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**\*E-FILED 07-02-2010\***

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA-SAN JOSE DIVISION

XCENTRIC VENTURES, LLC, an  
Arizona Corporation,

Plaintiff,

v.

ELIZABETH ARDEN d/b/a  
COMPLAINTSBOARD.COM, et al.,

Defendant.

~~Case No. C 09-80309 MISC WXRK~~  
Case No. C 10-80076 MISC JF (HRL)

Judge: Hon. Patricia V. Turnbull

~~PROPOSED~~  
PROTECTIVE ORDER PURSUANT  
TO COURT'S JANUARY 27, 2010  
ORDER DENYING MOTION TO  
QUASH SUBPOENA FOR  
INFORMATION FROM GOOGLE,  
INC.

**(MODIFIED BY THE COURT)**

The Court, having read and considered the Stipulation re: Form of Protective Order that has been filed by Plaintiff Xcentric Ventures, LLC ("XV") and Defendant Elizabeth Arden d/b/a Complaintsboard.com ("CB") (each a "Party" and collectively "the Parties"), and GOOD CAUSE for entry of such an Order appearing for the reasons stated in the Joint Stipulation, hereby ORDERS that the following provisions are made the ORDER of the Court.

**PROTECTIVE ORDER**

1. Documents generated by or in the custody of any Party or third party including Google, Inc., specifically including correspondence, responses to

1 written discovery and deposition questions, photographs, notes, blueprints,  
2 software source code, software object code, marketing materials such as surveys  
3 and analyses, vendor lists and contacts, customer lists, accounting information,  
4 materials related to the development of intellectual property, all information  
5 which constitutes trade secrets under California Civil Code § 3426.1 *et seq.*, all  
6 confidential research, development or commercial information within the meaning  
7 of Rule 26(c)(7) of the Federal Rules of Civil Procedure, third party documents or  
8 information held or possessed by a Party subject to enforceable obligations of  
9 confidentiality in favor of the third party, tangible things which fall into the  
10 foregoing categories, and any electronically stored information which falls into  
11 any of the foregoing categories (hereinafter collectively identified as  
12 “information”), except information which is publicly available, is subject to this  
13 Protective Order.

14         2. Any Party to this action who reasonably believes that any such  
15 information is a trade secret within the meaning of California Civil Code § 3426.1  
16 *et seq.*, or other confidential research, development or commercial information  
17 within the meaning of Rule 26(c) (7) of the Federal Rules of Civil Procedure shall  
18 have the right through its counsel to designate such information  
19 “CONFIDENTIAL” in accordance with Paragraphs 3 or 5 below. Such  
20 designated information shall thereafter be subject to the terms of this Protective  
21 Order, and use or disclosure of information so designated shall be restricted as set  
22 forth herein.

23         3. To designate information as confidential information and thereby  
24 subject it to this Protective Order, the Party disclosing the information shall place  
25 upon the document, thing, paper, or other tangible embodiments of the  
26 information, a legend substantially as follows:

27                 CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER  
28

1 Except as otherwise set forth herein, non-tangible information shall be  
2 expressly designated as confidential information subject to this Protective Order at  
3 the time of its disclosure or such status shall be confirmed in writing by the  
4 disclosing Party within a reasonable time after the disclosure.

5 4. The information designated “CONFIDENTIAL -- SUBJECT TO  
6 PROTECTIVE ORDER” as discussed in paragraph 3 above, and all tangible  
7 embodiments thereof, all copies thereof, the substance thereof, and all information  
8 contained herein (“Confidential Material”):

9 (a) shall not be disclosed or distributed by counsel, or by any other  
10 person who receives, views or hears the Confidential Material subject to the  
11 provisions of this Protective Order (collectively, a “receiving person”) to any  
12 person other than to (1) counsel for a Party, and such counsel’s secretaries,  
13 paralegals, and other regular support staff; (2) Parties or partners, directors,  
14 officers, and regular employees of a Party to the extent such disclosure is  
15 necessary for the trial or preparation for trial of the captioned action; (3) expert  
16 witnesses or consultants hired by counsel for either Party, who are assisting  
17 counsel in preparation of this action for trial; and (4) the Court and court  
18 employees;

19 (b) shall not be used or disclosed by any receiving person for any  
20 purpose other than the enforcement of XV’s judgment against CB, except where  
21 disclosure is lawfully required in discovery or pursuant to order of a court of  
22 competent jurisdiction in another legal action or proceeding; *provided, however,*  
23 that the receiving person shall give the disclosing Party notice that disclosure of  
24 Confidential Material is being sought in another action or proceeding in sufficient  
25 time to allow the disclosing Party to apply for a protective order limiting such  
26 disclosure in such action or proceeding.

