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14 *Attorneys for Plaintiffs j2 Global*
15 *Communications, Inc., and Call*
Sciences, Inc.

16
17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 j2 GLOBAL
20 COMMUNICATIONS, INC., A
21 DELAWARE CORPORATION
AND CALL SCIENCES, INC., A
22 DELAWARE CORPORATION,

23 Plaintiffs,

24 v.

25 ZILKER VENTURES, LLC, A
26 TEXAS LIMITED LIABILITY
27 COMPANY AND
28 CHOOSEWHAT.COM, LLC, A
TEXAS LIMITED LIABILITY
COMPANY,

Defendants.

Case No. 2:08-cv-07470-SJO-AJW

PLAINTIFFS' *EX PARTE*
APPLICATION FOR ISSUANCE
OF REQUEST FOR
INTERNATIONAL JUDICIAL
ASSISTANCE; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF

[DISCOVERY MATTER]

[Before Hon. Andrew J. Wistrich]

1 Plaintiffs j2 Global Communications, Inc. (“j2”) and Call Sciences, Inc.
2 (“Call Sciences”) (collectively referred to as “Plaintiffs”), pursuant to Federal Rule
3 of Civil Procedure 28(b), and the authority of this Court, request an Order directing
4 the issuance of a Request for International Judicial Assistance, in the form of the
5 Request filed concurrently herewith, to the court or tribunal having jurisdiction
6 over Protus IP Solutions, Inc. (“Protus”), which is located in Ottawa, Ontario,
7 Canada. In support of their application, Plaintiffs state the following:

8 1. Plaintiffs notified counsel for Defendants of this Application.
9 Counsel for Defendants stated that Defendants do not oppose the Application.

10 2. Pursuant to Local Rule 7-19, counsel for Defendants is: Enrico
11 Schaefer, Traverse Legal, 810 Cattageview Dr., Suite G-20, Traverse City,
12 Michigan 49684; tel.: (231) 932-0411.

13 3. *Ex parte* relief is necessary because, as set forth below, Defendants
14 withheld a crucial document related to Protus until just a few days ago. Because of
15 Defendants’ delay and the significant amount of time required to conduct
16 discovery via letters rogatory, Plaintiffs have no alternative but to seek *ex parte*
17 relief in order to secure the necessary discovery before trial.

18 4. The discovery Plaintiffs seek with this Application is directly relevant
19 to the issues in this case.

20 5. Among the issues in this litigation are claims by Plaintiffs for
21 trademark infringement, unfair competition, and false and misleading advertising.

22 6. Specifically, Defendants publish reviews of certain internet fax
23 services on their website faxcompare.com and provide links where consumers can
24 “sign up now” for the reviewed services. Defendants do the same for virtual pbx
25 services on their pbxcompare.com website.

26 7. Defendants claim to publish objective reviews of competing internet
27 faxing services on their website.

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1 8. Rather than providing an “objective” ranking and review of the
2 services, however, Defendants seek payment from internet faxing services to
3 secure favorable rankings and reviews. Plaintiffs allege that the purpose of the
4 advertising and evaluations of the competing services contained on Defendants’
5 websites is to secure sales for Defendants’ affiliates, resulting in payments and
6 commissions for Defendants.

7 9. Defendants admit that they “generate revenue from some vendors
8 with whom they are able to negotiate and execute affiliate contracts.” Br. Supp.
9 Mot. Dismiss at 1. Specifically, Defendants contract with and are paid
10 commissions, “lead bounties” and “sales bonuses” by the internet fax service
11 providers. Comp. at ¶¶ 21-24, 24, 37.

12 10. According to Plaintiffs’ allegations, consumers are misled into
13 believing that the reviews are objective rather than pay-for-play promotion.

14 11. In their answer to the Complaint, Defendants denied that “they
15 provide favorable review[s] because of a referred arrangement.” See Answ. at ¶25.
16 They also denied that they “promote” the services of any particular internet faxing
17 provider. See Answ. at ¶24.

18 12. Protus is an internet fax service provider located in Ottawa, Ontario,
19 Canada. Protus is a competitor of Plaintiffs. Discovery and information available
20 to date has identified Protus as an affiliate of Defendants.

21 13. Plaintiffs attached documents to the Complaint showing that the
22 Defendants’ website prominently features and favorably reviews Protus’ internet
23 faxing service, “MyFax,” which it ranks first above other competitors.

24 14. Defendants encourage consumers to “SIGN UP NOW!” for Protus’
25 internet faxing services via Defendants’ websites.

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1 15. In their first set of document requests served on March 17, 2009,
2 Plaintiffs specifically requested information regarding any agreements between
3 Defendants and internet fax service providers.

4 16. Specifically, Plaintiffs' Document Request No. 1 asked for "[a]ll
5 agreements between Defendants and any provider of internet fax services,
6 including drafts, and all documents regarding or relating to the agreement."
7 Plaintiff's First Set Doc. Req. at No. 1 (March 17, 2009) (Exhibit 1). Document
8 Request No. 23 asked for "[a]ll communications, including draft communications,
9 with Protus." *Id.*

10 17. Although Defendants said they would produce responsive documents,
11 in their first document production on May 5, 2009, Defendants did not produce any
12 agreements or correspondence with Protus in response to Document Request No. 1
13 or No. 23. Defendants' Resp. to Doc. Req. (April 16, 2009) (Exhibit 2).
14 Defendants made a subsequent production on May 13, 2009 which also did not
15 include any agreements or correspondence with Protus.

16 18. On August 13, Defendants produced 15,000 emails and included
17 communications with Protus, some of which predated the filing of the Complaint.

18 19. Two days later, on August 17, 2009, Defendants made an additional
19 production that included a May 4, 2009 "Consulting Agreement" between Protus
20 and Zilker. *See* Exhibit 3. Although it was not produced until last week, the
21 Consulting Agreement predates Defendants' first document production.

22 20. Pursuant to the Consulting Agreement, Protus agreed to pay Zilker
23 \$10,000 per month to develop the websites "Fax-fax.com, Fax.info and
24 Internetfaxprovider.com," "employ search engine optimization techniques" on
25 these websites, and to "link[] these websites to [Protus'] primary revenue
26 generating websites." *See* Exhibit 3.

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1 21. The Consulting Agreement provides a 24-month license of the domain
2 names to Defendants. *Id.* It further provides that Defendants’ compensation will
3 be reviewed every 90 days. *Id.*

4 22. Plaintiffs suggest that this “Consulting Agreement” constitutes
5 disguised payments for favorable promotion and placement on Defendants’
6 websites, and/or compensation for continuing this lawsuit.

7 23. As part of their alleged infringement and false advertising claims,
8 Plaintiffs intend to show that Protus has assisted Defendants in their false and
9 misleading advertisements, and that Defendants provided favorable reviews of
10 Protus in exchange for commissions, “lead bounties,” and “sales bonuses.”

11 24. As a result, limited and narrowly tailored discovery is needed from
12 Protus regarding its relationship with Defendants in order to further develop the
13 proofs for Plaintiffs’ infringement and false advertising claims against Defendants,
14 as well as Plaintiff’s defenses to Defendants’ claims.

15 25. Proposed Letters Rogatory, setting forth the discovery requests
16 Plaintiffs seek to direct to Protus, are filed herewith.

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1 WHEREFORE, Plaintiffs respectfully request that the Court issue an Order
2 directing the issuance of the proposed Request for International Judicial
3 Assistance.

4 Dated: August 24, 2009

Respectfully submitted,

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27 *Attorneys for Plaintiffs j2 Global*
28 *Communications, Inc., and Call*
Sciences, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs j2 Global Communications, Inc. (“j2”) and Call Sciences, Inc.
3 (“Call Sciences”) (collectively, “Plaintiffs”) seek issuance of letters rogatory to
4 obtain certain discoverable evidence from Protus IP Solutions, Inc. (“Protus”), a
5 non-party Canadian internet faxing service provider. Plaintiffs’ complaint alleges
6 that Defendants unfairly provide favorable reviews of certain internet fax providers
7 on their websites in exchange for payments and compensation. Defendants admit
8 that they “generate revenue from some vendors with whom they are able to
9 negotiate and execute affiliate contracts,” but deny that the payments affect their
10 reviews or rankings. Defendants’ websites currently rank Protus first above its
11 competitors. Just last week, Defendants admitted that Protus pays them \$10,000
12 per month for “consulting services,” and produced a “Consulting Agreement”
13 dated May 4, 2009. *See* Ex. 1. Based upon discovery conducted and information
14 available to date, it appears that Protus has information related to the alleged
15 “Consulting Agreement” with Defendants, as well as documents directly relevant
16 to Plaintiffs’ false advertising and trademark infringement claims and defenses.
17 Protus is a Canadian corporation, and thus Plaintiffs request that the Court issue
18 letters rogatory, pursuant to Rule 28(b) and the Court’s authority, to permit
19 Plaintiffs to obtain the requested information.

20 **I. FACTUAL BACKGROUND**

21 On November 12, 2008, Plaintiffs filed their complaint for trademark
22 infringement, unfair competition, and false and misleading advertising. The
23 complaint arises out of claims relating to Defendants’ operation of marketing
24 websites for internet fax and virtual pbx services and collection of commissions
25 and sales bonuses to promote certain services over others. The websites contain
26 misleading statements about Plaintiffs’ and Defendants’ services, misrepresent the
27 “unbiased” nature of the site, and infringe Plaintiffs’ trademarks.

1 **A. Defendants’ Website Constitutes Pay for Play Promotion.**

2 Defendants publish reviews of certain internet fax services on their website
3 faxcompare.com, encourage consumers to “sign up now” for the services, and
4 collect payments when consumers subscribe to a reviewed service. Comp. at ¶¶22-
5 25, Br. Supp. Mot. Dismiss at Ex. B, ¶ 8 (Aff. Gaines Kilpatrick). Defendants do
6 the same for virtual pbx services on their pbxcompare.com website. *Id.*
7 Defendants represent that their reviews are objective.¹ However, Plaintiffs allege
8 that the reviews and ranking on Defendants’ websites are directly influenced by
9 and correlated to payments made to Defendants by certain internet fax providers.
10 In fact, Defendants contract with, and are paid commissions, “lead bounties” and
11 “sales bonuses,” by the internet fax service providers that they promote. Comp. at
12 ¶¶21-24, 24, 37. Defendants’ own documents filed in this action state that they
13 “generate revenue from some vendors with whom they are able to negotiate and
14 execute affiliate contracts.” Br. Supp. Mot. Dismiss at 1. Plaintiffs allege that the
15 purpose of the advertising and evaluations of the competing services contained on
16 Defendants’ websites is to secure sales for Defendants’ affiliates, resulting in
17 payments and commissions for Defendants. According to the allegations,
18 consumers are misled into believing that the reviews are objective rather than pay-
19 for-play promotion, and choose internet faxing services other than Plaintiffs’ based
20 upon Defendants’ false and misleading advertisements.

