 whether it would produce a witness until after it produced the documents. After  
13 all the meeting and conferring, Google finally confirmed that under no  
14 circumstances would it make any corporate representative available for  
15 deposition. This required Calcar to open a miscellaneous action and move to  
16 compel. Google’s outside counsel then engaged in a series of pointless meet and  
17 confer efforts. Google ultimately filed its untimely, duplicative, “make-work”  
18 protective order motion. Then, after this Court granted Calcar’s unopposed  
19 motion to shorten time and set the hearing for May 14, Google demanded that  
20 Calcar agree, within two hours, that Google’s motion could also be heard on  
21 May 14, and that Calcar also agree to waive its right to file any opposition.  
22 Calcar did not agree to such an unfair proposition. Google then filed a motion to  
23 shorten time, but changed its position to allow Calcar the opportunity to file an  
24 opposition — a position it failed to offer during Google’s self-imposed two hour  
25 meet and confer window. (Bleeker Dec. ¶ 12.)

26 The amount of time and money spent by Google in avoiding a deposition  
27 on five limited deposition topics far exceeds the amount of time and money  
28 Google would have spent in deposition if it had just shown up.



1 More importantly, as Calcar explained in its moving papers in support of  
2 its motion to compel (and Google does not dispute), Google is not ultimately  
3 responsible for any costs associated with complying with the subpoena. Instead,  
4 under Google's agreement with Defendants, TCCI must indemnify Google for all  
5 Google's costs related to complying with the subpoena, including attorneys' fees.  
6 Therefore, Google will incur no unreimbursed expense involved in preparing for  
7 and attending its deposition, just as it should have over one month ago.<sup>5</sup>

8 **V. CONCLUSION**

9 Google's motion for a protective order is untimely and Google failed to  
10 establish good cause why a protective order is justified to prevent Google's  
11 deposition from going forward. Calcar, therefore, requests this Court to deny  
12 Google's motion for a protective order.

13  
14 DATED: May 12, 2008

Respectfully submitted,  
CHRISTIE, PARKER & HALE, LLP

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16  
17 By   
G. Warren Bleeker

18 Attorneys for Plaintiffs,  
19 CALCAR, INC. and AMERICAN  
20 CALCAR, INC.

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22  
23 <sup>5</sup> Google also raises a trade secret issue in its motion (Google Motion For  
24 Protective Order, at 8-9:fn.4). It is highly unlikely that any communications or  
25 agreements between TCCI and Google involve Google's trade secrets. However,  
26 a protective order has been entered in the underlying action. (Bleeker Dec., ¶ 10;  
27 Ex. E.) Counsel for Calcar provided the protective order to Google on April 4,  
28 2008, and Google has utilized that protective order, designating certain of its  
documents as "confidential." (*Id.*) The protective order has a specific "attorneys'  
eyes only" designation that would clearly protect any sensitive trade secret  
information.

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**CERTIFICATE OF SERVICE**

I certify that on May 12, 2008, I electronically filed the document described as **PLAINTIFF'S OPPOSITION TO GOOGLE'S MOTION FOR A PROTECTIVE ORDER.** with the Clerk of the Court using the ECF system which will send notification of such filing to the parties. I further certify that I have e-mailed a true copy of the above document to the non-ECF participants addressed as follows:

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/s/ \_\_\_\_\_  
Susan Lovelace