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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SATMODO, LLC,

12 Plaintiff,

13 v.

14 WHENEVER COMMUNICATIONS,  
15 LLC, et al.,

16 Defendants.  
17  
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Case No.: 3:17-cv-192-AJB-NLS

**ORDER ON MOTION FOR ENTRY  
OF PROTECTIVE ORDER**

**and**

**PROTECTIVE ORDER, AS  
MODIFIED BY THE COURT**

**(ECF No. 38)**

19  
20 Before the Court is the Plaintiff's Motion for Entry of a Protective Order. ECF No.  
21 38. In response, the Court set out a briefing schedule and hearing date. ECF No. 39.  
22 Defendants filed an opposition on February 14, 2018 and Plaintiff filed a reply on  
23 February 21, 2018. ECF Nos. 42, 43. The Court deems this motion suitable for  
24 determination on the papers submitted and without oral argument. CivLR 7.1 (d)(1).

25 **I. LEGAL STANDARD**

26 "Rule 26(c), setting forth grounds for protective orders, was enacted as a safeguard  
27 for the protection of parties and witnesses in view of the broad discovery rights  
28 authorized in Rule 26(b)." *United States v. Columbia Broad. Sys., Inc.*, 666 F.2d 364,

1 368-69 (9th Cir. 1982). “Generally, the public can gain access to litigation documents  
2 and information produced during discovery unless the party opposing disclosure shows  
3 ‘good cause’ why a protective order is necessary.” *Phillips ex rel. Estates of Byrd v. Gen.*  
4 *Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002). In order to satisfy the good cause  
5 standard, the party seeking the protective order must explain what specific prejudice or  
6 harm will result without protection. *Id.* at 1211. “Rule 26(c) confers broad discretion on  
7 the trial court to decide when a protective order is appropriate and what degree of  
8 protection is required . . . [because the] trial court is in the best position to weigh fairly  
9 the competing needs and interests of parties affected by discovery.” *Seattle Times Co. v.*  
10 *Rhinehart*, 467 U.S. 20, 36 (1984).

## 11 **II. DISCUSSION**

12 This case alleges that Defendants participated in a click-fraud scheme to force  
13 Plaintiff’s daily advertising budget, calculated on a per click basis, to be reached  
14 prematurely and clear advertising availability for its competitors, including defendant  
15 Whenever Communications. *See* ECF No. 16. Plaintiff argues that a protective order is  
16 necessary to protect privileged and proprietary information. ECF No. 38 at 1. Included  
17 within the Plaintiff’s proposed protective order is further explanation:

18 Disclosure and discovery in this action are likely to involve  
19 production of confidential proprietary, or private information  
20 and, for competitive reasons, are normally kept confidential. The  
21 materials to be exchanged throughout the course of the litigation  
22 between the parties may contain trade secret or other confidential  
23 research, technical, cost, price, marketing or other commercial  
24 information, as is contemplated by Federal Rules of Civil  
25 Procedure 26(c)(7). Special protection from public disclosure  
26 and use for any purpose other than prosecuting this litigation may  
27 be warranted. . . . The nature of the claims involved in this action  
28 may require discovery into competitive sensitive information,  
including potentially from third parties. A private agreement  
between the Parties would be insufficient to alleviate the Parties’  
concerns that such information remain confidential. The entry of  
a protective order is designed to prevent the unauthorized  
disclosure and use of such information of Parties and Non-Parties

1 during the litigation and after it has been concluded. A protective  
2 order will also facilitate timely production of material from both  
3 Parties and Non-Parties. ...

4 ECF No. 38-1, Ex. C.

5 Plaintiff submits that it will not produce confidential and proprietary documents  
6 recently requested by the Defendants—such as “full and complete reports and logs  
7 identifying clicks on Plaintiff’s paid ads, efforts Plaintiff has employed to try and block  
8 and/or monitor and track future attempts at unauthorized access, documents evidencing  
9 Plaintiff’s ‘historical and recent sales, costs, expenses, and conversion rates...’—to the  
10 Defendants, a direct competitor, absent a protective order or another order of the court  
11 compelling production. ECF No. 43 at 2.