21 **B. Defendants’ Website Features Protus and Ranks Its Services First**
22 **Above Other Competitors, all While Zilker Collects \$10,000 per**
23 **Month in “Consulting” Fees.**

24 Plaintiffs attached documents to the Complaint showing that Defendants’
25 website prominently features and favorably reviews Protus’ internet faxing service,

26 _____
27 ¹ In their answer to the Complaint, Defendants denied that “they provide favorable
28 that they “promote” the services of any particular internet faxing provider. See
Answ. at ¶24.

1 “MyFax,” which it ranks first above other competitors. Defendants encourage
2 consumers to “SIGN UP NOW!” for Protus’ internet faxing services via
3 Defendants’ websites. Defendants, rather than providing a represented “objective”
4 ranking and review of the “MyFax” service, seek and have received payment for
5 such ranking and reviews. Discovery and information available to date has
6 identified Protus as an affiliate of Defendants.

7 In their first set of document requests served on March 17, 2009, Plaintiffs
8 specifically requested information regarding any agreements between Defendants
9 and internet fax service providers. Specifically, Plaintiffs’ Document Request No.
10 1 asked for “[a]ll agreements between Defendants and any provider of internet fax
11 services, including drafts, and all documents regarding or relating to the
12 agreement.” Plaintiff’s First Set Doc. Req. at No. 1 (March 17, 2009) (Exhibit 1).
13 Document Request No. 23 asked for “[a]ll communications, including draft
14 communications, with Protus.” *Id.*

15 Although Defendants said they would produce responsive documents, in
16 their first document production on May 5, 2009, Defendants did not produce any
17 agreements or correspondence with Protus in response to Document Request No. 1
18 or No. 23. Defendants’ Resp. to Doc. Req. (April 16, 2009) (Exhibit 2).
19 Defendants made a subsequent production on May 13, 2009 which also did not
20 include any agreements or correspondence with Protus. On August 13, months
21 after stating they would produce the responsive documents, Defendants produced
22 15,000 emails, which included communications with Protus, some of which
23 predated the filing of the Complaint.

24 Two days later, on August 17, 2009, Defendants made an additional
25 production that included a May 4, 2009 “Consulting Agreement” between Protus
26 and Zilker. *See* Exhibit 3. Pursuant to the Consulting Agreement, Protus agreed to
27 pay Zilker \$10,000 per month to develop the websites “Fax-fax.com, Fax.info and
28 Internetfaxprovider.com,” “employ search engine optimization techniques” on

1 these websites, and to “link[] these websites to [Protus’] primary revenue
2 generating websites.” *See id.* The Consulting Agreement provides a 24-month
3 license of the domain names to Defendants. *Id.* It further provides that
4 Defendants’ compensation will be reviewed every 90 days. *Id.*

5 Plaintiffs believe that this “Consulting Agreement” may constitute disguised
6 payments for favorable promotion and placement on Defendants’ websites, and/or
7 compensation for continuing this lawsuit. As a result, discovery is needed from
8 Protus regarding its relationship with Defendants in order to further develop the
9 proof for Plaintiffs’ infringement and false advertising claims against Defendants.

10 Discovery is ongoing in this action, pursuant to the Court’s August 18, 2009
11 Order (Doc. No. 72) permitting the parties to extend the discovery date. The
12 parties previously agreed to extend the deadline until September 23, 2009. The
13 dispositive motion deadline is currently set for September 14, 2009. Trial is due to
14 begin on November 24, 2009.

15 **II. LEGAL ANALYSIS: THE COURT SHOULD ISSUE LETTERS**
16 **ROGATORY TO ALLOW PLAINTIFFS TO INVESTIGATE**
DEFENDANTS’ RELATIONSHIP WITH PROTUS.

17 **A. Legal Standard: The Court Is Empowered To Issue Letters**
18 **Rogatory.**

19 A request for international judicial assistance, or letter rogatory, is a
20 formal written request sent by a court to a foreign court asking that the testimony
21 of a witness residing within that foreign court’s jurisdiction be taken pursuant to
22 the direction of that foreign court and transmitted to the requesting court for use in
23 a pending action. *Marroquin-Manriquez v. I.N.S.*, 699 F.2d 129 (3rd Cir. 1983);
24 *Wright, Miller, & Marcus*, FEDERAL PRACTICE AND PROCEDURE at § 2083 (2007).
25 A letter rogatory can also include requests for the production of documents. *See*
26 *United States v. Reagan*, 453 F.2d 165, 168 (6th Cir. 1971) (affirming district
27 court’s issuance of letters rogatory seeking documents from investigation
28

1 conducted by German authorities). Federal Rule of Civil Procedure 28(b) provides
2 that a deposition may be taken in a foreign country “(2) pursuant to a letter of
3 request (whether or not captioned a letter rogatory).” Fed. R. Civ. P. 28(b).

4 A court is inherently vested with the authority to issue letters rogatory.
5 *See United States v. Staples*, 256 F.2d 290, 292 (9th Cir. 1958); *Reagan*, 453 F.2d
6 at 172. 28 U.S.C. § 1781 also implicitly provides federal courts with authority to
7 issue letters rogatory.² 28 U.S.C. § 1781(a)(2). Whether to issue such a letter is a
8 matter of discretion for the court. *See United States v. Mason*, 1990 WL 185894,
9 at *3 (4th Cir. 1990). The Canada Evidence Act also specifically provides that a
10 court outside of Canada may serve letters rogatory upon a Canadian court.
11 R.S.C.1985, c. C-5, s. 46.

12 **B. Because Plaintiffs’ Requests Are Narrowly Tailored, Impose No**
13 **Burden, and Request Relevant Information, the Court Should**
14 **Grant Their Request To Issue Letters Rogatory.**

15 When determining whether to exercise its discretion in issuing letters
16 rogatory, a court will generally not weigh the evidence sought from the discovery
17 request nor will it attempt to predict whether that evidence will actually be
18 obtained. *DBMS Consultants Ltd. v. Computer Assocs. Int’l, Inc.*, 131 F.R.D. 367,
19 369 (D. Mass. 1990); *B & L Drilling Elecs. v. Totco*, 87 F.R.D. 543, 545 (W.D.
20 Okla. 1978); *Sec. Ins. Co. of Hartford v. Trustmark Ins. Co.*, 218 F.R.D. 24, 27 (D.
21 Conn. 2003). The information sought in the letters of request need not be
22 admissible in a foreign proceeding. *See Intel Corp. v. Advanced Micro Devices,*
23 *Inc.*, 542 U.S. 241 (2004). Letters rogatory should issue even where further
24 domestic discovery may result in the need for less discovery abroad. *Philan Ins.*
25 *Ltd. v. Frank B. Hall & Co., Inc.*, 138 F.R.D. 45, 46 (S.D.N.Y. 1991).

26
27 ² 28 U.S.C. § 1781 provides the State Department with the power “to receive a
28 letter rogatory issued, or request made, by a tribunal in the United States, to
transmit it to the foreign or international tribunal, officer, or agency to whom it is
addressed, and to receive and return it after execution.” 28 U.S.C. § 1781(a) (2).

1 In this case, Protus holds key information relevant to Plaintiffs' claims and
2 defenses. Among the issues in this litigation is whether Defendants operate a pay-
3 for-promotion website that unfairly promotes the services of their affiliates over
4 others. Based upon the Consulting Agreement produced by Defendants, it is
5 undisputed that Protus is paying Zilker \$10,000 per month for "consulting"
6 services. It is also undisputed that Protus is an affiliate of Defendants, and that
7 Protus' "MyFax" internet faxing service receives favorable reviews and is
8 promoted on Defendants' website. As a result, Plaintiffs need to investigate the
9 relationship between Defendants and Protus in the limited manner identified in the
10 letters of request.

11 Furthermore, Plaintiffs' requests for information regarding Protus'
12 relationship and agreements with Defendants are narrowly tailored to identify
13 limited information that may prove of key importance to Plaintiff's claims. (The
14 requests are set forth in the proposed Request for International Judicial Assistance,
15 filed concurrently herewith.) Because the requests are narrowly tailored, the
16 burden imposed upon Protus in responding is minimal. *In re Baycol Prods.*
17 *Litigation*, 348 F. Supp. 2d 1058, 1059 (D. Minn. 2004). Additionally, there is
18 little burden imposed upon Defendants because they are already doing business
19 with Protus in Canada, are aware that the same websites covered in the Consulting
20 Agreement are relevant to this lawsuit, and accept payments from Protus of
21 \$10,000 per month. Thus, the need for the production and discovery of relevant
22 information outweighs any minimal burden imposed upon Protus and Defendants.

23 **C. Ex Parte Relief Is Warranted.**

24 *Ex parte* relief is warranted because Defendants' months-long delay in
25 producing relevant, responsive documents has left Plaintiffs with limited time to
26 secure this discovery before the trial begins November 24, 2009. The letters
27 rogatory process is lengthy—if this Court issues the Request for International
28 Judicial Assistance, Plaintiffs will then need to undertake judicial proceedings in

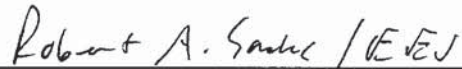
1 Canada. Without *ex parte* relief, it may not be possible to complete those
2 proceedings before the trial date. The urgency is not due to any fault of
3 Plaintiffs—rather, it the result of Defendants failing to produce until last week a
4 document that Plaintiffs requested in March.

5 **III. CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that the Court issue
7 an order directing the issuance of the proposed Letters Rogatory.

8
9 Dated: August 24, 2009

Respectfully submitted,

10  / E E J

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EXHIBIT 1

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18
19 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

20 j2 GLOBAL COMMUNICATIONS, INC.,
21 a Delaware Corporation, and CALL SCIENCES,
INC., a Delaware corporation,

22 Plaintiffs/Counter-Defendants,

23 v.

