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15 WaveMarket, Inc. d/b/a Location Labs

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19
20 CALLWAVE COMMUNICATIONS LLC,

21
22 Plaintiff,

23 vs.

24
25 AT&T INC., AT&T MOBILITY,
26 LLC, AND GOOGLE, Inc.,

27 Defendants.
28

No. 1:12-cv-1701-RGA

**WAVEMARKET, INC., d/b/a
LOCATION LABS' OBJECTIONS AND
RESPONSES TO PLAINTIFF'S
SUBPOENA TO TESTIFY AT A
DEPOSITION AND PRODUCTION OF
DOCUMENTS, ELECTRONICALLY
STORED INFORMATION, OR
TANGIBLE THINGS IN A CIVIL
ACTION**



1
2 Pursuant to Fed. R. Civ. P. 45(d)(2)(B) of the Federal Rules of Civil Procedure,
3 WaveMarket, Inc., d/b/a Locations Labs ("LOCATION LABS") hereby objects to Plaintiff,
4 Callwave Communication's ("PLAINTIFF") Subpoena To Testify at a Deposition and the
5 Production of Documents, Electronically Stored Information, or Tangible Things In A Civil
6 Action ("Plaintiff's Subpoena"), which was served upon it on February 10, 2014, as follows:

7 LOCATION LABS serves the following Objections and Responses within the 14 day
8 time period provided in Fed. R. Civ. P. 45(d)(2)(B) and requests the opportunity to meet and
9 confer with PLAINTIFF prior to the filing of any motion by PLAINTIFF seeking an order
10 compelling production or inspection. The following Objections and Responses are based upon
11 records and information reasonably available to LOCATIONS LABS as of the date of these
12 Objections and Responses. LOCATIONS LABS responds to Plaintiff's Subpoena based upon
13 its current understanding and its objections as set forth herein are made without prejudice to its
14 right to assert any additional objection or response. By responding to Plaintiff's Subpoena,
15 LOCATIONS LABS is not representing that documents or information responsive to Plaintiff's
16 Subpoena exist. LOCATIONS LABS expressly reserves its right to rely on any further,
17 additional, or different facts, documents or other evidence which may develop or come to its
18 attention at a later time. Therefore, LOCATIONS LABS reserves the right, at any time, to
19 revise, amend, correct, supplement, modify, or clarify its Objections and Responses to Plaintiff's
20 Subpoena, or production made pursuant thereto.

21 Nothing in these responses should be construed as waiving rights or objections that
22 might otherwise be available to LOCATIONS LABS nor should LOCATIONS LABS' responses
23 to any of these topics be deemed an admission of relevancy, materiality, or admissibility in
24 evidence of the topic or the response thereto. LOCATIONS Labs' Objections and Responses are
25 made without in any way waiving or intending to waive, but on the contrary preserving and
26 intending to preserve: (1) all questions as to competency, relevancy, authenticity, materiality,
27 privilege, and admissibility as evidence for any purpose of the Objections and Responses or
28 subject matter thereof, in any subsequent proceeding in or during the hearing of this matter; (2)

1 the right to object on any ground to the use of said Objections and Responses, or the subject
2 matter thereof, in any subsequent proceeding or in the hearing of this or any other matter; and
3 (3) the right to object on any ground at any time to any other subpoenas, requests for production
4 or other discovery procedures involving or relating to the subject matter of Plaintiff's Subpoena.

5 GENERAL OBJECTIONS

6 In addition to any specific objection which may be made on an individual basis in the
7 Specific Objections and Responses below, LOCATION LABS makes the following General
8 Objections, whether or not separately set forth in response to each of Plaintiff's Topics for
9 Deposition (hereinafter "Topics") and Requests for Production (hereinafter "Requests"), to each
10 and every instruction, definition, topic, and request made in Plaintiff's Subpoena. Nevertheless,
11 the assertion of the same, similar, or additional objections in response to a specific Request or
12 Topic does not waive, limit, or modify any of these General Objections. Likewise, any specific
13 objection made by LOCATION LABS in no respect waives, limits, or modifies any General
14 Objection. LOCATION LABS adopts and incorporates by reference the following General
15 Objections into each of its specific objections to the Requests and Topics contained in Plaintiff's
16 Subpoena.

17 A. LOCATION LABS objects to each Request and Topic as overly broad, vague,
18 compound, and to the extent that it seeks information that is not relevant to the claims or
19 defenses asserted in this litigation or the subject matter of this litigation or that is not reasonably
20 expected to lead to the discovery of admissible evidence. LOCATION Labs' response shall not
21 constitute an admission that the response is relevant and shall not waive LOCATION Labs' right
22 to object to the admissibility of such response at any proceeding.

