

1 Daniel A. Berman (State Bar No. 161696)
dberman@wshblaw.com

2 Lisa L. Boswell (State Bar No. 190304)
lboswell@wshblaw.com

3 **WOOD, SMITH, HENNING & BERMAN LLP**
 10960 Wilshire Boulevard, 18th Floor
 4 Los Angeles, California 90024-3804
 Phone: 310-481-7600 ♦ Fax: 310-481-7650

5 Attorneys for Defendant, LWRC INTERNATIONAL, LLC

6
 7
 8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

10
 11 MINDLAB MEDIA, LLC, a California
 Limited Liability Company;
 12 RICHARD MACHOWICZ,

13 Plaintiffs,

14 v.

15 LWRC INTERNATIONAL, LLC a
 Maryland Limited Liability Company;
 16 FAILZERO, an unknown Florida
 entity; DOES 1 to 10, inclusive,

17 Defendants.

CASE NO. CV11 03405 CAS

**[PROPOSED] ORDER RE:
 AMENDED STIPULATION AND
 PROTECTIVE ORDER**

NOTE CHANGES MADE BY
 COURT

[Assigned to U.S. District Judge Christine A. Snyder,
 Courtroom 5]

Trial Date: 5/7/13

18
 19 Plaintiffs MINDLAB MEDIA, LLC, a California Limited Liability
 20 Company, and RICHARD MACHOWICZ (hereinafter collectively
 21 the "Plaintiffs"), and Defendants LWRC INTERNATIONAL, LLC, a Maryland
 22 Limited Liability Company, and TANGO DOWN, INC., an Arizona
 23 Corporation (hereinafter collectively the "Defendants")(hereinafter
 24 collectively the "Parties" or individually each as a "Party"), recognize that
 25 some documents, things, testimony, and information that may be
 26 discoverable or disclosed in this action may contain private, confidential,
 27 proprietary, financial, sales, phone lists, customer lists, revenue data, profit
 28

1 and loss statements, or trade secret information ("Confidential Information"),
2 the disclosure of which could be harmful to the disclosing party. The Parties
3 execute this Amended Stipulated Protective Order (hereinafter the
4 "Protective Order") in accordance with Federal Rules of Civil Procedure Rule
5 29(b) and Rule 26.

6 **IT IS HEREBY STIPULATED** by and among the Parties hereto,
7 through their respective counsel of record, that, to the extent the Parties
8 produce or provide documents, things, testimony, or information that
9 comprise or contain Confidential Information, such documents, things,
10 testimony, or information may be produced or provided upon the following
11 terms and conditions:

12 1. A Party to this action who produces or provides documents,
13 things, testimony or other information, which he, she, or it reasonably
14 believes to comprise or contain Confidential Information, and which he, she,
15 or it desires to be subject to this Protective Order, shall designate such
16 information or materials as either "CONFIDENTIAL" or, if such information or
17 materials are of a highly confidential or proprietary nature, such as financial,
18 customer, phone lists, sales, revenue data, profit and loss statements, or
19 trade secret information, as "CONFIDENTIAL-ATTORNEYS' EYES ONLY."

20 2. The designation of documents, things, testimony, or other
21 information as "CONFIDENTIAL" OR "CONFIDENTIAL-ATTORNEYS' EYES
22 ONLY" shall be made as follows:

23 a. Documents and things comprising or containing
24 Confidential Information, including discovery responses, shall be designated
25 by prominently stamping or marking the documents or things with the term
26 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS EYES ONLY." If a
27 confidential document consists of multiple pages, each page of the
28 document shall be so stamped or marked.

