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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

17 CLEAR ADVANTAGE DIRECT MAIL,)
 18 INC., a California corporation,)

19 Plaintiff,)

20 vs.)

21 ACTION DIRECT MARKETING, INC., a)
 22 California corporation,)

23 Defendant.)

CASE NO: CV 11 3606 CW

**STIPULATED PROTECTIVE ORDER
 FOR LITIGATION INVOLVING
 HIGHLY SENSITIVE CONFIDENTIAL
 INFORMATION**

Judge: Hon. Claudia Wilken

24
 25 1. PURPOSES AND LIMITATIONS

26 Disclosure and discovery activity in this action are likely to involve production of
 27 confidential, proprietary, or private information for which special protection from public
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1 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
2 Accordingly, the parties hereby stipulate to and petition the court to enter the following
3 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
4 protections on all disclosures or responses to discovery and that the protection it affords from
5 public disclosure and use extends only to the limited information or items that are entitled to
6 confidential treatment under the applicable legal principles. The parties further acknowledge, as
7 set forth in Section 12.4 below, that this Stipulated Protective Order does not entitle them to file
8 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
9 followed and the standards that will be applied when a party seeks permission from the court to
10 file material under seal.

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
13 information or items under this Order.

14 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
15 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
16 Rule of Civil Procedure 26(c).

17 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their
18 support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” or
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless of
23 the medium or manner in which it is generated, stored, or maintained (including, among other
24 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
25 or responses to discovery in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
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1 witness or as a consultant in this action; (2) is not a past or current employee of a Party or of a
2 Party's competitor; and (3) at the time of retention, is not anticipated to become an employee of a
3 Party or of a Party's competitor.

4 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
5 Information or Items: extremely sensitive "Confidential Information or Items," disclosure of
6 which to another Party or Non-Party would create a substantial risk of serious harm that could
7 not be avoided by less restrictive means.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or
9 other legal entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a Party to
11 this action but are retained to represent or advise a Party to this action and have appeared in this
12 action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of
13 that Party.

14 2.10 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their support
16 staffs).

17 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this action.

19 2.12 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
21 organizing, storing, or retrieving data in any form or medium) and their employees and
22 subcontractors.

23 2.13 Protected Material: any Disclosure or Discovery Material that is
24 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
25 ONLY."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.

28 3. SCOPE

1 The protections conferred by this Stipulation and Order cover not only Protected
2 Material (as defined above), but also (1) any information copied or extracted from Protected
3 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
4 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
5 Material. However, the protections conferred by this Stipulation and Order do not cover the
6 following information: (a) any information that is in the public domain at the time of disclosure
7 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving
8 Party as a result of publication not involving a violation of this Order, including becoming part
9 of the public record through trial or otherwise; and (b) any information known to the Receiving
10 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
11 who obtained the information lawfully and under no obligation of confidentiality to the
12 Designating Party. Any use of Protected Material at trial shall be governed by a separate
13 agreement or order.

14 4. DURATION

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

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection under this Order
25 must take care to limit any such designation to specific material that qualifies under the
26 appropriate standards. To the extent it is practical to do so, the Designating Party must designate
27 for protection only those parts of material, documents, items, or oral or written communications
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1 that qualify – so that other portions of the material, documents, items, or communications for
2 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

7 If it comes to a Designating Party’s attention that information or items that it designated
8 for protection do not qualify for protection at all or do not qualify for the level of protection
9 initially asserted, that Designating Party must promptly notify all other Parties that it is
10 withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic copies and/or
17 electronic documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains protected
20 material. If only a portion or portions of the material on a page qualifies for protection, the
21 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
22 markings in the margins) and must specify, for each portion, the level of protection being
23 asserted.

24 A Party or Non-Party that makes original documents or materials available for
25 inspection need not designate them for protection until after the inspecting Party has indicated
26 which material it would like copied and produced. During the inspection and before the
27 designation, all of the material made available for inspection shall be deemed “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified

1 the documents it wants copied and produced, the Producing Party must determine which
2 documents, or portions thereof, qualify for protection under this Order. Then, before producing
3 the specified documents, the Producing Party must affix the appropriate legend
4 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each
5 page that contains Protected Material. If only a portion or portions of the material on a page
6 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
8 level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
10 the Designating Party identify on the record, before the close of the deposition, hearing, or other
11 proceeding, all protected testimony and specify the level of protection being asserted. When it is
12 impractical to identify separately each portion of testimony that is entitled to protection and it
13 appears that substantial portions of the testimony may qualify for protection, the Designating
14 Party may invoke on the record (before the deposition, hearing, or other proceeding is
15 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
16 which protection is sought and to specify the level of protection being asserted. Only those
17 portions of the testimony that are appropriately designated for protection within the 21 days shall
18 be covered by the provisions of this Protective Order. Alternatively, a Designating Party may
19 specify, at the deposition or up to 21 days if that period is properly invoked, that the entire
20 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY.”