12 In opposition to the motion for entry of a protective order, Defendant first argues  
13 that Plaintiff fails to demonstrate good cause for a protective order “at this juncture of the  
14 case.” ECF No. 42 at 1-2. Defendant concedes “there may be need for a protective order  
15 on very limited categories of discovery later in the case,” but disputes that it is necessary  
16 now or for documents requested because “a material portion” of the ClickCease reports  
17 Plaintiff relies on to demonstrate fraudulent clicks have been included in filings before  
18 the Court. ECF No. 42 at 4. Defendants do not offer any proposed alternate categories,  
19 language, or its own proposed protective order. Defendant’s only specific challenge to  
20 any term of Plaintiff’s proposed protective order is to the definition of  
21 “‘CONFIDENTIAL’ Information or Items” on the grounds that it uses subjective terms,  
22 failing to identify a “*properly demarcated category* of legitimately confidential  
23 information.” *Id.* at 2 (emphasis in original).

24 While Plaintiff makes minimal effort to identify “what specific prejudice or harm  
25 will result without protection,” the Court is also unaware of any cases involving direct  
26 competitors where there was any disagreement that a protective order was warranted, as  
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1 Defendants appear to argue.<sup>1</sup> The potential for prejudice and/or harm are high when  
2 producing marketing, financial, or other confidential and proprietary information to a  
3 direct competitor. Thus, the Court will exercise its discretion to enter a blanket protective  
4 order. *Seattle Times Co. v. Rhinehart*, 467 U.S. at 36 (“Rule 26(c) confers broad  
5 discretion on the trial court to decide when a protective order is appropriate and what  
6 degree of protection is required.”)

7 Blanket protective orders are routinely approved for use in civil cases and  
8 consistent with the mandate that courts provide “just, speedy, and inexpensive” resolution  
9 in every action and proceeding. *Van v. Wal-Mart Stores, Inc.*, C 08-5296 PSG, 2011 WL  
10 62499, at \*2 (N.D. Cal. Jan. 7, 2011) (“Blanket protective orders serve the interests of a  
11 ‘just, speedy, and inexpensive’ determination of cases by avoiding the undue cost and  
12 delay that would ensue if courts had to make a good cause determination on a document-  
13 by-document basis for all documents exchanged in discovery that a party wished to  
14 protect.”). The Ninth Circuit implicitly acknowledged that the use of blanket protective  
15 orders conserves judicial resources-and taxpayer money-by eliminating the requirement  
16 that a party move for a protective order every time that party produces documents they  
17 contend are confidential. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,  
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21 <sup>1</sup> In the cases located by this Court involving direct competitors disputing a protective order, the parties  
22 only disputed the proper level of access for in house counsel. In none of the cases did the parties dispute  
23 that a blanket protective order was appropriate. *See, e.g., Life Techs. Corp. v. Ebioscience Inc.*,  
24 10CV2127 IEG NLS, 2011 WL 1597441, at \*1 (S.D. Cal. Apr. 26, 2011) (“The parties have agreed  
25 upon all but one of the terms of a protective order to cover the use of confidential information in this  
26 litigation. The issue presented to the Court for resolution is whether the in house attorneys ...should be  
27 able to access information produced by [the opposing party] as “Attorneys' Eyes Only.”); *Lindsey v.*  
28 *Elsevier Inc.*, 16-cv-00959 GPC DHB, 2016 WL 8731471, at \*1 (S.D. Cal. Aug. 19, 2016) (competitors  
“agreed upon a form of protective order in all respects except one: they disagree about whether the  
protective order should have an “Attorneys' Eyes Only” (“AEO”) level of confidentiality designation  
that would preclude Plaintiff from reviewing documents with that designation.”); *Newmark Realty*  
*Capital, Inc. v. BGC Partners, Inc.*, 16CV01702BLFSVK, 2017 WL 2591842, at \*2 (N.D. Cal. June 15,  
2017) (parties, competitors, agreed a protective order was appropriate, disagreed re scope of in house  
counsel access); *Intel Corp. v. VIA Techs., Inc.*, 198 F.R.D. 525, 528 (N.D. Cal. 2000) (motion to modify  
agreed upon protective order re scope of information permissibly shared with in-house counsel).