1 b. A deposition transcript comprising or containing
2 Confidential Information shall be designated "CONFIDENTIAL" or
3 "CONFIDENTIAL-ATTORNEYS EYES ONLY" by requesting such treatment
4 thereof either on the record at the time of the deposition or by written notice
5 after service of the deposition transcript. If confidential treatment of a
6 deposition transcript is requested on the record at the time of the deposition,
7 the requesting Party shall instruct the court reporter to stamp or mark each
8 page of the transcript containing the Confidential Information with the terms
9 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY."
10 Alternatively, the requesting Party may instruct the court reporter to
11 separately bind such designated pages of the transcript. If confidential
12 treatment of a transcript is requested by a Party by written notice after
13 completion of a deposition, such written notice shall be mailed to all other
14 Parties within twenty (20) calendar days after completion and service of the
15 transcript. Such written notice shall specifically identify by page and line
16 number all portions of the transcript that should be treated as
17 "CONFIDENTIAL" OR "CONFIDENTIAL-ATTORNEYS' EYES ONLY" in
18 accordance with this Protective Order. Documents or things used as
19 exhibits at a deposition that a Party desires to be subject to this Protective
20 Order shall be separately stamped or marked "CONFIDENTIAL" or
21 "CONFIDENTIAL-ATTORNEYS' EYES ONLY." Any and all such deposition
22 transcripts generated in connection with this litigation shall be treated as
23 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" until such time as twenty-five
24 (25) calendar days have passed from the time the Parties receive the
25 deposition transcript.

26 c. Any Party may designate documents or things produced by
27 a third party pursuant to a subpoena as "CONFIDENTIAL" or
28 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" by providing written notice to

1 each other Party within ten (10) calendar days of receipt of the documents or
2 things produced by the third party. Such written notice shall specifically
3 identify each document or thing produced by the third party that should be
4 treated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES
5 ONLY" in accordance with this Protective Order. No Party is authorized to
6 disclose any third party documents produced in connection with any
7 subpoena until fifteen (15) calendar days have elapsed since receipt of the
8 materials, and no Party has designated the documents or things produced
9 by such third party as either "CONFIDENTIAL" or "CONFIDENTIAL-
10 ATTORNEYS' EYES ONLY".

11 3. By designating a document, thing, testimony, or other
12 information as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES
13 ONLY" in accordance with this Protective Order, the Party making such
14 designation certifies that there is a good faith basis in both fact and law for
15 the designation, such that good cause exists under Federal Rules of Civil
16 Procedure Rule 26(c)(1).

17 4. In the absence of designating a document, thing, testimony, or
18 other information as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS'
19 EYES ONLY" in accordance with this Protective Order, such documents,
20 things, testimony, or other information shall be deemed to be non-
21 confidential and not restricted by this Protective Order.

22 5. Information and materials designated as "CONFIDENTIAL" or
23 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall be held in confidence
24 by the attorneys and their office personnel for the Parties in this action, and
25 shall be used solely in connection with the prosecution, defense, or
26 settlement of this action. Information and materials designated as
27 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall
28 not be disclosed to any person except as provided by this Protective Order.

1 6. Information and materials designated "CONFIDENTIAL"
2 pursuant to this Protective Order (including any copies, summaries,
3 excerpts, and abstracts derived therefrom) may be disclosed, directly or
4 indirectly, only to the following persons:

5 a. The Court before which this action is pending and the
6 clerks and other personnel of the Court;

7 b. The attorneys of record for the parties in this matter;

8 c. The office personnel employed by the attorneys of record
9 working under direct supervision of said attorneys;

10 d. Experts or other persons necessarily retained by counsel
11 to assist in the prosecution, defense, or settlement of this action, provided
12 that said experts and consultants expressly agree to be bound by the terms
13 of this Protective Order;

14 e. Any Party, and any Party's officers, directors, partners,
15 private counsel or insurance carriers, provided that such persons expressly
16 agree to be bound by the terms of this Protective Order;

17 f. Third-party witnesses, but only as to Confidential
18 Information to which such witness had access prior to the entry of this
19 Protective Order;

20 g. Any court reporter at a deposition or other proceeding in
21 this matter;

22 h. Any mediator mutually selected by the parties or appointed
23 by the Court for the purpose of assisting in the settlement or other resolution
24 of this action; and

25 i. Such other persons as the Parties may agree to in writing,
26 or who may be designated by the Court.