24 ZILKER VENTURES, LLC, a Texas
25 limited liability company, and
26 CHOOSEWHAT.COM, LLC,

27 Defendants/Counter-Plaintiffs.
28

Case No. 2:08-cv-07470-SJO AJW

**PLAINTIFFS' FIRST REQUESTS
FOR PRODUCTION OF
DOCUMENTS**

1 Plaintiffs j2 Global Communications, Inc. ("j2") and Call Sciences, Inc. ("Call Sciences")
2 by and through their attorneys, hereby request pursuant to Federal Rules of Civil Procedure 26
3 and 34 that Defendant Zilker Ventures, LLC and Choosewhat.com, LLC produce the documents
4 identified herein.

5
6 **DEFINITIONS**

7 1. The terms "you" and "your" shall mean each Defendant, and any or all of his
8 officers, agents, employees, representatives, accountants, attorneys; and any or all persons either
9 acting or purporting to act on behalf of Defendant.

10 2. "Refer" or "relate" or "referring" or "relating" or "regarding" means all
11 documents which comprise, explicitly or implicitly refer to, were reviewed in conjunction with
12 or were created, generated or maintained as a result of the subject matter of the request,
13 including, without limitation, all documents which reflect, record, memorialize, embody, discuss,
14 evaluate, consider, review or report on the subject matter of the request.

15 3. "Document(s)" shall be interpreted broadly and includes all written, computer-
16 generated or stored or maintained information or data, whether recorded, printed, typed,
17 transcribed, filmed, digitized, electromagnetic or graphic matter, and all other tangible things and
18 media upon which any handwriting, typing, printing, drawing, representation, electrostatic or
19 other copy, sound or video recording, magnetic or electrical impulse, visual reproduction or
20 communication is recorded, reproduced or represented.

21 4. Without limiting the generality of the foregoing, the term "document" or
22 "documents" includes, but is not limited to blogs, twitter entries and records, books, papers,
23 records, correspondence, reports, memoranda, computer generated or stored or maintained
24 information or data (including, but not limited to, electronic mail (*i.e.*, "e-mail"), articles,
25 newspapers, contracts, tables, tabulations, graphs, charts, diagrams, plans, schedules,
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1 appointment books, calendars, diaries, time sheets, reports, studies, analyses, drafts, telegrams,
2 teletype of telecopy messages, files, telephone logs and messages, checks, microfilms,
3 microfiche, pictures, photographs, printouts, electronic data compilations, tapes, diskettes,
4 drives, removable media, notes, minutes or transcripts of proceedings and every means of
5 recording upon any tangible thing any form of communication or representation, including
6 letters, words, pictures, sounds or symbols, or any combinations thereof.
7

8 Documents shall include originals and all non-identical copies (whether different from
9 the original because of notes made in or attached to such copy, or otherwise), all other data
10 compilations from which information can be obtained (translated, if necessary into usable form)
11 and any preliminary versions, drafts or revisions of any of the foregoing. If a document was
12 prepared in several copies or if additional copies were thereafter made, and if any such copies
13 were not identical or are no longer identical by reason of notation or modification of any kind
14 whatsoever including, without limitation, notations on the front or back of any pages thereof,
15 then each such copy must be produced.
16

17 As noted, the terms "documents" or "records" include, among other information,
18 information stored in machine-readable form. In determining where responsive documents in
19 this form might be located, consider whether you have any equipment or media that contain
20 "documents" as defined herein, including but not limited to:
21

22 (1) Desktop personal computers (PCs) or workstations; PCs, workstations,
23 minicomputers, or mainframes; laptop, notebook, and other portable computers, whether
24 assigned to individuals or in pools available for shared use; and home computers used for work-
25 related purposes;

26 (2) Backup disks and tapes, archival disks and tapes, and other forms of
27 offline storage, whether stored on-site with the computers used to generate them or off-site in
28 another computer facility or by a third party; and

1 (3) Electronic mail messages, even if available only on backup or archive
2 disks or tapes.

3 5. The term "or" shall be construed as disjunctive and conjunctive, and "any" and
4 "all" as used herein shall include "each" and "every."

5 6. "Person" or "persons" means any natural person or any business, legal or
6 governmental entity or association.

7 7. The use of the singular form of any word includes the plural and vice versa; and
8 the use of the masculine gender shall include the feminine and neuter genders.

9 8. Related terms to "efax" shall include efixing, efixer, efixes, efixed, e-fax, e fax"
10 and shall include all capitalized forms of these words.

11 **INSTRUCTIONS**

12 1. Each request seeks all documents available to you, in your possession, custody or
13 control, or in the possession, custody or control of your staff, agents, employees, representatives
14 and, unless privileged, attorneys, or any other person who has possession, custody or control of
15 your proprietary knowledge, information or documents.

16 2. These document requests are continuing pursuant to Fed. R. Civ. P. 26(e), and
17 require you to promptly supplement your responses or production if additional responsive
18 documents are received, generated or located after the initial production of documents.

19 3. Unless otherwise specified or the context otherwise dictates, the documents
20 requested are documents that were prepared, written, sent, dated, received, applicable or in effect
21 at any time between 2005 and the date of your responses to these requests.

22 4. Electronic records or computerized information should be produced in an
23 intelligible, usable format or together with a description of the system or program from which the
24 information was derived sufficient to permit rendering the records or information intelligible
25 and/or usable.

1 5. Each request should be complied with in full. If you object to any request, state
2 the reasons for the objection and indicate if you are producing documents to the extent the
3 request is in your view unobjectionable. If you are unable to comply with a request fully,
4 comply to the extent possible, provide an explanation as to why full compliance is not possible,
5 and identify or describe all other sources of more complete or accurate documentation responsive
6 to the request.
7

8 6. For any record or document responsive or relating to these requests which is
9 known to have been destroyed or lost, or is otherwise unavailable, identify each such document
10 by author, addressee, date, number of pages, and subject matter; and explain in detail the events
11 leading to the destruction or loss, or the reason for the unavailability of such document.
12

13 7. If you are aware of any responsive document(s) that has/have been removed from
14 the relevant files, please furnish a list identifying each such document; this should include the
15 name and address of any person who has seen the document or who now has possession, custody
16 or control thereof, and should indicate, if known, the present location of the document.
17

18 8. If any document or information is withheld or redacted on the basis of any
19 asserted privilege or immunity from discovery, please provide in lieu of such document or
20 information a written statement or schedule indicating:

- 21 (a) the type of document, e.g., letter or memorandum;
- 22 (b) the general subject matter of the document;
- 23 (c) the date of the document;
- 24 (d) the author, addressees, and all recipients of the document, including,
25 where not otherwise apparent, the relationships of all authors, addressees, and recipients to each
26 other, along with their titles and affiliations;
- 27 (e) a description of the claimed basis for the asserted immunity.
28

1 5. All documents regarding or relating to the development, design, collection and
2 evaluation of information for the creation and modification of faxcompare.com.

3 6. All documents regarding or relating to the development, design, collection and
4 evaluation of information for the creation and modification of pbxcompare.com.

5 7. All business plans, including drafts, for Defendants and all documents gathered
6 and relied upon in the preparation of the same.

7 8. All communications with investors, potential investors or agents for same
8 regarding or relating to Defendants.

9 9. All contracts, including employment contracts, between defendants and Gaines
10 Kilpatrick or Leo Welder.

11 10. All communications regarding the content of faxcompare.com, including but not
12 limited to developing or modifying content, inquiries or suggestions to internet fax providers,
13 requests to internet fax providers, messages to customers or potential customers of internet fax
14 services, or to investors, friends or family relating to the site development.

15 11. All communications regarding the content of pbxcompare.com, including but not
16 limited to plans to developing or modifying content, inquiries or suggestions to pbx providers,
17 requests to pbx providers, messages to customers or potential customers of pbx providers, or to
18 investors, friends or family relating to the site.

19 12. All corporate formation documents for Defendants, including bylaws, certificates
20 of incorporation, stock certificates, licenses, filings with the secretary of state, and minutes.

21 13. All documents regarding or relating to meeting minutes, corporate resolutions,
22 corporate authority, and evidence those Defendants have obeyed the corporate formalities in the
23 operation of their businesses.

24 14. All documents regarding or relating to bank accounts held by Defendants.

25 15. All documents regarding or relating to payments received and deposits, and
26 accounts receivable for Defendants, including but not limited to any spreadsheets or accounting.

27 16. Corporate tax returns for Defendants.
28

- 1 17. All documents regarding corporate expenditures, reimbursements, salaries,
2 employee payments and bonuses.
- 3 18. All corporate credit card statements.
- 4 19. All documents regarding or relating to research conducted by Defendants
5 regarding faxcompare.com.
- 6 20. All documents regarding or relating to research conducted by Defendants
7 regarding faxcompare.com.
- 8 21. All communications between Gaines Kilpatrick and anyone, internal or external
9 to Defendants, regarding or relating to faxcompare.com, pbxcompare.com, or the claims asserted
10 in the above-captioned complaint.
- 11 22. All communications between Leo Welder and anyone, internal or external to
12 Defendants, regarding or relating to the claims asserted in the above-captioned complaint.
- 13 23. All communications, including draft communications, with Protus.
- 14 24. All documents regarding or relating to the decision to purchase or use "efax" or
15 related terms as a search term through any internet keyword advertising program including but
16 not limited to Google Adwords program, and such documents should include but are not limited
17 to any official action, corporate resolution or minutes of directors' meeting.
- 18 25. All documents regarding or relating to the purchase or use of "efax" or related
19 terms as a search term through any internet keyword advertising program including but not
20 limited to Google Adwords program.
- 21 26. All documents which include the use of the term "efax" or related terms by
22 Defendants.
- 23 27. All reports generated by Defendants, including annual, semi-annual, quarterly,
24 monthly, weekly or daily reports, that are regarding or relating to faxcompare.com or
25 pbxcompare.com or any revenue or accounts receivable generated in relation to these sites.
- 26 28. All organizational charts for Defendants.
- 27 29. All internal communications regarding or relating to faxcompare.com or
28 pbxcompare.com.

1 30. All documents regarding or relating to consumer complaints, questions or
2 feedback concerning or relating to faxcompare.com or pbxcompare.com.

3 31. All blog entries by Defendants regarding or relating to faxcompare.com or
4 pbxcompare.com, regardless of where posted.

5 32. All twitter entries by Defendants regarding or relating to faxcompare.com or
6 pbxcompare.com, regardless of where posted.

7 33. All documents regarding or relating to search engine optimization efforts
8 undertaken by Defendants relating to faxcompare.com, pbxcopmare.com or choosewhat.com.

9 34. All drafts of text appearing on faxcompare.com, pbxcompare.com or
10 choosewhat.com.

11 35. All documents regarding or relating to the Affidavit of Gaines Kilpatrick attached
12 as Ex. B to Defendant's Motion to Dismiss.