1 1131 (9th Cir.2003) (noting that use of a blanket protective order was “understandable for  
2 the unfiled documents given the onerous burden document review entails.”).

3 “While blanket protective orders are usually based on a joint request of the  
4 parties—and courts generally expect such cooperation among litigants—the agreement of  
5 all parties is not required so long as certain conditions are met.” *Van v. Wal-Mart*, 2011  
6 WL 62499, at \*2 (citing *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania*  
7 *House Group, Inc.*, 121 F.R.D. 264, 268 (M.D.N.C. 1988)). Specifically, the party  
8 requesting the protective order must “make some threshold showing of good cause to  
9 believe that discovery will involve confidential or protected information,” which “may be  
10 done on a generalized as opposed to document-by-document basis.” *Id.* Additionally,  
11 the parties “must agree to only invoke the designation in good faith.” *Id.* Finally, the  
12 party receiving documents must have the right to challenge the confidentiality  
13 designations assigned to documents. *Id.*

14 The Court finds that Plaintiff has satisfied the threshold showing of good cause to  
15 believe that discovery will involve confidential information. Plaintiff points to presently  
16 pending discovery requests from Defendant seeking financial and historical sales  
17 information. *See* ECF No. 43-1 at ¶ 4, Exs 1-2. Additionally, this lawsuit is between  
18 direct market competitors and discovery is likely to include further financial and trade  
19 secret information, such as the marketing budgets or strategies that are the subject of  
20 litigation.

21 Upon review of the proposed protective order submitted by Plaintiff, the Court  
22 finds that it contains all the other necessary conditions, including that confidentiality  
23 designations may only be invoked in good faith (*see* ¶¶ 2.1, 2.5, 5.1) and may be  
24 challenged by the receiving party (*see* ¶ 6).

25 Defendants raise a single objection to Plaintiff’s proposed protective order. *See*  
26 ECF No. 42 at 2 (objecting to proposed protective order section 2.1 “CONFIDENTIAL”  
27 Information or Items). Defendants’ specific objection is to the subjective nature of what  
28 constitutes confidential information, which is defined as:

1           **“CONFIDENTIAL”** Information or Items: Information  
2 (regardless of how generate [sic] stored, or maintained) or  
3 tangible things that a Party or Non-Party reasonably and in good  
4 faith believes to contain confidential or proprietary information  
5 that is not publicly available (such as commercial financial, trade  
secret, or other sensitive information) and that are treated  
confidentially by a Party [sic] Non-Party.

6 ECF No. 38-1, Ex. C at 10. Defendants offer no alternative proposed definition or  
7 categories for what can be properly considered or designated as “CONFIDENTIAL.”

8           In considering Defendant’s objection, the Court reviewed the Southern District’s  
9 model protective order (available on the Court’s website), and finds an equally subjective  
10 standard is used:

11                   Designation as “CONFIDENTIAL”: Any party may designate  
12 information as “CONFIDENTIAL” only if, in the good faith  
13 belief of such party and its counsel, the unrestricted disclosure  
14 of such information could be potentially prejudicial to the  
business or operations of such party.

15 Model Protective Order, ¶ 4(a).

16           The Court finds a subjective standard appropriate for two reasons: First, because  
17 the parties are in the best position to determine what documents are best designated  
18 “CONFIDENTIAL.” Second, because the protective order contains appropriate  
19 safeguards, such as requiring the parties not over-designate and providing a mechanism  
20 for the parties to challenge designations. While the Court finds these safeguards strike  
21 the proper balance, it will add language from the model protective order to further  
22 address Defendants’ concern.