27 ///

28 ///

1 7. Information and materials designated "CONFIDENTIAL-
2 ATTORNEYS EYES ONLY" pursuant to this Protective Order (including any
3 copies, excerpts, and abstracts derived therefrom) may be disclosed,
4 directly or indirectly, only to the following persons:

5 a. The Court before which this action is pending and the
6 clerks and other personnel of the Court, provided that Parties comply with
7 Local Rules – Central District of California Rule 79-5.1, and Federal Rules of
8 Civil Procedure Rule 26(c)(1)(A)-(H) and Rule 26(c)(2);

9 b. The attorneys of record, private counsel, and/or insurance
10 carriers for the Parties in this matter;

11 c. The office personnel employed by the attorneys of record
12 and/or private counsel for the Parties in this matter working under direct
13 supervision of said attorneys;

14 d. Any court reporter at a deposition or other proceeding in
15 this matter;

16 e. Any mediator mutually selected by the parties or appointed
17 by the Court for the purpose of assisting in the settlement or other resolution
18 of this action; and

19 f. Such other persons as the parties may agree to in writing,
20 or who may be designated by the Court.

21 8. Additionally, to the extent any Party desires to disclose
22 information and materials designated "CONFIDENTIAL-ATTORNEYS EYES
23 ONLY" to persons other than those designated in Paragraphs 7(a)-7(f) of
24 this Protective Order (including any copies, excerpts, and abstracts derived
25 therefrom), such Party shall adhere to the following process identified in
26 Paragraph 8(a) of this Protective Order, below, as an express condition
27 precedent to any such disclosure.
28

1 a. Process for Disclosure of information and materials
2 designated as "CONFIDENTIAL-ATTORNEYS EYES ONLY":

3 i. First, the Party seeking to disclose information and
4 materials designated "CONFIDENTIAL-ATTORNEYS EYES ONLY" shall
5 designate in writing with particularity the material for which disclosure is
6 sought, as well as the person or persons to whom disclosure would be
7 made, and the conditions applicable thereto, if any;

8 ii. Second, if the Party who has produced the
9 information and materials designated as "CONFIDENTIAL-ATTORNEYS
10 EYES ONLY" denies the request for further disclosure or fails to respond
11 within five (5) business days of the date the request is received, the Party
12 seeking to disclose the material shall file an appropriate motion. **Any such**
13 **motion must comply with Rule 37 of the Local Rules. (FFM)**

14 iii. The Party who has produced the information and
15 materials designated as "CONFIDENTIAL-ATTORNEYS EYES ONLY" shall
16 file its response to the motion within five (5) business days of receipt of the
17 motion;

18 iv. Thereafter, all Parties shall use their best efforts to
19 expedite resolution of the matter;

20 v. The Court's determination shall thereupon take
21 precedence over the provisions of this Protective Order with respect to the
22 documents in dispute, but shall not otherwise effect the provisions of this
23 Protective Order;

24 b. Without limiting the foregoing, Paragraph 8 of this
25 Protective Order shall govern the disclosure of information and materials
26 designated as "CONFIDENTIAL-ATTORNEYS EYES ONLY" to the following
27 third parties:
28

1 i. Experts or other persons retained by counsel to
2 assist in the prosecution, defense, or settlement of this action, provided that
3 said experts and consultants expressly agree to be bound by the terms of
4 this Protective Order;

5 ii. Third-party witnesses, but only as to Confidential
6 Information to which such witness had access prior to entry of this Protective
7 Order;

8 9. Prior to receiving any documents, things, testimony, or other
9 information designated as "CONFIDENTIAL" or "CONFIDENTIAL-
10 ATTORNEYS' EYES ONLY," each "qualified person" specified above in
11 paragraphs 6(d)-(i), 7(d)-7(f), 8(b)(i), and 8(b)(ii), shall be provided with a
12 copy of this Protective Order and shall execute a **Nondisclosure**
13 **Agreement** in the form of **Attachment "A."** Counsel who disclose
14 designated Confidential Information to such a "qualified person" shall
15 maintain the executed copy of the Nondisclosure Agreement in his or her file
16 and make it available at or in connection with any Court proceeding where it
17 may be called for.

18 10. This Protective Order shall not expand or restrict the rights of
19 any Party to either demand the production of any documents, things, or
20 information, or to object to any demand for documents, things, or
21 information, or to withhold any documents, things, or information. Nor shall
22 this Protective Order expand or restrict the rights of any Party to seek to
23 have the Court compel the production of any documents, things, or
24 information.

25 11. This Protective Order shall not affect the rights of or restrictions
26 on any Party to use or disseminate any documents, things, or information
27 obtained independently of discovery in this action, whether or not such
28 documents, things, or information are also obtained through discovery.