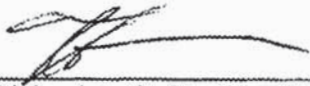
13 36. All documents which support or relate to Defendant's affirmative defenses.

14 37. All documents which support or relate to Defendant's counterclaims.

15 Dated: March 17, 2009

Respectfully submitted,

17 Robert A. Sacks (SBN 150146)
18 Brian R. England (SBN 211335)
19 Edward E. Johnson (SBN 241065)
20 SULLIVAN & CROMWELL LLP
21 1888 Century Park East
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23 
24 Richard A. Gaffin (*Pro Hac Vice*)
25 A. Michael Palizzi (*Pro Hac Vice*)
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28 MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.
101 N. Main Street, 7th Floor
Ann Arbor, MI 48104

*Attorneys for Plaintiffs j2 Global Communications,
Inc., and Call Sciences, Inc.*

AALIB:551133.1

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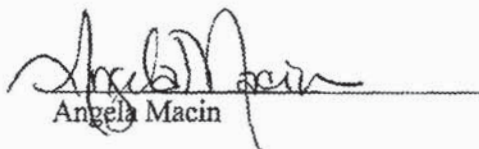
PROOF OF SERVICE

Angela Macin says that she is a Legal Administrative Assistant at Miller, Canfield, Paddock and Stone, P.L.C. and that on the 17th day of March, 2009 she served a copy of ***PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS*** and this *Proof of Service* upon:

Enrico C. Schaefer, Esq.
Traverse Legal PLC
810 Cottageview Drive, Unit G-20
Traverse City, MI 49684

Ronald G. Gabler, Esq.
Ronald G. Gabler Law Offices
16830 Ventura Blvd., Suite 358
Encino, CA 91436-1707

via U.S. Mail.


Angela Macin

Founded in 1852
by Sidney Davv Miller

MILLER CANFIELD

RICK JUCKNISS
TEL (734) 668-7798
FAX (734) 663-8624
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Miller, Canfield, Paddock and Stone, P.L.C.
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FLORIDA: Naples

ILLINOIS: Chicago

NEW YORK: New York

CANADA: Toronto • Windsor

CHINA: Shanghai

POLAND: Gdynia
Warsaw • Wroclaw

March 17, 2009

Enrico C. Schaefer, Esq.
Traverse Legal PLC
810 Cottageview Drive, Unit G-20
Traverse City, MI 49684

Ronald G. Gabler, Esq.
Ronald G. Gabler Law Offices
16830 Ventura Blvd., Suite 358
Encino, CA 91436-1707

**Re: j2 Global Communications, Inc. and Call Sciences, Inc. v. Zilker Ventures, LLC and
Choosewhat.com, LLC
Case No. 08-cv-07470**

Mr. Schaefer and Mr. Gabler:

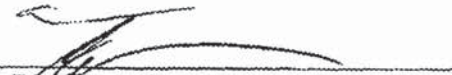
Enclosed please find Plaintiffs' First Requests for Production of Documents in the above captioned matter.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Miller, Canfield, Paddock and Stone, P.L.C.

By: _____


Rick Juckniess

FRJ/am

cc: Robert A. Sacks, Esq. (w/encl.)

Enclosure

EXHIBIT 2

TRAVERSElegal

ATTORNEYS & ADVISORS

April 16, 2009

Frederick R. Juckniess
Miller Canfield Paddock & Stone, PLC
101 North Main Street, Seventh Floor
Ann Arbor, MI 48104

Re: j2 Global v. Zilker Ventures

Dear Rick:

Enclosed are our response to your discovery requests. I have also enclosed a proposed Stipulated Protective Order for your review. Please let me know your thoughts.

Very truly yours,

TRAVERSE LEGAL, PLC



Enrico Schaefer
enrico@traverselegal.com

ES/cad
Enclosures

1 Ronald G. Gabler, Esq. (SBN. 57061)
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8 Enrico C. Schaefer (admitted *Pro Hac Vice*)
9 Enrico.schaefer@traverselegal.com
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11 810 Cottageview Drive, Unit G-20
12 Traverse City, Michigan 49684
13 Tel.: (231) 932-0411
14 Fax: (231) 932-0636

15 *Attorneys for Defendants Zilker Ventures,*
16 *LLC and ChooseWhat.com, LLC*

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

j2 GLOBAL COMMUNICATIONS,
INC., a Delaware Corporation, AND
CALL SCIENCES, INC., a Delaware
Corporation,

Plaintiff

v.

ZILKER VENTURES, LLC, a Texas
Limited Liability Company, and
CHOOSEWHAT.COM, LLC, a
Texas Limited Liability Company,

Defendants.

Case No. 2:08-cv-07470-SJO (AJW)

**DEFENDANTS' RESPONSES TO
PLAINTIFFS' FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Defendants Zilker Ventures, LLC, and Choosewhat.com, LLC, respond to Plaintiffs'

First Requests for Production of Documents as follows:

1 **GENERAL OBJECTIONS**

2 1. Defendants object to Plaintiff's "Instructions" and "Definitions" to the extent they
3 purport to impose discovery obligations that differ from or exceed the discovery obligations
4 imposed by the Federal Rules of Civil Procedure or the local rules.
5

6 2. Defendants object to the Requests for Production of Documents to the extent that
7 they seek information protected by the attorney-client privilege, the work-product privilege, or
8 any other privilege, protection, or immunity applicable under the governing law.

9 3. To the extent Plaintiffs seek user information, such as emails, logins, user data or
10 other information subject to privacy terms or laws, Defendants will produce responsive
11 documents subject to a separate appropriate agreement which will protect that highly sensitive
12 and private information.
13

14 4. Defendants object to the Requests for Production of Documents to the extent that
15 they are overly broad, unduly burdensome, oppressive, and/or seek information that is not
16 relevant to the issues in this lawsuit or reasonably calculated to lead to the discovery of
17 admissible evidence.
18

19 5. These General Objections are made, to the extent applicable, in response to each
20 of the Requests for Production of Documents as if the objections were fully set forth therein.

21 6. Defendants respond to each of the Requests for Production of Documents based
22 upon information and documentation available as of the date hereof and reserve the right to
23 supplement and amend their responses.
24

25 **REQUESTS**

26 1. All agreements between Defendants and any provider of internet fax services,
27 including drafts, and all documents regarding or relating to the agreement.
28

1 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
2 responsive Request No. 1 and will produce those files to Plaintiffs on a hard drive. The parties
3 are negotiating a confidentiality agreement which will protect proprietary information of both
4 parties. Subject to further review and response, Defendants anticipate being able to produce
5 said hard drive within 14 days.
6

7 2. All communications between Defendants and any provider of internet fax
8 services.

9 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
10 responsive Request No. 2 and will produce those files to Plaintiffs on a hard drive. The parties
11 are negotiating a confidentiality agreement which will protect proprietary information of both
12 parties. Subject to further review and response, Defendants anticipate being able to produce
13 said hard drive within 14 days.
14

15 3. All agreements between Defendants and any party regarding commissions,
16 payments, proposals or other consideration relating to advertising, "click-throughs," sales,
17 placement or appearance on any of the defendant's websites including but not limited to
18 faxcompare.com and pbxcompare.com, including drafts, and all documents regarding or relating
19 to the agreements.
20

21 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
22 responsive Request No. 3 and will produce those files to Plaintiffs on a hard drive. The parties
23 are negotiating a confidentiality agreement which will protect proprietary information of both
24 parties. Subject to further review and response, Defendants anticipate being able to produce
25 said hard drive within 14 days.
26
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1 4. All communications regarding commissions, payments or other consideration
2 relating to advertising, "click-throughs," sales, links, placement or appearance on any of the
3 defendants' websites including but not limited to faxcomare.com and pbxcompare.com.

4 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
5 responsive Request No. 4 and will produce those files to Plaintiffs on a hard drive. The parties
6 are negotiating a confidentiality agreement which will protect proprietary information of both
7 parties. Subject to further review and response, Defendants anticipate being able to produce
8 said hard drive within 14 days.

9
10 5. All documents regarding or relating to the development, design, collection and
11 evaluation of information for the creation and modification of faxcompare.com.

12 **RESPONSE:** Defendants object to Request No. 5 in that it is vague and overly broad.
13 Otherwise, Defendants are searching, compiling and reviewing digital files responsive Request
14 No. 5 and will produce those files to Plaintiffs on a hard drive. The parties are negotiating a
15 confidentiality agreement which will protect proprietary information of both parties. Subject to
16 further review and response, Defendants anticipate being able to produce said hard drive within
17 14 days.

18
19
20 6. All documents regarding or relating to the development, design, collection and
21 evaluation of information for the creation and modification of pbxcompare.com.

22 **RESPONSE:** Defendants object to Request No. 6 in that it is vague and overly broad.
23 Otherwise, Defendants are searching, compiling and reviewing digital files responsive Request
24 No. 6 and will produce those files to Plaintiffs on a hard drive. The parties are negotiating a
25 confidentiality agreement which will protect proprietary information of both parties. Subject to
26

1 further review and response, Defendants anticipate being able to produce said hard drive within
2 14 days.

3 7. All business plans, including drafts, for Defendants and all documents gathered
4 and relied upon in the preparation of the same.
5

6 **RESPONSE:** Defendants object and will not produce investor information at this time,
7 as there has been no showing that such information is reasonably calculated to lead to the
8 discovery of admissible evidence. Moreover, investor information is typically covered by non-
9 disclosure agreements which preclude production without court order. Otherwise, Defendants
10 are searching, compiling and reviewing digital files responsive Request No. 7 and will produce
11 those files to Plaintiffs on a hard drive. The parties are negotiating a confidentiality agreement
12 which will protect proprietary information of both parties. Subject to further review and
13 response, Defendants anticipate being able to produce said hard drive within 14 days.
14

15 8. All communications with investors, potential investors or agents for same
16 regarding or relating to Defendants.
17

18 **RESPONSE:** Defendants object and will not produce investor information at this time,
19 as there has been no showing that such information is reasonably calculated to lead to the
20 discovery of admissible evidence. Moreover, investor information is typically covered by non-
21 disclosure agreements which preclude production without court order. Otherwise, Defendants
22 are searching, compiling and reviewing digital files responsive Request No. 8 and will produce
23 those files to Plaintiffs on a hard drive. The parties are negotiating a confidentiality agreement
24 which will protect proprietary information of both parties. Subject to further review and
25 response, Defendants anticipate being able to produce said hard drive within 14 days.
26
27
28

1 9. All contracts, including employment contracts, between defendants and Gaines
2 Kilpartrick or Leo Welder.