23           In light of the foregoing, the Court hereby enters the following protective order, as  
24 modified by the Court from the proposed protective order submitted by Plaintiff:<sup>2</sup>

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28 <sup>2</sup> Apart from the change to the definition of “CONFIDENTIAL” Information and Items discussed above, the Court’s modifications to the proposed protective order corrects grammar and typographical errors,

1       **III. PROTECTIVE ORDER**

2       **1. PURPOSES AND LIMITATIONS**

3           Disclosure and discovery in this action are likely to involve production of  
4 confidential proprietary, or private information and, for competitive reasons, are normally  
5 kept confidential. The materials to be exchanged throughout the course of the litigation  
6 between the parties may contain trade secret or other confidential research, technical, cost,  
7 price, marketing or other commercial information, as is contemplated by Federal Rules of  
8 Civil Procedure 26(c)(7). Special protection from public disclosure and use for any  
9 purpose other than prosecuting this litigation may be warranted.

10          This Order does not confer blanket protections on all disclosures or responses to  
11 discovery and that the protection it affords from public disclosure and use extends only to  
12 the limited information or is entitled to confidential treatment under this Order or  
13 applicable legal principles.

14          The nature of the claims involved in this action may require discovery into  
15 competitive sensitive information, including potentially from third parties. A private  
16 agreement between the Parties would be insufficient to alleviate the Parties' concerns that  
17 such information remain confidential. The entry of a protective order is designed to prevent  
18 the unauthorized disclosure and use of such information of Parties and Non-Parties during  
19 the litigation and after it has been concluded. A protective order will also facilitate timely  
20 production of material from both Parties and Non-Parties.

21       **2. DEFINITIONS**

22           **2.1. "CONFIDENTIAL" Information or Items:** Information (regardless of  
23 how generated, stored, or maintained) or tangible things that a Party or Non-  
24 Party reasonably and in good faith believes to contain confidential or  
25 proprietary information that is not publicly available (such as commercial  
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27  
28 and remove inapplicable language and references to the Order being the result of a stipulation if the parties.

1 financial, trade secret, or other sensitive information), and that are treated  
2 confidentially by a Party or Non-Party, the unrestricted disclosure of which  
3 could be potentially prejudicial to the business or operations of such party.

4 **2.2. Designating Party:** A Party or Non-Party that designates information or  
5 items produced in disclosures or in responses to discovery as  
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’  
7 EYES ONLY.”

8 **2.3. Disclosure or Discovery Material:** All items or information, regardless of  
9 the medium or manner generated, stored, or maintained (including, among  
10 other things, testimony, transcripts, tangible things) that are produced or  
11 generated in disclosures or responses to discovery in this matter.

12 **2.4. Expert:** A person with specialized knowledge or experience in a matter  
13 pertinent to the litigation who has been retained by a Party or its Outside  
14 Counsel to serve as an expert witness consultant in this action and who is not  
15 a current or former employee of a Party or of a competitor of Party.

16 **2.5. “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”:**  
17 Competitively sensitive “CONFIDENTIAL” Information or Items, the  
18 disclosure of which would result in the disclosure of Information only known  
19 on a “need-to-know basis” and generally not known by individuals or entities  
20 not affiliated with a Party, and would cause injury to the producing Party’s  
21 commercial or competitive interests. There is a particularized need for this  
22 Information to be covered by the Order to protect information of a highly  
23 sensitive and confidential nature, as disclosure could create a substantial risk  
24 of harm to the Designating Party that could not be avoided by less restrictive  
25 means.

26 **2.6. Information:** Any document (whether in hard copy or a computer readable  
27 form), portion thereof, any type of evidence, any form of discovery  
28 contemplated under FRCP 26 through 36, any other information given in



1 writing or orally.

2 **2.7. Non-Party:** Any person or entity that is not a Party that produces information  
3 that the Non-Party or any Party contends should be treated as  
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’  
5 EYES ONLY” material in this action.

6 **2.8. Outside Counsel:** Attorneys with the firms of Matthew V. Herron and  
7 McCormick Barstow, LLP, and any other firm(s) subsequently appearing in  
8 this action on behalf of a Party. This shall include paralegals, secretaries and  
9 other support staff employed in the law firms identified.