23 B. LOCATION LABS objects to each Request and Topic to the extent that they fail to
24 describe with reasonable particularity the topics and requests for which information and
25 documents are sought and specifically objects to the extent each Topic and Request is not
26 reasonably limited in time, geographic region or scope.

27 C. LOCATION LABS objects to Plaintiff's Subpoena to the extent it seeks to impose
28 obligations beyond what is required by Federal Rules of Civil Procedure 26, 34, and 45.

1 D. LOCATION LABS objects to Plaintiff's Subpoena on the grounds that it imposes
2 upon LOCATION LABS undue burden and expense, including without limitation, substantially
3 disrupting and impairing LOCATION Labs' business operations, services to its customers, and
4 diverting financial resources and time. Pursuant to Rule 45(d)(1) and Rule 45(d)(2)(B)(ii),
5 LOCATION LABS requests that Plaintiff reimburse LOCATION LABS in advance for the
6 costs of production, including reasonable attorneys fees. This includes without limitation the
7 reasonable fees, costs and expenses incurred in connection with responding to the subpoena,
8 including but not limited to LOCATION LABS' costs and expenses in locating, compiling and
9 producing documents and things, reviewing for privilege and/or immunity from production, and
10 in preparing any withheld document list. LOCATION LABS will not produce the requested
11 information until the Plaintiff agrees to reimburse LOCATION LABS for the costs of
12 production, including reasonable fees, or until Plaintiff obtains an Order pursuant to Rule
13 45(d)(2)(B)(ii) compelling production by LOCATION LABS, which order "must protect a
14 person who is neither a party nor a party's officer from significant expense resulting from
15 compliance." To the extent Plaintiff refuses to reimburse LOCATION LABS for its response to
16 this Subpoena and to limit the Requests consistent with the Objections stated herein,
17 LOCATION LABS reserves the right to seek an Order from the Court, pursuant to Rule
18 45(d)(1), imposing upon the Plaintiff an appropriate sanction, including costs of production, lost
19 earnings, and attorneys fees, for Plaintiff's failure to take reasonable steps to avoid imposing
20 undue burden or expense on the persons subject to the subpoena. LOCATION LABS further
21 objects to the "Form of Production" set forth in Plaintiff's Subpoena on the grounds that it
22 imposes upon LOCATION LABS undue burden and expense and is inconsistent with Rule
23 45(d)1) and Rule 45(d)(2)(B)(ii).

24 E. LOCATION LABS objects to Plaintiff's Subpoena to the extent it seeks to impose
25 on LOCATION LABS any obligations or responsibilities different from or in excess of those
26 required by the Federal Rules of Civil Procedure, the Local Rules of the United States District
27 Court for the Northern District of California, Orders of the Court, or any other applicable law.
28

1 F. LOCATION LABS objects to the definitions and instructions contained in
2 Plaintiff's Subpoena to the extent they seek to impose on LOCATION LABS any obligations or
3 responsibilities different from or in excess of those required by the Federal Rules of Civil
4 Procedure, the Local Rules of the United States District Court for the Northern District of
5 California, or any other applicable law. In particular,

6 1) The terms "YOU," OR "YOUR," is defined to include "WaveMarket, Inc. d/b/a
7 Location Labs," and "its affiliates, divisions, successors, predecessors, agents, employees,
8 representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting
9 on behalf of the foregoing, directly or indirectly." LOCATION LABS objects to this definition
10 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome, and
11 LOCATION LABS will specifically limit its response to be that of LOCATION LABS, its
12 officers and employees acting in their official capacities as authorized by LOCATION LABS.

13 2) The terms "Plaintiff" or "Callwave" is defined to include "Callwave
14 Communications, LLC," and "any of its past and present affiliates, operating divisions, parent
15 corporations, subsidiaries, directors, officers, agents, employees, representatives, and all Persons
16 acting on its behalf." LOCATION LABS objects to this definition on the grounds that it is
17 vague, ambiguous, overly broad and unduly burdensome, and encompassing entities or persons
18 of whom LOCATION LABS has no knowledge and/or with whom LOCATION LABS has had
19 no dealings or transactions.

20 3) The terms "Defendant" or "Defendants" is defined to include "Google, Inc., AT&T
21 Mobility, LLC, Sprint Nextel Corp., T-Mobile USA, Inc. Verizon Communication, Inc. Cellco
22 Partnership, d.b.a. Verizon Wireless, Blackberry Corp., and Blackberry Ltd, on an individual
23 basis," and "any and all affiliates, divisions, successors, predecessors, agents, employees,
24 representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting
25 on behalf of the foregoing, directly, or indirectly." LOCATION LABS objects to this definition
26 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome, and
27 encompassing entities or persons of whom LOCATION LABS has no knowledge and/or with
28 whom LOCATION LABS has had no dealings or transactions.

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