3 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
4 responsive Request No. 9 and will produce those files to Plaintiffs on a hard drive. The parties
5 are negotiating a confidentiality agreement which will protect proprietary information of both
6 parties. Subject to further review and response, Defendants anticipate being able to produce
7 said hard drive within 14 days.
8

9 10. All communications regarding the content of faxcompare.com, including but not
10 limited to developing or modifying content, inquiries or suggestions to internet fax providers,
11 requests to internet fax providers, messages to customers or potential customers of internet fax
12 services, or to investors, friends or family relating to the site development.
13

14 **RESPONSE:** Defendants object to providing communications with family or friends to
15 issues beyond those raised by the allegations in the complaint. Otherwise, Defendants are
16 searching, compiling and reviewing digital files responsive Request No. 10 and will produce
17 those files to Plaintiffs on a hard drive. The parties are negotiating a confidentiality agreement
18 which will protect proprietary information of both parties. Subject to further review and
19 response, Defendants anticipate being able to produce said hard drive within 14 days.
20

21 11. All communications regarding the content of pbxcompare.com, including but not
22 limited to plans to developing or modifying content, inquiries or suggestions to pbx providers,
23 requests to pbx providers, messages to customers or potential customers of pbx providers, or to
24 investors, friends or family relating to the site.
25

26 **RESPONSE:** Defendants object to providing communications with family or friends to issues
27 beyond those raised by the allegations in the complaint. Otherwise, Defendants are searching,
28

1 compiling and reviewing digital files responsive Request No. 11 and will produce those files to
2 Plaintiffs on a hard drive. The parties are negotiating a confidentiality agreement which will
3 protect proprietary information of both parties. Subject to further review and response,
4 Defendants anticipate being able to produce said hard drive within 14 days.
5

6 12. All corporate formation documents for Defendants, including bylaws, certificates
7 of incorporation, stock certificates, licenses, filings with the secretary of state, and minutes.

8 **RESPONSE:** Defendants are searching, compiling and reviewing digital files responsive
9 Request No. 12 and will produce those files to Plaintiffs on a hard drive. The parties are
10 negotiating a confidentiality agreement which will protect proprietary information of both
11 parties. Subject to further review and response, Defendants anticipate being able to produce
12 said hard drive within 14 days.
13

14 13. All documents regarding or relating to meeting minutes, corporate resolutions,
15 corporate authority, and evidence those Defendants have obeyed the corporate formalities in the
16 operation of their businesses.

17 **RESPONSE:** Defendants object to Request No. 13 on the basis that it seeks irrelevant
18 information. Defendant will further respond if Plaintiffs will provide detailing how such
19 information might lead to the discovery admissible evidence. Matters concerning “piercing the
20 corporate veil” are not at issue in this suit.
21

22 14. All documents regarding or relating to bank accounts held by Defendants.

23 **RESPONSE:** Defendants object to Request No. 14 on the basis that it seeks irrelevant
24 information. Defendant will further respond if Plaintiffs will provide detailing how such
25 information might lead to the discovery admissible evidence. Matters concerning “piercing the
26 corporate veil” are not at issue in this suit. Plaintiffs are not entitled to take discovery
27
28

1 concerning damages before they have a judgment for same. Defendants object to this request as
2 failing to seek relevant information or information which is calculated to lead to the discovery
3 of admissible evidence.

4 15. All documents regarding or relating to payments received and deposits, and
5 accounts receivable for Defendants, including but not limited to any spreadsheets or accounting.

6 **RESPONSE:** Defendants object to Request No. 15 on the basis that it seeks irrelevant
7 information. Defendant will further respond if Plaintiffs will provide detailing how such
8 information might lead to the discovery admissible evidence. Matters concerning “piercing the
9 corporate veil” are not at issue in this suit. Plaintiffs are not entitled to take discovery
10 concerning damages before they have a judgment for same. Defendants object to this request as
11 failing to seek relevant information or information which is calculated to lead to the discovery
12 of admissible evidence.
13

14 16. Corporate tax returns for Defendants.

15 **RESPONSE:** Defendants object to Request No. 15 on the basis that it seeks irrelevant
16 information. Defendant will further respond if Plaintiffs will provide detailing how such
17 information might lead to the discovery admissible evidence. Matters concerning “piercing the
18 corporate veil” are not at issue in this suit. Plaintiffs are not entitled to take discovery
19 concerning damages before they have a judgment for same. Defendants object to this request as
20 failing to seek relevant information or information which is calculated to lead to the discovery
21 of admissible evidence.
22

23 17. All documents regarding corporate expenditures, reimbursements, salaries,
24 employee payments and bonuses.
25
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1 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
2 responsive Request No. 17 and will produce those files to Plaintiffs on a hard drive. The parties
3 are negotiating a confidentiality agreement which will protect proprietary information of both
4 parties. Subject to further review and response, Defendants anticipate being able to produce
5 said hard drive within 14 days.
6

7 18. All corporate credit card statements.

8 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
9 responsive Request No. 18 and will produce those files to Plaintiffs on a hard drive. The parties
10 are negotiating a confidentiality agreement which will protect proprietary information of both
11 parties. Subject to further review and response, Defendants anticipate being able to produce
12 said hard drive within 14 days.
13

14 19. All documents regarding or relating to research conducted by Defendants
15 regarding faxcompare.com.

16 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
17 responsive Request No. 19 and will produce those files to Plaintiffs on a hard drive. The parties
18 are negotiating a confidentiality agreement which will protect proprietary information of both
19 parties. Subject to further review and response, Defendants anticipate being able to produce
20 said hard drive within 14 days.
21

22 20. All documents regarding or relating to research conducted by Defendants
23 regarding faxcompare.com.

24 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
25 responsive Request No. 20 and will produce those files to Plaintiffs on a hard drive. The parties
26 are negotiating a confidentiality agreement which will protect proprietary information of both
27
28

1 parties. Subject to further review and response, Defendants anticipate being able to produce
2 said hard drive within 14 days.

3 21. All communications between Gaines Kilpatrick and anyone, internal or external
4 to Defendants, regarding or relating to faxcompare.com, pbxcompare.com, or the claims
5 asserted in the above-captioned complaint.
6

7 **RESPONSE:** Defendants object to Request No. 21 in that “or the claims asserted in the
8 above-captioned complaint” is vague and overly broad. If Plaintiffs would like to request
9 specific information, Defendants will further respond. Otherwise, Defendants are searching,
10 compiling and reviewing digital files responsive Request No. 21 and will produce those files to
11 Plaintiffs on a hard drive. The parties are negotiating a confidentiality agreement which will
12 protect proprietary information of both parties. Subject to further review and response,
13 Defendants anticipate being able to produce said hard drive within 14 days.
14

15 22. All communications between Leo Welder and anyone, internal or external to
16 Defendants, regarding or relating to the claims asserted in the above-captioned complaint.
17

18 **RESPONSE:** Defendants object to Request No. 22 in that “or the claims asserted in the
19 above-captioned complaint” is vague and overly broad. If Plaintiffs would like to request
20 specific information, Defendants will further respond. Otherwise, Defendants are searching,
21 compiling and reviewing digital files responsive Request No. 22 and will produce those files to
22 Plaintiffs on a hard drive. The parties are negotiating a confidentiality agreement which will
23 protect proprietary information of both parties. Subject to further review and response,
24 Defendants anticipate being able to produce said hard drive within 14 days.
25

26 23. All communications, including draft communications, with Protus.
27
28

1 **RESPONSE:** Defendants specifically object to the production of any information
2 between counsel for Defendants and counsel for Protus concerning this lawsuit as protected by
3 the attorney-client privilege and attorney work product doctrine. As Plaintiffs know, j2
4 Global's claim to trademarks for words related to "eFax" are currently being opposed by Protus
5 at the United States Patent and Trademark Office, TTAB Proceeding No. 91166044. Thus, the
6 issues concerning trademark validity and infringement, as well as other trademark issues, are
7 identical in both proceedings. Moreover, counsel for Protus has been contacted incident to
8 possible retention and remains as a candidate for possible retention moving forward. A
9 privilege log will be produced upon request. Otherwise, Defendants are searching, compiling
10 and reviewing digital files responsive Request No. 23 and will produce those files to Plaintiffs
11 on a hard drive. The parties are negotiating a confidentiality agreement which will protect
12 proprietary information of both parties. Subject to further review and response, Defendants
13 anticipate being able to produce said hard drive within 14 days.

16 24. All documents regarding or relating to the decision to purchase or use "efax" or
17 related terms as a search term through any internet keyword advertising program including but
18 not limited to Google Adwords program, and such documents should include but are not limited
19 to any official action, corporate resolution or minutes of directors' meeting.

21 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
22 responsive Request No. 24 and will produce those files to Plaintiffs on a hard drive. The parties
23 are negotiating a confidentiality agreement which will protect proprietary information of both
24 parties. Subject to further review and response, Defendants anticipate being able to produce
25 said hard drive within 14 days.

1 25. All documents regarding or relating to the purchase or use of “efax” or related
2 terms as a search term through any internet keyword advertising program including but not
3 limited to Google Adwords program.

4 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
5 responsive Request No. 25 and will produce those files to Plaintiffs on a hard drive. The parties
6 are negotiating a confidentiality agreement which will protect proprietary information of both
7 parties. Subject to further review and response, Defendants anticipate being able to produce
8 said hard drive within 14 days.

9
10 26. All documents which include the use of the term “efax” or related terms by
11 Defendants.

12 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
13 responsive Request No. 26 and will produce those files to Plaintiffs on a hard drive. The parties
14 are negotiating a confidentiality agreement which will protect proprietary information of both
15 parties. Subject to further review and response, Defendants anticipate being able to produce
16 said hard drive within 14 days.

17
18 27. All reports generated by Defendants, including annual, semi-annual, quarterly,
19 monthly, weekly or daily reports, that are regarding or relating to faxcompare.com or
20 pbxcompare.com or any revenue or accounts receivable generated in relation to those sites.

21 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
22 responsive Request No. 27 and will produce those files to Plaintiffs on a hard drive. The parties
23 are negotiating a confidentiality agreement which will protect proprietary information of both
24 parties. Subject to further review and response, Defendants anticipate being able to produce
25 said hard drive within 14 days.
26
27
28

1 28. All organizational charts for Defendants.