10 **2.9. Producing Party:** A Party or Non-party that produces material designated as  
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’  
12 EYES ONLY” in this action.

13 **2.10. Professional Vendors:** Persons or entities that provide litigation support  
14 service (including but not limited to photocopying, videotaping, translating,  
15 preparing exhibits demonstrations, organizing, storing, and retrieving data in  
16 any form or medium), as well as the employees and subcontractors.

17 **2.11. Protected Material:** Any Information, Disclosure or Discovery Material that  
18 is designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —  
19 ATTORNEYS’ EYES ONLY.”

20 **2.12. Receiving Party:** A Party that receives “CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL — ATTORNEYS’ EYES ONLY” material from Producing  
22 Party.

### 23 **3. SCOPE**

24 The protections conferred by this Order cover Protected Material and Information  
25 copied extracted therefrom, as well as all copies, excerpts, summaries, or compilations  
26 thereof, plus testimony, conversations, or presentations by Parties or Outside Counsel to or  
27 in Court proceedings or in other settings that might reveal Protected Material.

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations imposed  
3 by this Order shall remain in effect until a Designating Party agrees otherwise in writing  
4 or the Court's order otherwise directs.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1. Exercise of Restraint and Care in Designating Material for Protection.**

7 Each Producing Party that designates information or items for protection under this  
8 Order must take care to limit any such designation to specific material that qualifies under  
9 the appropriate standard. A Designating Party must take care to designate for protection  
10 only those parts of the material documents, items, or oral or written communication that  
11 qualify so that other portions of the material documents, items, or communications for  
12 which protection is not warranted are not swept unjustifiability within the ambit of this  
13 Order.

14 If it comes to a Designating Party's attention that information or items that it  
15 designated for protection do not qualify for protection, the Designating Party must  
16 promptly notify all other Parties that it is withdrawing the mistaken designation.

17 **5.2. Manner and Timing of Designations.**

18 Except as otherwise provided in this Order, or as otherwise stipulated or ordered,  
19 Disclosure or Discovery Material that qualifies for protection under this Order must be  
20 clearly so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 **5.3 Information in documentary form** (e.g., paper or electronic documents,  
23 excluding transcripts depositions or other pretrial or trial proceedings): The Producing  
24 Party shall affix the designation of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL  
25 — ATTORNEYS' EYES ONLY" at the top or bottom of each page that contains protected  
26 material, in such a manner that will not interfere with the legibility of the document.

27 **5.4 Testimony given in depositions or in other pretrial or trial proceedings:**

28 All depositions or portions of depositions taken in this action, including exhibits thereto,

1 that discuss, contain, or constitute Information designated “CONFIDENTIAL” or  
2 “HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY” may be similarly  
3 designated. Confidentiality designations for depositions shall be made either on the record  
4 or by written notice to the other party within twenty-one (21) days following receipt of the  
5 transcript to do so. Only those portions of the testimony that are appropriately designated  
6 for protection within the twenty-one (21) days following receipt of the transcript shall be  
7 covered by the provisions this Order. Until expiration of the aforesaid twenty-one (21) day  
8 period, all deposition transcripts shall be considered and treated as “HIGHLY  
9 CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” unless otherwise agreed on the  
10 record at the deposition.

11 The deposition of any witness (or any portion of such deposition) that encompasses  
12 Information designated “Confidential” or “Confidential – Attorneys’ Eyes Only” shall be  
13 taken only in the presence of persons who are qualified to have access to such information.

14 Transcript pages containing Protected Material must be separately identified by the  
15 court reporter who must affix to the top of each such page the designation of  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”  
17 as instructed by the Party or Non-Party offering sponsoring the witness or presenting the  
18 testimony.

19 **5.5 Information produced in some form other than documentary and for any**  
20 **other tangible items:** The Producing Party shall affix, in a prominent place on the exterior  
21 of the container or containers in which the information or item is stored, the designation of  
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY.”  
23 If only portions of the information or item warrant protection, the Producing Party, to the  
24 extent practicable, shall identify the protected portions, specifying whether they qualify as  
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY.”  
26 When a tangible object is produced for inspection subject to this Order, a photograph there  
27 shall be produced at the time of inspection labeled with the desired designation. Thereafter,  
28 a knowledge learned or obtained as a result of the inspection shall be subject to this Order

1 in accordance with the designation.

