WILLIAM B. CHANDLER III
CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: March 29, 2005
Decided: March 30, 2005

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Re: *Matthews v. Groove Networks, Inc., et al.*
Civil Action No. 1213-N

Dear Counsel:

I have considered defendants' Motion for the Entry of a Confidentiality Order and Order Directing That Previously Filed Papers Be Placed Under Seal, and I have determined that an oral argument is not necessary in this matter. For the reasons discussed below I deny defendants' motion.

Pursuant to Court of Chancery Rule 5(g), defendants seek to have all filings with this Court placed under seal. Having reviewed defendants' arguments and the pertinent filings, I conclude that defendants have failed to show good cause or any harm that would occur by allowing these filings to remain in the public domain.

Defendants also argue that the filings should be sealed because they believe that plaintiff, by discussing various financial terms of the proposed merger, has violated § 9.1 of his Employment Agreement and § 10 of the Series F Exchangeable Convertible Preferred Stock Purchase Agreement ("Stock Purchase Agreement"). While both of these sections deal with confidentiality, I conclude that neither pertains to the information that plaintiff has discussed in his filings. Section 9.1 of the Employment Agreement deals with proprietary information, which is defined as

> all information … relating to the business, technical or financial affairs of the Corporation and that is generally understood in the industry as being trade secret, confidential and/or proprietary, that is designated as being, or reasonably should be understood to be confidential or proprietary information of the corporation.

Simply put, as this information was provided to the plaintiff after his employment with Groove had ceased, I cannot conclude that this information is protected under § 9.1 of the Employment Agreement. Similarly, § 10 of the Stock Purchase Agreement does not apply to the information plaintiff uses in his filings. This provision states that

> each Purchaser … agrees that it will keep confidential and will not disclose or divulge any confidential, proprietary or secret information which such Purchaser may obtain from the Company pursuant to financial statements, reports and other materials submitted by the Company to such Purchaser pursuant to the agreement …

> unless such information is known, or until such information is known to the public.

This section only applies to information released to the Purchaser pursuant to the Stock Purchase Agreement, and I conclude that information concerning the proposed terms of the merger, years after the stock had been purchased, is not information released to the Purchaser pursuant to an agreement to purchase stock. Additionally, this information was made available to the plaintiff twice, once as a holder of the Series F, and in a separate disclosure as a holder of Common Stock. Because the plaintiff obtained this information in a disclosure unrelated to the Series F, § 10 of the Stock Purchase Agreement cannot bind the plaintiff from revealing this information and, therefore, is not applicable in the present case.

With respect to the production of documents for discovery, I request that the parties work out a stipulated confidentiality agreement that will apply to all documents produced during discovery, but such stipulation should only govern previously undisclosed proprietary, financial information.

IT IS SO ORDERED.

Very truly yours,

/s/ William B. Chandler III

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