2 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
3 responsive Request No. 28 and will produce those files to Plaintiffs on a hard drive. The parties
4 are negotiating a confidentiality agreement which will protect proprietary information of both
5 parties. Subject to further review and response, Defendants anticipate being able to produce
6 said hard drive within 14 days.
7

8 29. All internal communications regarding or relating to faxcompare.com or
9 pbxcompare.com.

10 **RESPONSE:** See previous responses. To the extent Plaintiffs seek information
11 beyond that already requested above, please specifically identify what Plaintiffs are looking for,
12 and Defendants will further respond.
13

14 30. All documents regarding or relating to consumer complaints, questions or
15 feedback concerning or relating to faxcompare.com or pbxcompare.com.

16 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
17 responsive Request No. 30 and will produce those files to Plaintiffs on a hard drive. The parties
18 are negotiating a confidentiality agreement which will protect proprietary information of both
19 parties. Subject to further review and response, Defendants anticipate being able to produce
20 said hard drive within 14 days.
21

22 31. All blog entries by Defendants regarding or relating to faxcompare.com or
23 pbxcompare.com, regardless of where posted.

24 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
25 responsive Request No. 31 and will produce those files to Plaintiffs on a hard drive. The parties
26 are negotiating a confidentiality agreement which will protect proprietary information of both
27
28

1 parties. Subject to further review and response, Defendants anticipate being able to produce
2 said hard drive within 14 days.

3 32. All twitter entries by Defendants regarding or relating to facompare.com or
4 pbxcompare.com, regardless of where posted.
5

6 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
7 responsive Request No. 32 and will produce those files to Plaintiffs on a hard drive. The parties
8 are negotiating a confidentiality agreement which will protect proprietary information of both
9 parties. Subject to further review and response, Defendants anticipate being able to produce
10 said hard drive within 14 days.

11 33. All documents regarding or relating to search engine optimization efforts
12 undertaken by Defendants relating to faxcompare.com, pbxcompare.com or choosewhat.com.
13

14 **RESPONSE:** Defendants object to providing any information concerning the domain
15 choosewhat.com, which is not the subject of this litigation and/or not calculated to lead to the
16 discovery of admissible evidence. If Plaintiffs would like to provide further detail as to how
17 such information might be relevant to this litigation, Defendants will further respond.
18

19 34. All drafts of text appearing on faxcompare.com, pbxcompare.com or
20 choosewhat.com.

21 **RESPONSE:** Defendants are searching, compiling and reviewing digital files
22 responsive Request No. 34 and will produce those files to Plaintiffs on a hard drive. The parties
23 are negotiating a confidentiality agreement which will protect proprietary information of both
24 parties. Subject to further review and response, Defendants anticipate being able to produce
25 said hard drive within 14 days.
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1 35. All documents regarding or relating to the Affidavit of Gaines Kilpatrick
2 attached as Ex. B to Defendant's Motion to Dismiss.

3 **RESPONSE:** Defendants object to Request No. 35 as "all documents regarding or
4 relating to the Affidavit of Gaines Kilpatrick" is vague and overly broad. Otherwise,
5 Defendants are searching, compiling and reviewing digital files responsive Request No. 35 and
6 will produce those files to Plaintiffs on a hard drive. The parties are negotiating a
7 confidentiality agreement which will protect proprietary information of both parties. Subject to
8 further review and response, Defendants anticipate being able to produce said hard drive within
9 14 days.
10

11 36. All documents which support or relate to Defendant's affirmative defenses.

12 **RESPONSE:** Defendants object in that "all documents which support or relate to
13 Defendant's affirmative defenses" is vague and ambiguous. Otherwise, Defendants are
14 searching, compiling and reviewing digital files responsive Request No. 36 and will produce
15 those files to Plaintiffs on a hard drive. The parties are negotiating a confidentiality agreement
16 which will protect proprietary information of both parties. Subject to further review and
17 response, Defendants anticipate being able to produce said hard drive within 14 days.
18

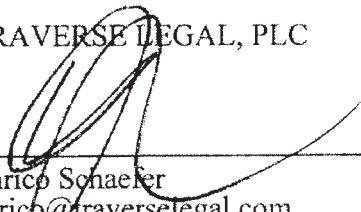
19 37. All documents which support or relate to Defendant's counterclaims.

20 **RESPONSE:** Defendants object in that "all documents which support or relate to
21 Defendant's counterclaims" is vague and ambiguous. Otherwise, Defendants are searching,
22 compiling and reviewing digital files responsive Request No. 37 and will produce those files to
23 Plaintiffs on a hard drive. The parties are negotiating a confidentiality agreement which will
24 protect proprietary information of both parties. Subject to further review and response,
25 Defendants anticipate being able to produce said hard drive within 14 days.
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Respectfully submitted,

TRAVERSE LEGAL, PLC



Enrico Schaefer
enrico@traverselegal.com
TRAVERSE LEGAL, PLC
810 Cottageview Drive, Unit G20
Traverse City, MI 49684
Tel: (231) 932-0411
Fax: (231) 932-0636

Dated: April 16, 2009

*Attorneys for Defendants Zilker Ventures,
LLC and ChooseWhat.com, LLC*

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2009, I electronically served and mailed the foregoing **DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS** to the following:

Frederick R. Juckniess
Miller, Canfield, Paddock & Stone, PLC
101 North Main Street, Floor 7
Ann Arbor, MI 48104

Richard A. Gaffin
A. Michael Palizzi
Kristen I. Spano
Miller, Canfield, Paddock & Stone, PLC
150 West Jefferson, Suite 2500
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Robert A. Sacks
Brian R. England
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1888 Century Park East, Suite 211
Los Angeles, CA 90067

Attorneys for Plaintiffs



1 Ronald G. Gabler, Esq. (SBN. 57061)
2 Arg1211@aol.com
3 Of Counsel for TRAVERSE LEGAL, PLC
4 16830 Ventura Boulevard, Suite 358
5 Encino, California 91436-1707
6 Tel: (818) 783-2932
7 Fax: (818) 783-3257

8 Enrico C. Schaefer (admitted *Pro Hac Vice*)
9 Enrico.schaefer@traverselegal.com
10 TRAVERSE LEGAL, PLC
11 810 Cottageview Drive, Unit G-20
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13 Tel.: (231) 932-0411
14 Fax: (231) 932-0636

15 *Attorneys for Defendants Zilker Ventures,*
16 *LLC and ChooseWhat.com, LLC*

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

j2 GLOBAL COMMUNICATIONS,
INC., a Delaware Corporation, AND
CALL SCIENCES, INC., a Delaware
Corporation,

Plaintiffs/
Counter-Defendants,

v.

ZILKER VENTURES, LLC, a Texas
Limited Liability Company, and
CHOOSEWHAT.COM, LLC, a
Texas Limited Liability Company,

Defendants/
Counter-Plaintiffs.

Case No. 2:08-cv-07470-SJO (AJW)

STIPULATED PROTECTIVE ORDER

Plaintiffs, j2 Global Communications, Inc., (“j2”) and Call Sciences, Inc., and
Defendants, Zilker Ventures, LLC, (“Zilker”) and Choosewhat.com, LLC, having stipulated to
the entry of a Protective Order, and the Court being otherwise fully advised in the premises;

NOW, THEREFORE, **IT IS HEREBY ORDERED** as follows:

1 1. Introduction and Scope.

2 This Protective Order shall govern any designated record or information produced in this
3 proceeding, including all designated motions and other papers submitted, all designated
4 deposition testimony, all designated testimony taken at a hearing or other proceeding,
5 interrogatory answers, documents and other discovery materials, whether produced informally
6 or in response to interrogatories, requests for admissions, requests for production of documents,
7 subpoenas, or other formal method of discovery.
8

9 2. Designation.

10 a. Each party shall have the right to designate as confidential and subject to this
11 Protective Order any thing, information, document or portion of any document produced or
12 prepared by it in this proceeding which the producing party deems to contain trade secrets,
13 know-how, proprietary data, commercially sensitive or other confidential information, including
14 without limitation technical, sales, marketing, underwriting, employee, business, financial,
15 privacy, and other proprietary information (“Confidential Information”). This designation shall
16 be made identifying documents containing Confidential Information as such in writing or with
17 the legend CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY, at or before
18 production to the receiving party. This designation shall be made in good faith. A party shall
19 not designate a document as CONFIDENTIAL – ATTORNEYS ONLY unless it contains
20 extremely sensitive information.
21
22

23 In the event a party inadvertently produces Confidential Information without such
24 legend, that party shall promptly furnish written notice to the receiving party that the
25 Confidential Information is designated CONFIDENTIAL or CONFIDENTIAL –
26 ATTORNEYS ONLY under this Protective Order along with appropriately labeled copies of
27
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1 the Confidential Information. Such post-production designation of Confidential Information
2 shall not, under any circumstances, be deemed a waiver, in whole or in part, of the right to
3 assert confidentiality or of the protections of this Protective Order, and shall not entitle the
4 receiving party or its attorneys to disclose such information in violation of this Protective Order.
5

6 Any Confidential Information not reduced to documentary, electronic, tangible or
7 physical form or which cannot be easily stamped may be designated by providing written notice
8 of such designation and the designation of any storage media shall extend to the contents of
9 such storage media. Materials provided for inspection do not need to be designated as Confidential
10 Information until copies of the materials are requested after inspection and selection by counsel.
11 Making Confidential Information available for inspection shall not constitute a waiver of any
12 claim of confidentiality, or privilege, and all materials provided for inspection by a party's
13 counsel shall be treated as though designated as CONFIDENTIAL – ATTORNEYS ONLY at
14 the time of the inspection.
15

16 3. Limit on Use of Discovered Information.

17 All documents produced or testimony given during the discovery phase of the above
18 captioned proceeding, whether pursuant to document requests, interrogatories, requests for
19 admission, depositions, or otherwise ("Discovered Material"), shall be used by the receiving
20 party only for the purpose of prosecution, defense or settlement of a dispute involving the
21 trademark at issue in the above captioned proceeding, regardless of whether such Discovered
22 Material contains Confidential Information or has been designated as CONFIDENTIAL; no
23 party or other person receiving any Discovered Material shall use it for any purpose other than
24 the prosecution, defense or settlement of a dispute involving the trademark at issue in the above
25 captioned proceeding. This paragraph shall apply retroactively from the date of entry of this
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1 Protective Order to all materials previously produced in anticipation of the negotiation of an
2 appropriate protective order.

3 4. "Confidential" Material.