22 Parties shall give the other parties notice if they reasonably expect a deposition,
23 hearing, or other proceeding to include Protected Material so that the other Parties can ensure
24 that only authorized individuals who have signed the “Acknowledgment and Agreement to Be
25 Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a
26 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

28 Transcripts containing Protected Material shall have an obvious legend on the title

1 page that the transcript contains Protected Material, and the title page shall be followed by a list
2 of all pages (including line numbers as appropriate) that have been designated as Protected
3 Material and the level of protection being asserted by the Designating Party. The Designating
4 Party shall inform the court reporter of these requirements. Any transcript that is prepared before
5 the expiration of a 21-day period for designation shall be treated during that period as if it had
6 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety
7 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as
8 actually designated.

9 (c) for information produced in some form other than documentary or electronic
10 and for any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information or item is stored the legend
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
13 a portion or portions of the information or item warrant protection, the Producing Party, to the
14 extent practicable, shall identify the protected portion(s) and specify the level of protection being
15 asserted.

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive the
18 Designating Party’s right to secure protection under this Order for such material. Upon timely
19 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
20 material is treated in accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
24 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
25 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
26 right to challenge a confidentiality designation by electing not to mount a challenge promptly
27 after the original designation is disclosed.
28

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process by providing written notice of each designation it is challenging and
3 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been
4 made, the written notice must recite that the challenge to confidentiality is being made in
5 accordance with this specific paragraph of the Protective Order. The Parties shall attempt to
6 resolve each challenge in good faith and must begin the process by conferring directly (in voice
7 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
8 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
9 the confidentiality designation was not proper and must give the Designating Party an
10 opportunity to review the designated material, to reconsider the circumstances, and, if no change
11 in designation is offered, to explain the basis for the chosen designation. A Challenging Party
12 may proceed to the next stage of the challenge process only if it has engaged in this meet and
13 confer process first or establishes that the Designating Party is unwilling to participate in the
14 meet and confer process in a timely manner.

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
16 court intervention, the Challenging Party shall file and serve a motion to remove confidentiality
17 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
18 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
19 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
20 accompanied by a competent declaration affirming that the movant has complied with the meet
21 and confer requirements imposed in the preceding paragraph. Failure by the Challenging Party
22 to make such a motion including the required declaration within 21 days (or 14 days, if
23 applicable) shall automatically waive the right to object to the confidentiality designation for
24 each challenged designation. Except where waived under this paragraph, the Challenging Party
25 may file a motion challenging a confidentiality designation at any time if there is good cause for
26 doing so, including a challenge to the designation of a deposition transcript or any portions
27 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
28 declaration affirming that the movant has complied with the meet and confer requirements

1 imposed by the preceding paragraph.

2 The burden of persuasion in any such challenge proceeding shall be on the
3 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass
4 or impose unnecessary expenses and burdens on other Parties) may expose the Challenging Party
5 to sanctions. Unless the Challenging Party has waived the confidentiality designation by failing
6 to file a motion to retain confidentiality as described above, all Parties shall continue to afford
7 the material in question the level of protection to which it is entitled under the Producing Party's
8 designation until the Court rules on the challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a Non-Party in connection with this case only for
12 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
13 disclosed only to the categories of persons and under the conditions described in this Order.
14 When the litigation has been terminated, a Receiving Party must comply with the provisions of
15 Section 13 below (FINAL DISPOSITION).

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

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
20 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
21 disclose any information or item designated "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
24 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
25 Bound" that is attached hereto as Exhibit A;

26 (b) the officers, directors, and employees of the Receiving Party to whom
27 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
28

1 and Agreement to Be Bound” (Exhibit A);

2 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
3 reasonably necessary for this litigation and who have signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and
7 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
8 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
11 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
12 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
13 separately bound by the court reporter and may not be disclosed to anyone except as permitted
14 under this Stipulated Protective Order.

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

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
19 the Designating Party, a Receiving Party may disclose any information or item designated
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
23 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
24 Bound” that is attached hereto as Exhibit A;

25 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
26 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
27 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been
28 followed;

1 (c) the court and its personnel;

2 (d) court reporters and their staff, professional jury or trial consultants, and
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
4 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

5 (e) the author or recipient of a document containing the information or a custodian
6 or other person who otherwise possessed or knew the information;

7 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

9 (a) Unless otherwise ordered by the court or agreed to in writing by the
10 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
11 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating
13 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
14 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
15 (2) sets forth the full name of the Expert and the city and state of his or her primary residence,
16 (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
17 employer(s), (5) identifies each person or entity from whom the Expert has received
18 compensation or funding for work in his or her areas of expertise or to whom the expert has
19 provided professional services, including in connection with a litigation, at any time during the
20 preceding five years,¹ and (6) identifies (by name and number of the case, filing date, and
21 location of court) any litigation in connection with which the Expert has offered expert
22 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
23 preceding five years.

24 (b) A Party that makes a request and provides the information specified in the
25

26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
27 party, then the Expert should provide whatever information the Expert believes can be disclosed
28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 preceding respective paragraphs may disclose the subject Protected Material to the identified
2 Expert unless, within 14 days of delivering the request, the Party receives a written objection
3 from the Designating Party. Any such objection must set forth in detail the grounds on which it is
4 based.