1 (c) shall not be disclosed to any person within the categories of  
2 paragraphs 4(a) (2) and 4(a) (3), unless the provisions of paragraph 8 of this  
3 Protective Order are agreed to and followed.

4 5. To designate information as for attorneys' review only and thereby  
5 subject it to this Protective Order, the Party disclosing the information shall place  
6 upon the document, thing, paper, or other tangible embodiments of the  
7 Information, a legend substantially as follows:

8 CONFIDENTIAL -- ATTORNEYS ONLY

9 Except as otherwise set forth herein, non-tangible information shall be  
10 expressly designated as for attorneys' review only subject to this Protective Order  
11 at the time of its disclosure or such status shall be confirmed in writing by the  
12 disclosing Party within a reasonable time after the disclosure.

13 Party designating information for attorneys' review only shall do so only  
14 upon a good faith belief that disclosure other than subject to these terms may  
15 cause the Party to suffer serious competitive or commercial damage.

16 6. The information designated "CONFIDENTIAL -- ATTORNEYS  
17 ONLY" as discussed in paragraph 5 above, and all tangible embodiments thereof,  
18 all copies thereof, the substance thereof, and all information contained therein  
19 ("Attorneys Only Material"):

20 (a) shall not be disclosed or distributed by counsel, or by any other  
21 person who receives, views or hears the Attorneys Only Material subject to the  
22 provisions of this Protective Order (collectively, a "receiving person") to any  
23 person other than to (1) counsel for a Party, and counsel's secretaries, paralegals,  
24 and other support staff; (2) independent consulting or testifying experts hired by  
25 counsel for either Party, not affiliated with, employed by or regularly providing  
26 consulting services to either of the Parties or to a direct commercial competitor of  
27 a Party, who are assisting counsel in preparation of this action for trial; and (3) the  
28 Court and court employees;

1 (b) shall not be used or disclosed by any receiving person for any  
2 purpose other than the enforcement of XV's judgment against CB, except where  
3 disclosure is lawfully required in discovery or pursuant to order of a court of  
4 competent jurisdiction in another legal action or proceeding; *provided, however,*  
5 that the receiving person shall give the disclosing Party notice that disclosure of  
6 Attorneys Only Material is being sought in another action or proceeding in  
7 sufficient time to allow the disclosing Party to apply for a protective order limiting  
8 such disclosure in such action or proceeding;

9 (c) shall not be disclosed to any person within the category of  
10 paragraph 6(a) (2) unless the provisions of paragraph 8 of this Protective Order  
11 are agreed to and followed.

12 7. Subject to public policy and further Court Order, nothing shall be  
13 filed under seal, and the Court shall not be required to take any further action with  
14 regard to any material that a Party has designated as Confidential Material or  
15 Attorneys Only Material without separate prior Court Order made after  
16 application by either Party.

17 8. Prior to disclosing any Confidential Material or Attorneys Only  
18 Material to any person described in paragraphs 4(a)(2), 4(a)(3), or 6(a)(2), counsel  
19 for the respective Party proposing to make such disclosure shall do the following:

20 (a) Counsel shall explain the contents of this Protective Order to  
21 the person to whom disclosure is to be made. The receiving person shall agree to  
22 be bound by the terms of this Protective Order by executing a Confidential  
23 Disclosure Declaration in form and content substantially as set forth in Addendum  
24 "1" attached to this Protective Order. Counsel securing such declarations shall  
25 maintain the originals of all such declarations.