4 Except as otherwise provided by written stipulation of the parties, or by further order of
5 the Court, Confidential Information designated as CONFIDENTIAL shall only be disclosed by
6 the receiving party for the purposes set forth in Paragraph 3 hereof and only to:
7

- 8 a. attorneys who represent the receiving party, including outside and
9 in-house counsel, and employees of such attorneys or law firms
10 with which such attorneys are associated, but only for the limited
11 purposes as set forth in this Protective Order;
12
13 b. experts (whether acting as testifying experts or non-testifying
14 consultants) and their staff retained by the receiving party for the
15 purpose of providing advice, an expert opinion and/or testifying at
16 the trial of this proceeding, and subject to Paragraph 6 hereof;
17
18 c. non-parties specifically retained to assist the attorneys of record
19 or a party in copying or computer coding of documents,
20 organizing, filing, translating, converting, storing or retrieving
21 data, or designing programs for handling data connected with this
22 proceeding, including the performance of such duties in relation
23 to a computerized litigation support system, but only for purposes
24 of performing such services in connection with this proceeding;
25
26 d. defendants may share Confidential Information concerning all
27 trademark issues with Protus IP Solutions, Inc., which has filed an
28

1 Opposition Proceeding to certain of j2's trademark applications,
2 Opposition No. 91166044, TTAB, subject to the Protective Order
3 executed between Protus and j2 in the proceeding to the extent the
4 discovery relates to issues concerning j2's alleged trademark
5 rights, defenses and damages;

6
7 e. a court of competent jurisdiction and its personnel as provided in
8 Paragraph 11 hereof; and

9 f. the parties to this proceeding, but only for purposes of this proceeding.

10 No documents or information designated as CONFIDENTIAL shall be disclosed to any person
11 except as otherwise provided herein or by written stipulation of the parties or by order of the
12 Court.
13

14 5. "Confidential - Attorneys Only" Material.

15 Except as provided in Paragraph 4d, Confidential Information designated as
16 CONFIDENTIAL – ATTORNEYS ONLY shall be disclosed only to:

- 17 a. outside attorneys who represent the receiving party and
18 employees of such attorneys or law firms with which such
19 attorneys are associated, but only for the limited purposes as set
20 forth in this Protective Order;
- 21
22 b. experts (whether acting as testifying experts or non-testifying
23 consultants) and their staff retained by the receiving party for the
24 purpose of providing advice, an expert opinion and/or testifying at
25 the trial of this proceeding, and subject to Paragraph 6 hereof;
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- 1 c. non-parties specifically retained to assist the attorneys of record
2 or a party in copying or computer coding of documents,
3 organizing, filing, translating, converting, storing or retrieving
4 data, or designing programs for handling data connected with this
5 proceeding, including the performance of such duties in relation
6 to a computerized litigation support system, but only for purposes
7 of performing such services in connection with this proceeding;
8 and
9
10 d. a court of competent jurisdiction and its personnel as provided in
11 Paragraph 11 hereof.
12

13 No documents or information designated as CONFIDENTIAL – ATTORNEYS ONLY shall be
14 disclosed to any party to this proceeding, or any non-party, or to any officer, director or
15 employee of any party, except as otherwise provided herein or by written stipulation of the
16 parties or by order of the Court. In the event that outside counsel for either party believes it
17 necessary to disclose specific documents or information designated as CONFIDENTIAL –
18 ATTORNEYS ONLY to a specific individual not otherwise authorized herein, it shall seek
19 authorization from the designating party for such disclosure. Such authorization shall not be
20 unreasonably withheld by the designating party, but the requested disclosure shall only be made
21 upon the written stipulation of the parties or by order of the Court.
22

23 6. Identification of Experts.

24 A party desiring to disclose Confidential Information designated CONFIDENTIAL –
25 ATTORNEYS ONLY to outside experts (whether acting as testifying experts or non-testifying
26 consultants) under Paragraph 5 hereof (“Disclosing Party”) shall first obtain from each expert a
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1 signed undertaking in the form of Exhibit A hereto and a complete résumé (curriculum vitae),
2 including an identification of all publications authored or co-authored by said expert. A copy of
3 such undertaking and résumé shall be served upon counsel for the other party ("Designating
4 Party"). The Designating Party shall then have seven (7) calendar days to serve a written
5 objection to such disclosure. Any written objection shall state with specificity the reason(s) for
6 such objection. There shall be no disclosure to such expert within the seven-day period except
7 by the parties' agreement or further order of the Court pursuant to resolution of a motion. If
8 within the seven-day period the Designating Party objects to the disclosure, counsel shall
9 consult with each other and attempt, without a requirement, to reach an agreement. Failing that
10 and for good cause shown, the Disclosing Party may file a motion with the Court for an order
11 granting access. In the resolution of such matter, the burden shall be on the party objecting to
12 disclosure.
13
14

15 7. Related Documents.

16 Confidential Information designated CONFIDENTIAL or CONFIDENTIAL –
17 ATTORNEYS ONLY shall include (a) all copies, extracts and complete or partial summaries
18 prepared from such information; (b) portions of deposition transcripts and exhibits thereto
19 which contain or reflect the content of any such information, copies, extracts, or summaries of
20 it; (c) portions of affidavits, briefs, memoranda or any other writing filed with the Court and
21 exhibits thereto which contain or reflect the content of any such information, copies, extracts, or
22 summaries of it; (d) deposition testimony designated in accordance with Paragraph 8 hereof;
23 and (e) testimony taken at a hearing or other proceeding that is designated in accordance with
24 Paragraph 9 hereof.
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1 8. Designation of Deposition Transcripts.

2 Deposition transcripts, or portions thereof, as well as exhibits that have not otherwise
3 been designated pursuant to this Protective Order may be designated as subject to this Protective
4 Order either:

5 a. at the time of such deposition, in which case the transcript of the
6 designated testimony shall be bound in a separate volume and
7 marked CONFIDENTIAL or CONFIDENTIAL —

8 ATTORNEYS ONLY by the reporter, as the designating party
9 may direct, or
10

11 b. within thirty (30) calendar days following receipt of the
12 deposition transcript by providing written notice to the reporter
13 and all counsel of record, in which case all counsel receiving such
14 notice shall mark the copies or portions of the designated
15 transcript in their possession or under their control as directed by
16 the designating party.
17

18 All deposition transcripts not previously designated shall be treated as CONFIDENTIAL –
19 ATTORNEYS ONLY for a period of thirty (30) calendar days after receipt of the transcript, and
20 the transcript shall not be disclosed by a non-designating party to persons other than those
21 persons named or approved according to Paragraph 5 hereof to review documents or materials
22 designated CONFIDENTIAL – ATTORNEYS ONLY on behalf of that non-designating party.
23

24 9. Designation of Hearing Testimony or Argument.

25 With respect to testimony elicited and exhibits marked during hearings and other
26 proceedings, whenever counsel for any party deems that any question or line of questioning
27

1 calls for the disclosure of Confidential Information that should be kept CONFIDENTIAL or
2 CONFIDENTIAL – ATTORNEYS ONLY, counsel may designate on the record prior to such
3 disclosure that it is CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY. Whenever
4 matter designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY is to be
5 discussed in a hearing or other proceeding, any party claiming such confidentiality may, with
6 permission of that Court only, exclude from the room any person who is not entitled under this
7 Protective Order to receive information designated as CONFIDENTIAL or CONFIDENTIAL –
8 ATTORNEYS ONLY.
9

10 10. Disclosure to Author or Recipient.

11 Notwithstanding any other provisions of this Protective Order, nothing herein shall
12 prohibit counsel for a party from disclosing any document, whether designated as
13 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY, to any person whom the
14 document clearly identifies as the author or a recipient of such document and regardless of
15 designation pursuant to this Protective Order, but only for the purposes set forth in Paragraph 3
16 hereof. The person viewing such documents shall not be permitted to retain copies of any of the
17 documents, unless that person is authorized to do so under other provisions of this Protective
18 Order.
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21 11. Designation of Documents Under Seal.

22 Any Confidential Information designated as CONFIDENTIAL or CONFIDENTIAL –
23 ATTORNEYS ONLY, if filed with the Court or a court of competent jurisdiction, shall be filed
24 and kept by the Court under seal and shall be made available only to the Court and to persons
25 authorized by this Protective Order. The party filing any paper which reflects, contains or
26 includes any Confidential Information subject to this Protective Order shall file such paper in a
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1 sealed envelope, or other appropriately sealed container, which indicates the title of the action,
2 the party filing the materials, the nature of the materials filed, and the legend CONFIDENTIAL
3 -- FILE UNDER SEAL PURSUANT TO PROTECTIVE ORDER.

4 At the conclusion of this proceeding, any materials filed with the Court under seal shall
5 be kept under seal or be returned to the party filing it for disposition as provided for in
6 Paragraph 19 hereof.

8 12. Confidentiality of Party's Own Documents.

9 No person may disclose any Confidential Information, except as provided in this
10 Protective Order; but nothing herein shall affect the right of a party to disclose Confidential
11 Information which it designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS
12 ONLY to its officers, directors, employees, consultant or experts, or to any non-party. Such
13 disclosure shall not waive the protections of this Protective Order and shall not entitle other
14 parties or their attorneys to disclose such information in violation of this Protective Order.

16 13. Preparation of Witness and Exhibit Designation.

17 Any party may mark any Confidential Information designated as CONFIDENTIAL or
18 CONFIDENTIAL – ATTORNEYS ONLY as an exhibit to a deposition, hearing or other
19 proceeding and examine any witness who is not otherwise prohibited from viewing such
20 material thereon, provided the exhibit and related transcript pages receive the same type of
21 confidentiality designation as the original document.
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1 14. Other Protections; Challenge to Confidentiality Designation.

2 This Protective Order shall not preclude any party from seeking and obtaining, on an
3 appropriate showing, such additional protection with respect to the confidentiality of
4 Confidential Information, or other discovery material as such party may consider appropriate.
5 No party shall be precluded from: (a) claiming that any Confidential Information is not entitled
6 to the protections of this Protective Order; (b) applying to the Court for an order permitting a
7 disclosure or use of Confidential Information otherwise prohibited by this Protective Order; or
8 (c) applying for an order modifying this Protective Order in any respect. No party shall be
9 obligated to challenge the propriety of any confidentiality designation, and failure to do so shall
10 not preclude a subsequent attack on the propriety of such designation.
11

12 Either party may contest a claim of either level of confidentiality. If the receiving party
13 disagrees with the designation and marking by the producing party of any material as
14 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY then the parties shall first try
15 to resolve such disputes on an informal basis. If agreement cannot be reached between counsel,
16 then such dispute may be presented to the Court by motion or otherwise. In the resolution of
17 such matter, the burden of establishing confidentiality shall be on the party who made the claim
18 of confidentiality.
19
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21 15. Prior or Public Knowledge.