2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 **6.1. Timing of Challenges:** Unless a prompt challenge to Designating Party’s  
4 confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
5 unnecessary economic burdens, or later significant disruption or delay of the litigation, a  
6 Party does not waive its right to challenge confidentiality designation by electing not to  
7 mount a challenge promptly after the original designation disclosed.

8 **6.2. Challenge Procedure:** Should a dispute arise between the Parties regarding  
9 confidentiality designation, the Parties hereby agree that such dispute will be resolved in  
10 accordance with the Court’s Civil Case Procedures, Section VI, regarding discovery  
11 disputes, including the meet and confer obligations and 45 day deadline contained therein.  
12 The burden of persuasion in any such judicial challenge proceeding shall be on the  
13 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to  
14 harass or impose unnecessary expenses and burdens on other parties) may expose the  
15 Challenging Party to sanctions. All parties shall continue to afford the material in question  
16 the level of protection to which is entitled under the Producing Party’s designation until  
17 the Court rules on the challenge.

18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 **7.1. Basic Principles:** A Receiving Party may use Protected Material disclosed or  
20 produced by another Party or Non-Party in connection with this case only for prosecuting,  
21 defending, or attempting to settle this litigation. Treatment of Protected Material by  
22 Outside Counsel in conformity with the designation shall not be construed in any way as  
23 an admission or agreement by any Party that the designated Information in fact or in law  
24 constitutes or contains any proprietary or confidential information.

25 The designation of any Information as being “CONFIDENTIAL” or “HIGHLY  
26 CONFIDENTIAL —ATTORNEYS’ EYES ONLY” pursuant to this Order shall not  
27 relieve the Designating Party from the burden imposed by the relevant substantive law.

28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order and must be stored and maintained by a Receiving Party  
2 at a location and in a secure manner that is consistent with the Receiving Party's or its  
3 firm's storage of client files. When the litigation has been terminated, a Receiving Party  
4 must comply with the provisions of Section 13 below.

5 **7.2. Disclosure of "CONFIDENTIAL" Information or Items:** Unless otherwise  
6 ordered the Court or permitted in writing by the Designating Party, a Receiving Party may  
7 disclose any information or item designated "CONFIDENTIAL" only to:

8 (a) the Receiving Party's Outside Counsel and their office associates, paralegals,  
9 legal assistants, stenographic and clerical employees, and Professional Vendors hired in  
10 the ordinary course representation to whom disclosure is reasonably necessary;

11 (b) the officers, directors, and employees of the Receiving Party to whom  
12 disclosure is reasonably necessary for this litigation and who have signed the  
13 "Acknowledgment and Agreement to Bound" attached hereto as Exhibit A;

14 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure  
15 is reasonably necessary and who have signed the "Acknowledgement and Agreement to be  
16 Bound" attached hereto Exhibit A;

17 (d) the Court and its personnel;

18 (e) court reporters retained to transcribe testimony and their staffs;

19 (f) the author of the document, the original source of the Information, or persons  
20 who received it; and

21 (g) mediators or other ADR professionals agreed on and retained by the Parties.

22 **7.3. Disclosure of "HIGHLY CONFIDENTIAL — ATTORNEY'S EYES**  
23 **ONLY" Information or Items:** Unless otherwise ordered by the Court or permitted in  
24 writing by the Designating Party, a Receiving Party may disclose any information or item  
25 designated "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" only to the  
26 persons designated in paragraphs 7.2 (a) (c), (d), (e), and (f).

27 **8. PROTECTED MATERIAL SOUGHT IN OTHER LITIGATION**

28 If a Receiving Party is served with a subpoena or an order issued in another litigation

1 that would compel disclosure of any Information or items designated in this action as  
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,”  
3 the Receiving Party must promptly notify the Designating Party, in writing, within sufficient  
4 time to allow the Designating Party to seek relief to stop the production of such Protected  
5 Material. Such notification must include a copy of the subpoena or court order.