26 (b) Counsel for a Party retaining an independent expert described  
27 in paragraph 6(a)(2) shall furnish the expert's signed Confidential Disclosure  
28 Declaration and current Curriculum Vitae to counsel for the adverse Party not less

1 than ten (10) calendar days prior to disclosing any Attorneys Only material to that  
2 expert. If the adverse Party objects to the proposed disclosure of Attorneys Only  
3 Material to that expert, his or its counsel shall, within three (3) business days after  
4 receipt of the expert's materials, give written notice stating the objections and the  
5 specific grounds therefor, and requesting that counsel meet and confer in a good  
6 faith effort to resolve such objections without the need for Court intervention. If  
7 the Parties are unable to resolve such objections on a voluntary basis, then the  
8 Party objecting to such disclosure may, not more than ten (10) days following the  
9 meet and confer meeting, file a motion seeking an Order prohibiting or limiting  
10 disclosure of Attorneys Only Material to such expert. Such motion shall comply  
11 with and be governed by applicable Local Rules.

12 (c) If an objection to disclosure is timely served, and if the parties  
13 are thereafter unable to voluntarily resolve the objections and a motion under  
14 Local Rule 37 is timely filed, no disclosure of Attorneys Only Material shall be  
15 made until the Court has ruled on the motion or the Parties have reached a  
16 voluntary agreement and formally withdrawn the motion. If either (i) no timely  
17 written objection is served, or (ii) no timely motion is filed, counsel for the Party  
18 retaining the expert may proceed with any Attorneys Only Material disclosures  
19 otherwise allowed under this Protective Order.

20 9. Documents need not be designated as Confidential Material or  
21 Attorneys Only Material at the time of a document inspection; however, such  
22 documents shall be so designated as appropriate at the time copies are delivered to  
23 the opposing Party. A response to an interrogatory or request for admission shall  
24 be so designated at or prior to the time the response is served on an opposing Party  
25 by placing the appropriate notation prominently on each answer or response  
26 containing information deemed confidential. Failure to designate documents or  
27 tangible things as Confidential or Attorneys Only at the time of production shall  
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1 not constitute a waiver of such claim if the designation is made within a  
2 reasonable time thereafter.

3 10. The Parties may agree on any method of production of documents.  
4 Absent some other express agreement by the Parties made prior to any inspection;  
5 the following procedure is to be followed in any inspections of the Parties'  
6 original documents and things:

7 (a) The inspections shall be limited to counsel for the Parties, and  
8 such counsel's secretaries, paralegals, and other regular support staff;

9 (b) All documents and things produced for inspection will  
10 temporarily be treated as if they had been stamped "Confidential: Attorneys Only"  
11 pursuant to this Protective Order regarding confidential information. For the  
12 purposes of these documents and things, it will not be necessary for the producing  
13 Party to have them stamped confidential, and the producing Party will not be  
14 deemed to have waived any confidential designation by the lack of a confidential  
15 legend on the documents and things at the time of inspection; and

16 (c) During the course of the inspection, the inspecting personnel  
17 will tag those documents which are to be copied and later provided. Upon  
18 obtaining photocopies of the tagged documents, the producing Party will then  
19 stamp the "Confidential -- Subject to Protective Order" or "Confidential --  
20 Attorneys Only" legend on those documents that the producing Party believes  
21 should be so designated. Upon receipt of the photocopied documents, the  
22 inspecting personnel will no longer be required to treat as Confidential or  
23 Confidential: Attorneys Only those documents and things that do not bear the  
24 appropriate legend. However, the inspecting personnel will continue to treat as  
25 Confidential -- Attorneys Only all other documents that were reviewed but were  
26 not tagged to be photocopied.

27 11. Should any Party obtain documents or information from a third party,  
28 including but not limited to Google, Inc., by subpoena or otherwise, which contain

1 or can reasonably be assumed to contain, Confidential Information of another  
2 Party, all such documents and information shall be treated by the receiving Party  
3 as "Confidential - Attorneys Only" under this Protective Order, unless and until  
4 such documents and information have been disclosed by the receiving Party to the  
5 other Party and the other Party has agreed pursuant to paragraph 18 that all or any  
6 designated part of such documents and information shall be designated as  
7 Confidential or "Confidential – Attorneys Only", or shall not be subject to this  
8 Protective Order.