5 (c) A Party that receives a timely written objection must meet and confer with the
6 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
7 agreement within seven days of the written objection. If no agreement is reached, the Party
8 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
9 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court
10 to do so. Any such motion must describe the circumstances with specificity, set forth in detail
11 the reasons why disclosure to the Expert is reasonably necessary, assess the risk of harm that the
12 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
13 In addition, any such motion must be accompanied by a competent declaration describing the
14 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
15 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
16 to approve the disclosure.

17 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
18 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
19 proposed) outweighs the Receiving Party's need to disclose the Protected Material to the Expert.

20
21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
22 OTHER LITIGATION

23
24 If a Party is served with a subpoena or a court order issued in other litigation that
25 compels disclosure of any information or items designated in this action as "CONFIDENTIAL"
26 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall
28 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the Party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or order is
3 subject to this Protective Order. Such notification shall include a copy of this Stipulated
4 Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.²

7 If the Designating Party timely seeks a protective order, the Party served with the
8 subpoena or court order shall not produce any information designated in this action as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
10 determination by the court from which the subpoena or order issued, unless the Party has
11 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
12 expense of seeking protection in that court of its confidential material – and nothing in these
13 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
14 disobey a lawful directive from another court.

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

17 (a) The terms of this Order are applicable to information produced by a Non-
18 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
20 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
21 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
24 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
25

26 _____
27 ² The purpose of imposing these duties is to alert the interested Parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
its confidentiality interests in the court from which the subpoena or order issued.

1 Party shall:

2 1. promptly notify in writing the Requesting Party and the Non-Party
3 that some or all of the information requested is subject to a confidentiality agreement with a
4 Non-Party;

5 2. promptly provide the Non-Party with a copy of the Stipulated
6 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
7 description of the information requested; and

8 3. make the information requested available for inspection by the
9 Non-Party.

10 (c) If the Non-Party fails to object or seek a protective order from this court
11 within 14 days of receiving the notice and accompanying information, the Receiving Party may
12 produce the Non-Party's confidential information responsive to the discovery request. If the
13 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
14 in its possession or control that is subject to the confidentiality agreement with the Non-party
15 before a determination by the court.³ Absent a court order to the contrary, the Non-Party shall
16 bear the burden and expense of seeking protection in this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26

27 ³ The purpose of this provision is to alert the interested parties to the existence of a Non-Party
28 and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 PROTECTED MATERIAL
2

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection, the
5 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
6 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
7 an e-discovery order that provides for production without prior privilege review. Pursuant to
8 Federal Rule of Evidence 502(d) and (e), insofar as the Parties reach an agreement on the effect
9 of disclosure of a communication or information covered by the attorney-client privilege or work
10 product protection, the Parties may incorporate their agreement in the protective order submitted
11 to the court.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to disclosing or
17 producing any information or item on any ground not addressed in this Stipulated Protective
18 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
19 the material covered by this Protective Order.

20 12.3 Export Control. Disclosure of Protected Material shall be subject to all
21 applicable laws and regulations relating to the export of technical data contained in such
22 Protected Material, including the release of such technical data to foreign persons or nationals in
23 the United States or elsewhere. The Producing Party shall be responsible for identifying any
24 such controlled technical data, and the Receiving Party shall take measures necessary to ensure
25 compliance.

26 12.4 Filing Protected Material. Without written permission from the
27 Designating Party or a court order secured after appropriate notice to all interested persons, a
28 Party may not file in the public record in this action any Protected Material. A Party that seeks

1 to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
2 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
3 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
4 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
5 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
6 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,
7 then the Receiving Party may file the Protected Material in the public record pursuant to Civil
8 Local Rule 79-5(e) unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2

3 DATED: October 21, 2011 /s/ Laura L. Chapman
4 Laura L. Chapman
5 FOLEY & LARDNER LLP
6 Attorneys for Plaintiff

6

7 DATED: October 21, 2011 /s/ Lawrence G. Townsend
8 Lawrence G. Townsend
9 LAW OFFICES OF LAWRENCE G. TOWNSEND
10 Attorneys for Defendant

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11 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11

12 DATED: 10/25/2011 
13 Hon. Claudia Wilken
14 United States District Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name],
5 of _____ [print or type full address], declare under penalty of
6 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
7 issued by the United States District Court for the Northern District of California on _____
8 [date] in the case of *Clear Advantage Direct Mail, Inc. v. Action Direct Marketing, Inc.*, Case
9 No. CV-11-3606 CW. I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order, and I understand and acknowledge that failure to so comply could expose me
11 to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated Protective Order
13 to any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Northern District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone number] as my California
19 agent for service of process in connection with this action or any proceedings related to
20 enforcement of this Stipulated Protective Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 [printed name]

26 Signature: _____

27 [signature]

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Electronic Filing Attestation Pursuant to General Order No. 45 (X)(B)

I, Laura L. Chapman, attest under penalty of perjury that concurrence in the filing of this document has been obtained from Lawrence G. Townsend.

/s/ Laura L. Chapman
Laura L. Chapman