6 The purpose of imposing this duty is to afford the Designating Party in this case an  
7 opportunity to try to protect its confidentiality interests in the court from which the subpoena  
8 or order is issued. The Designating Party shall bear the burdens and the expenses of  
9 seeking protection of its confidential material and nothing in these provisions should be  
10 construed as authorizing or encouraging the Receiving Party in this action to disobey a  
11 lawful directive from another court.

## 12 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
14 Protected Material to any person or in any circumstance not authorized under this Order,  
15 the Receiving Party must immediately (a) notify in writing the Designating Party of the  
16 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
17 Protected Material, (c) inform the person(s) to whom unauthorized disclosures were made  
18 of all the terms of this Order and provide a copy of this Order, and (d) require such  
19 person(s) to execute the “Acknowledgment and Agreement to be Bound” attached hereto  
20 Exhibit A.

## 21 **10. FILING PROTECTED MATERIAL**

22 Without written permission from the Designating Party, or Court Order, no Party  
23 shall file any Protected Material in the public record without first making a request, with  
24 notice to all Parties and interested persons, to file the material under seal pursuant to  
25 Paragraph 10.1 below.

### 26 **10.1 FILING UNDER SEAL**

27 Nothing shall be filed under seal, and the Court shall not be required to take any  
28 action, without separate prior order by the Judge before whom the hearing or proceeding

1 will take place, after application by the affected party with appropriate notice to opposing  
2 counsel. The parties shall follow and abide by applicable law, including Civ. L.R. 79.2,  
3 ECF Administrative Policies and Procedures, Section II.j, and the chambers' rules, with  
4 respect to filing documents under seal.

5 **11. INADVERTENT PRODUCTION OF PROTECTED MATERIAL**

6 Notwithstanding anything contrary herein, if a Party or Non-Party through  
7 inadvertence or mistake produces any Protected Material without designating it with the  
8 designation of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS'  
9 EYES ONLY," the Producing Party may give written notice to the Receiving Party that  
10 the Disclosure or Discovery Material contains Protected Material a should be treated as  
11 such in accordance with the provisions of this Order. Upon receipt of such notice the  
12 Receiving Party must treat such Disclosure or Discovery Material as Protected Material  
13 and should make reasonable efforts to retrieve any such Information distributed to  
14 unauthorized persons. Outside Counsel for the Parties will agree on a mutually acceptable  
15 manner of labeling or marking the inadvertently produced materials as  
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY." The  
17 inadvertent or unintentional disclosure by the Producing Party of Protected Material,  
18 regardless of whether the information was so designated at the time of disclosure shall not  
19 be deemed a waiver in whole or in part of the Producing Party's claim of confidentiality  
20 either as to the specific information disclosed, or as to any other information relating  
21 thereto or on the same related subject matter. The Receiving Party shall not be responsible  
22 for the disclosure or other distribution of belatedly designated Protected Material as to such  
23 disclosure or distribution that may occur before the receipt of such notification of a claim  
24 of confidentiality and such disclosure distribution shall not be deemed to be a violation of  
25 this Order.

26 All inadvertent disclosures of Information that is privileged or otherwise immune  
27 from discovery shall be subject to the requirements and procedures detailed in Federal Rule  
28 of Evidence 502(b) a Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent

1 disclosures shall not constitute waiver or estoppel as to, or otherwise prejudice any claim  
2 of such privilege or immunity.

3 **12. MISCELLANEOUS**

4 **12.1. Modifications:** The Court may modify the protective order in the interests of  
5 justice or for public policy reasons.

6 **12.2. Right to Further Relief:** Nothing in this Order abridges the right of any person  
7 to seek modification by the Court in the future, and nothing in this Order shall be construed  
8 to prevent a party from seeking such further provisions enhancing or limiting  
9 confidentiality as may be appropriate.