22 The restrictions and obligations set forth herein relating to documents and things marked
23 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY shall not apply to any
24 information which the parties agree in writing, or if they are unable to agree, the Court
25 determines: (a) was or becomes public knowledge other than as a result of disclosure by the
26 receiving party; or (b) has come or shall come into the receiving party's lawful possession
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1 independently of the producing party. Such restrictions and obligations shall not be deemed to
2 prohibit discussions with any person about any documents or things marked CONFIDENTIAL
3 or CONFIDENTIAL – ATTORNEYS ONLY if that person already had or obtained lawful
4 possession thereof other than pursuant to this Protective Order. Nothing in this Protective
5 Order shall affect or restrict use or disclosure of documents or things obtained other than
6 through discovery pursuant to this Protective Order.
7

8 16. Limitation of Protective Order.

9 This Protective Order does not preclude any party from seeking further relief or
10 protective orders from the Court as may be appropriate under applicable rules.
11

12 17. Non-Party Confidential Information.

13 The terms of this Protective Order shall be applicable to CONFIDENTIAL and
14 CONFIDENTIAL – ATTORNEYS ONLY information obtained from a non-party, and such
15 information produced in connection with this proceeding shall be protected by the provisions of
16 this Protective Order. Such a non-party shall have: (a) the same right as a party to designate any
17 such information under this Protective Order; and (b) standing to enforce the terms of this
18 Protective Order with respect to disclosure and use of that non-party's designated information.
19

20 18. Return of Designated Information.

21 Upon final termination of this proceeding, including any appeal thereof, unless
22 otherwise agreed to in writing by an attorney of record for the designating party, each party
23 shall assemble and return all Confidential Information designated as CONFIDENTIAL or
24 CONFIDENTIAL–ATTORNEYS ONLY, including all copies (whether in the possession of the
25 party, counsel, experts, or non-parties), extracts and summaries thereof, to the party from whom
26 the such designated Confidential Information was obtained, except that any documents or
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1 copies which contain or constitute attorney's work product or expert reports may be retained by
2 counsel, or destroyed.

3 19. Privileged Information

4 The inadvertent production of any privileged information shall not be deemed a waiver
5 or impairment of any claim or privilege or protection afforded to the privileged information.
6 Upon receiving written notice from the producing party that privileged information has been
7 inadvertently produced, or upon independent discovery that privileged information has been
8 inadvertently produced, the receiving party shall immediately return all such privileged
9 information, and all copies thereof, to the producing party. Such return shall be without
10 prejudice to, and does not waive, any claim by the returning party that the returned document(s)
11 are not protected by a privilege, provided, however, that nothing contained in the returned
12 document(s) shall be used by the returning party to establish the alleged lack of privilege.
13
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15 20. Waiver or Termination of Protective Order.

16 No part of the restrictions imposed by this Protective Order may be waived or
17 terminated, except by the written stipulation executed by counsel of record for each designating
18 party, or by an order of the Court for good cause shown. The restrictions provided for herein
19 shall not terminate upon the conclusion of this proceeding, but shall continue until further order
20 of the Court.
21

22 21. Modification of Protective Order; Prior Agreements.

23 This Protective Order may be modified, and any matter related to it may be resolved by
24 written stipulation of the parties subject to approval of the Court.
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1 22. Continuing Jurisdiction.

2 This Protective Order is ongoing and shall survive termination of this proceeding. The
3 Court shall retain jurisdiction to enforce the Protective Order even after termination of this
4 proceeding.

5 23. Paragraph Captions.

6 The Title captions for each paragraph of this Protective Order are for convenience only
7 and are not intended to affect or alter the text of the paragraphs or the substance of the
8 Protective Order.
9

10 Dated this ____ day of April 2009

11 Frederick R. Juckniess, Esq.
12 MILLER, CANFIELD, PADDOCK AND
13 STONE, PLC
14 101 North Main Street, Seventh Floor
15 Ann Arbor, MI 48104
16 (734) 663-2445
17 Attorneys for Plaintiffs

18 Dated this ____ day of April, 2009

19 Enrico Schaefer, Esq.
20 TRAVERSE LEGAL, PLC
21 810 Cottageview Drive, Suite G20
22 Traverse City, MI 49684
23 (231) 932-0411
24 Attorneys for Defendants

25 SO ORDERED:

26 United States District Court Judge
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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of April, 2009, I electronically filed the foregoing **PROTECTIVE ORDER** with the Clerk of the Court using the CM/ECF System.

Ronald G. Gabler, Esq. (SBN. 57061)
Arg1211@aol.com
Of Counsel for TRAVERSE LEGAL, PLC
16830 Ventura Boulevard, Suite 358
Encino, California 91436-1707
Tel: (818) 783-2932
Fax: (818) 783-3257

*Attorneys for Defendants Zilker Ventures,
LLC and ChooseWhat.com, LLC*

1 EXHIBIT A

2 UNDERTAKING RE: PROTECTIVE ORDER

3 United States District Court
4 Central District of California

5 **j2 GLOBAL COMMUNICATIONS, INC. AND CALL SCIENCES, INC. v.**
6 **ZILKER VENTURES, LLC, AND CHOOSEWHAT.COM, LLC**
7 **Case No. 2:08CV07470**

8 UNDERTAKING OF _____

9 1. My address is _____

10 My present occupation is _____

11 2. I have received a copy of the Protective Order in the above-captioned proceeding
12 and any amendments thereto, and I have carefully read and understand its provisions. I consent
13 to jurisdiction of the United States District Court, Central District of California solely for the
purpose of enforcing the provisions of the Protective Order.

14 3. I will comply with all of the provisions of the Protective Order. I will hold in
15 confidence, and will not disclose to anyone other than those persons specifically authorized by
16 the Protective Order, and will not copy or use except for purpose of this proceeding, any
documents or things marked CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY
17 which I receive in this proceeding, except as allowed in accordance with the Protective Order.

18 4. Upon final termination of this proceeding, I will return all Confidential
19 Information designated as CONFIDENTIAL or CONFIDENTIAL–ATTORNEYS ONLY
20 which is in my possession, custody, or control, including all copies, extracts and summaries
thereof, to counsel who retained me.

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

23 Executed on this date _____ at _____

24 By: _____
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EXHIBIT 3

Consulting Agreement

WHEREAS Zilker Ventures, LLC ("Zilker Ventures" or "Consultant") offers consumer information on the internet and has substantial experience in product and competitive analysis, web site development and affiliate marketing.

WHEREAS Zilker Ventures provides organized research and information on on-line service offerings allowing consumers to make a quality buying decision in minimal time. Zilker further advises companies on how to improve their services and customer experience.

WHEREAS Protus IP Solutions ("Protus" or "Client") offers on-line consumer services and has several undeveloped domain names.

WHEREAS Protus is continually improving its service offerings based on competitive analysis, consumer feedback and other relevant information.

Domain Licensing:

Client has a number of domains in Client's portfolio that are currently unused or underutilized. It is the opinion of Consultant that Consultant will be able to develop websites and employ search engine optimization techniques on these domains that could significantly increase their value. Furthermore, by linking these websites to Client's primary revenue generating websites, Consultant believes that Client could see a significant increase in traffic to Client's revenue sites. In order to accomplish this objective, Consultant proposes the following:

Licensed Domains:

Client will license to Consultant unused or underutilized domains, specifically the domains Fax-fax.com Fax.info and Internetfaxprovider.com (Licensed Domains).

Content and Design:

A) Consultant will have absolute discretion with regard to content and design published on Licensed Domains. Consultant will bear all costs associated with the development and maintenance of Licensed Domains. Consultant warrants that it will have ownership rights in all content developed and published on the Licensed Domains and the ability to transfer full title and ownership to Protus.
B) At the end of the License Consultant shall deliver all content developed and published and transfer all rights in said content to Protus including all copyrights in the content. Consultant waives all moral rights in said content.

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C) Consultant shall indemnify, defend, and hold PROTUS harmless from all third party legal claims, damages, and expenses relating to the development, operation, and content of the Websites during the term of this Agreement.

License Term:

The initial term of the license shall be for 24 months. However, Client shall have the right to terminate the license agreement at any time with 30 days written notice.

Linking:

Consultant shall provide links to Client's primary revenue generating websites, to be determined by Client, either 1) from the home page of websites operated by Consultant on each of the License Domains, or 2) subject to a link web strategy to be approved by Client.

Affiliate Revenue:

Consultant shall be permitted to enter into affiliate marketing or other revenue generating agreements to be operated on the License Domains. Any such agreements entered into between Client and Consultant shall be identical to any pre existing compensation agreements currently in place between the parties. Consultant shall be the sole benefactor of revenues generated from the operation of websites on the License Domains.

Other

Consultant shall comply with all applicable laws including laws regarding unsolicited telemarketing, faxing and email. Consultant agrees to abide by all Internet and search engine policies, protocols and guidelines including but not limited to SEO best practices and Google Webmaster guidelines.

Product and Service Analysis:

In addition to the above proposal, Consultant will perform a detailed analysis of Client's products and services and provide Client with a detailed report of Consultant's finding including the following:

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Product Peer Group: _____

Consultant will identify each service provider that provides competing products and services to Client.

Competitive Analysis:

Consultant will provide Client with an analysis of the competitive advantage (or disadvantage) of Client's products and services in relation to the Peer Group. This shall include data collected on Consultant's websites indicating which products and services are most attractive to consumers, and more importantly, which products and services illicit the most consummated transactions.

Consulting Service Agreement:

Scope of Work:

The scope of consulting services shall include the activities described above and any additional services mutually agreed upon at a later date by and between Client and Consultant.

Term:

The Term of the Consulting Service agreement shall be 90 days. However, either party shall have the right to terminate this agreement at any time with 30 days written notice. In the event that this agreement is terminated, no further fees or services shall be due to either party.

Compensation:

Consultant shall be held on retainer and shall be paid a fee of \$10,000 per month for services rendered. This compensation agreement shall be reviewed every 90 days, at which time Client can adjust the rate or terminate the agreement entirely at Client's sole and absolute discretion.

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As previously discussed between the parties, neither is contemplating or expecting that this agreement will provide Protus with special treatment of its services on faxcompare.com or pbxcompare.com. Thank you for the opportunity to submit this proposal. We are very excited about the opportunity to work with you and look forward to your favorable response.

Zilker Venturs, LLC



Gaines Kilpatrick

Agreed and Accepted:
Protus



5/4/09
Date