9 12. (a) During any deposition, hearing or other proceeding,  
10 Confidential Material may be disclosed to any deponent or witness (i) who is  
11 indicated on the face of the document to be its originator, author or recipient of a  
12 copy of said document, (ii) who has been designated by the producing Party to  
13 testify on its behalf (as in the procedure under Fed.R.Civ.P. 30(b)(6)), or (iii) who  
14 is another person entitled hereunder to have access to Confidential Material,  
15 including Court Reporters hired by counsel of either Party who are not and have  
16 never been affiliated with the Parties; and to no other persons unless prior  
17 authorization is obtained from counsel representing the producing Party or from  
18 the Court.

19 (b) Parties may, on the record during a deposition, hearing or other  
20 proceeding or in writing within twenty (20) days after receipt of a deposition or  
21 hearing transcript, designate to all Parties any pages or lines thereof containing  
22 Confidential Material or Attorneys Only Material. The portion of any deposition  
23 or hearing transcript so designated shall be transcribed or marked by each Party as  
24 a separate record, and access thereto shall be limited in accordance with the terms  
25 of this Order.

26 13. The termination of proceedings in this action shall not relieve any  
27 person to whom confidential information was disclosed from the obligation of  
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1 maintaining the confidentiality of such information in accordance with the  
2 provisions of this Protective Order.

3 14. Upon final termination of this action or satisfaction of XV's  
4 judgment, each Party shall assemble and, as agreed, shall either destroy or return  
5 to the disclosing Party within thirty (30) days all items designated as Confidential  
6 Material or Attorneys Only Material. Written verification of destruction shall be  
7 given immediately after such destruction, and receipt of material returned to the  
8 disclosing Party shall be acknowledged by the disclosing Party in writing.

9 15. Any document or testimony transcript designated as Confidential  
10 Material or Attorneys Only Material pursuant to this Protective Order will be  
11 treated as such pursuant hereto, unless confidentiality is waived in writing by the  
12 Party asserting it or an order is obtained in accordance with Paragraphs 18 and 19.  
13 To aid the Court in considering requests pursuant to Paragraphs 18 and 19, the  
14 Parties agree that confidential information shall not include information that:

15 (a) was, is, or becomes public knowledge, not in violation of this  
16 Protective Order, as shown by written documents; or

17 (b) was previously known to the receiving Party or was developed  
18 independently by the receiving Party, as shown by written documents.

19 16. Inadvertently allowing an initial inspection of documents (including  
20 physical objects) shall not constitute a waiver of the attorney/client privilege or  
21 work product immunity with respect to any document so inspected. Inadvertently  
22 furnishing copies to the opposing Party also shall not constitute a waiver of the  
23 attorney/client privilege or work product immunity with respect to any document  
24 or physical object so furnished, if within a reasonable period of time after the  
25 opposing counsel's receipt of such documents, the producing Party designates any  
26 such document as within either the attorney/client privilege or work product  
27 immunity and requests return of any such documents to the producing Party.  
28 Upon request by the producing Party for return of any such documents designated

1 as within either the attorney/client privilege or work product immunity, the  
2 receiving Party immediately shall return to the producing Party all copies of such  
3 documents and shall destroy all notes or summaries made regarding such  
4 documents. Nothing herein shall prevent the receiving Party from challenging the  
5 propriety of the attorney/client privilege or work product immunity designation by  
6 filing an appropriate motion with the Court pursuant to the provisions of Local  
7 Rule 37.

8 17. Nothing in this Protective Order shall foreclose or limit any Party  
9 from asserting that any information designated confidential pursuant to this  
10 Protective Order is, in fact, not protectable as such within the meaning of  
11 Rule 26(c)(7) of the Federal Rules of Civil Procedure and/or paragraph 14 above.  
12 The failure to designate information in accordance with this Protective Order and  
13 the failure to object to a designation at a given time shall not preclude the filing of  
14 a motion pursuant at a later date seeking to impose such designation or  
15 challenging the propriety thereof, **unless a prompt challenge is necessary to avoid foreseeable  
substantial unfairness, unnecessary economic burdens, or significant disruption or delay.**

16 18. The Parties may by written stipulation waive all or any part of their  
17 rights under this Protective Order and any Party may seek an order modifying this  
18 Protective Order. Any Party shall also have the right to apply to the Court for an  
19 order modifying or vacating the strictures on disclosure imposed by this Protective  
20 Order as applied to any items designated pursuant hereto.