10 **12.3. Right to Assert Other Objections:** No Party waives any right it otherwise  
11 would have to object to disclosing or producing any information or item any ground not  
12 addressed in this Order. Similarly, no action taken in accordance with this Order shall  
13 construed as a waiver of any claim or defense in the action or of any position as to  
14 discoverability admissibility, or relevance of evidence.

15 **12.4. Change in Designation:** Any Party may request a change in the designation  
16 of Information designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —  
17 ATTORNEYS’ EYES ONLY.” Any such Information shall be treated as designated until  
18 the change is completed. If the requested change in the designation is not agreed to, the  
19 Party seeking the change may move the Court for relief, providing notice to any third party  
20 whose designation of produced Information “CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL —ATTORNEYS’ EYES ONLY” in the action may be affected. The  
22 Party asserting that the Information is “CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL —ATTORNEYS’ EYES ONLY” shall have the burden of proving that  
24 the Information in question is within the scope of protection afforded by FRCP 26(c) and  
25 that it must treated with the designated level of confidentiality.

26 **13. FINAL DISPOSITION**

27 Within sixty (60) days after the final termination of this action (including any  
28 appeals), Receiving Party shall, upon written notice from the Designating Party, either

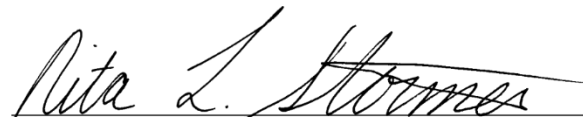


1 return or certify in writing to the Producing Party that all “CONFIDENTIAL” or “HIGHLY  
2 CONFIDENTIAL — ATTORNEYS’ EYES ONLY” information has been destroyed,  
3 including all tangible copies of extracts of data taken from such Information, and that  
4 commercially reasonable efforts have been taken to remove electron copies of such  
5 Information, from any computer, server, or communication device. The written  
6 certification shall state that the Receiving Party has not retained copies of the  
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —ATTORNEYS’ EYES ONLY”  
8 information, except that Outside Counsel are entitled to retain an archival copy of all  
9 pleadings, motions, papers, transcripts, legal memoranda, correspondence, or attorney  
10 work product that may contain such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
11 — ATTORNEYS’ EYES ONLY” information. Archival copies shall, however remain  
12 subject to this Order, as set forth in Section 4 above.

13           Within 60 days following the expiration of the last period for appeal from any order  
14 issued connection with this action, the parties shall remove any Information designated  
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”  
16 from the office of the Clerk of Court Following that 60-day period, the Clerk of Court shall  
17 destroy all Information designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
18 — ATTORNEYS’ EYES ONLY.”

19  
20           **IT IS SO ORDERED.**

21 Dated: February 27, 2018

22 

23 Hon. Nita L. Stormes  
24 United States Magistrate Judge  
25  
26  
27  
28

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND BY**  
3 **STIPULATION FOR PROTECTIVE ORDER**

4 I hereby certify that I have reviewed and understand the attached Stipulation for  
5 Protective Order entered into between Plaintiff Satmodo, LLC and Defendants Whenever  
6 Communications, LLC dba Satellitophonestore.com and Henaa Blanco, and that I, being a  
7 person covered under paragraphs 7.2(b) and (c), 7.4 or 9 of that Stipulation, agree to  
8 comply with the terms of the Stipulation and to submit to the jurisdiction of the United  
9 States District Court for the Southern District of California should I violate the terms of  
10 that Stipulation.

11 I further certify that I am authorized to sign this Stipulation on behalf of any entity  
12 listed below in which I am employed and, in doing so, bind not only myself, but also all  
13 other personnel of such entity whom it is necessary that the material be shown and/or  
14 shared for the purposes of this litigation, and that I will take reasonable steps to ensure  
15 compliance by such other personnel with this Stipulation.

16 Date: \_\_\_\_\_, 2018

17  
18 \_\_\_\_\_  
19 Signature

20 \_\_\_\_\_  
21 Printed Name of Signatory

22 \_\_\_\_\_  
23 Name of Employer

24 \_\_\_\_\_  
25 Address