21 19. The Parties shall follow the procedure set forth in applicable Local  
22 Rules in any dispute regarding the confidentiality of documents or information, or  
23 whether information or documents are properly designated “CONFIDENTIAL –  
24 SUBJECT TO PROTECTIVE ORDER” or “ CONFIDENTIAL ATTORNEYS  
25 ONLY” under Paragraphs 3 or 5 above.

26 20. To the extent that any discovery is taken in this action of any person  
27 who is not a Party to this action (a “Third Party”), and in the event such Third  
28 Party or any Party contends that the discovery sought involves confidential,

1 proprietary, or trade-secret protected material, then such Third Party shall be  
2 asked (but shall not be obligated) to agree in writing to be bound by and to have  
3 his, her or its confidential material protected by this Protective Order. Upon, and  
4 subject to, such Third Party's execution of an agreement to be bound hereby, such  
5 Third Party's confidential information shall be protected by and handled in  
6 accordance with this Protective Order.

7 **21. For a period of six months after the satisfaction of judgment, this court will retain**  
8 **jurisdiction to enforce the terms of this order.**

9 **PURSUANT TO STIPULATION, AS MODIFIED BY THE COURT,**  
10 **SO ORDERED: ~~April~~ 2, 2010.**

11 July

12   
13 Hon. ~~Patricia V. Turnbull~~ Howard R. Lloyd  
14 United States Magistrate Judge

15 Presented By:

16 GINGRAS LAW OFFICE, PLLC  
17 David S. Gingras

18 Attorneys for Xcentric Ventures, LLC

19 -and-

20 PICK & BOYDSTON, LLP  
21 Erik S. Syverson

22 Attorneys for Elizabeth Arden d/b/a Complaintsboard.com  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA-SAN JOSE DIVISION

XCENTRIC VENTURES, LLC, an  
Arizona Corporation,  
  
Plaintiff,  
  
v.  
  
ELIZABETH ARDEN d/b/a  
COMPLAINTSBOARD.COM, et al.  
  
Defendant.

**10-80076MISC JF (HRL)**  
Case No. C ~~09-80309 MISC JW (PT)~~  
  
~~Judge: Hon. Patricia V. Turnbull~~  
  
~~Courtroom: 5~~

CONFIDENTIAL DISCLOSURE  
DECLARATION

This Confidential Disclosure Declaration is being entered into in connection with and in furtherance of that certain Protective Order (the "Protective Order") that has been stipulated to by the parties and approved as the Order of the Court in the matter of *Xcentric Ventures, LLC v. Elizabeth Arden d/b/a Complaintsboard.com, et al.*, Civil Action No. C ~~09-80309 MISC JW (PT)~~ pending in the United States District Court for the Northern District of California, San Jose Division.

I, \_\_\_\_\_, am employed by \_\_\_\_\_. In connection with this action, I am:  
  
\_\_\_\_\_ a director, officer or employee of \_\_\_\_\_ and in that capacity I am directly assisting in this action and authorized to

**ADDENDUM TO PROTECTIVE ORDER**

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receive Confidential Material pursuant to paragraph 4(a)(2) of the Protective Order;

an expert witness or consultant hired by a party and in that capacity I am assisting counsel in preparation of this action for trial and authorized to receive Confidential Material pursuant to paragraph 4(a)(3) or 6(a)(2) of the Protective Order.

I have read, understand and agree to comply with and be bound by the terms of the Protective Order. I further state that the Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any Confidential Material, as defined in the Protective Order, for any purpose not appropriate or necessary to my participation in this action or disclosing any Confidential Material to any person not entitled to receive them under the terms of the Stipulated Protective Order. To the extent I have been given access to Confidential Material, I will not in any way disclose, discuss, or exhibit such Confidential Material except to those persons whom I know (a) are authorized under the Protective Order to have access to such information, and (b) have executed a Confidential Disclosure Declaration. I will return, on request, all materials containing Confidential Material, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the Northern District of California for purposes of its enforcement and the enforcement of my obligations under this Confidential Disclosure Declaration.

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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\_\_, at \_\_\_\_\_.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)