1 Nothing in this Protective Order shall restrict a Party from using, disclosing,
2 or disseminating its own documents, things, or information as it deems
3 appropriate, whether or not such documents, things, or information have
4 been designated "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS'
5 EYES ONLY" in accordance with this Protective Order.

6 12. If any documents, things, or information designated as
7 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" are
8 included with any papers filed with the Court, the filing Party shall **lodge** file
9 **(FFM)** such papers and materials under seal in accordance with Local Rules
10 – Central District of California Rule 79-5.1. Unless and until a court order to
11 file under seal is entered, confidential material shall be lodged separately as
12 exhibits and will be returned to counsel upon completion of the hearing for
13 which the confidential material is submitted.

14 13. ~~In the event that any documents, things, or information~~
15 ~~designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES~~
16 ~~ONLY" are used in any Court proceeding in this action, such documents,~~
17 ~~things, or information shall not lose its designated confidential status through~~
18 ~~such use, and the Parties shall take all reasonable steps to maintain its~~
19 ~~confidentiality.~~ **(FFM)**

20 14. Maintenance of the protected status of any "CONFIDENTIAL" or
21 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" documents, things, or
22 information shall in all cases be subject to further order of the Court.
23 Nothing herein shall preclude any Party upon proper notice to all other
24 Parties from applying to the Court for any modification of this Protective
25 Order, or moving the Court for an order changing the status of any particular
26 designated information or document, or relieving a Party from the restrictions
27 contained in this Protective Order, or from applying to the Court for further or
28 additional protective orders.

1 15. This Order shall be without prejudice to the right of any Party to
2 present a motion to the Court under Federal Rules of Civil Procedure Rule
3 26(c) (or other applicable law) for a separate protective order as to any
4 particular document or information, including restrictions differing from those
5 as specified herein and including challenges to the designations made
6 pursuant to this Order. ~~Any Party to this Order objecting to a designation of~~
7 ~~materials as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES~~
8 ~~ONLY" under Paragraph 2 shall, within ten (10) calendar days after notice of~~
9 ~~said designation, notify the designating Party, in writing, of its objection and~~
10 ~~the basis for the objection. The designating Party shall then have ten (10)~~
11 ~~business days from receipt of the written objection to respond to the~~
12 ~~objecting Party to arrange for a meet and confer. If the designating Party~~
13 ~~does not respond within the ten (10) business day period (or within whatever~~
14 ~~longer period of time the Parties agree to in writing), the challenged~~
15 ~~designation shall be deemed removed pending further written agreement of~~
16 ~~the Parties or order of the Court. If the designating Party does respond~~
17 ~~within the ten (10) business day period (or within whatever longer period of~~
18 ~~time the Parties agree to in writing), but after meeting and conferring the~~
19 ~~objection cannot be resolved, the Party seeking to disclose the materials~~
20 ~~marked as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES~~
21 ~~ONLY" by the other Party shall file a motion for an order to remove the~~
22 ~~challenged designation. Pending the Court's ruling, the provisions of this~~
23 ~~Order shall apply and disclosure and use of the challenged documents or~~
24 ~~information shall not be made except according to the challenged~~
25 ~~designation as provided under this Order. This Order shall not be modified~~
26 ~~without a showing of good cause and meeting any other applicable burdens~~
27 ~~under the law. (FFM)~~
28

1 16. ~~No Party shall be obligated to challenge the propriety of the~~
2 ~~designation of any documents, things, or information as "CONFIDENTIAL"~~
3 ~~or "CONFIDENTIAL-ATTORNEYS' EYES ONLY," however, the failure to~~
4 ~~express a challenge in accordance with the time constraints identified in~~
5 ~~Paragraph 15, above, shall constitute a waiver of the right to challenge the~~
6 ~~designation of "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES~~
7 ~~ONLY". (FFM)~~

8 17. If timely corrected, an inadvertent failure to designate qualified
9 information or items as "CONFIDENTIAL" or "CONFIDENTIAL-
10 ATTORNEYS' EYES ONLY," does not, standing alone, waive the
11 designating Party's right to secure protection under this Order for such
12 material. If material is designated as "CONFIDENTIAL" or
13 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" after the material was initially
14 produced, the receiving Party, on timely notification of the designation, must
15 make reasonable efforts to assure that the material is treated in accordance
16 with the provisions of this Order.

17 18. At the conclusion of this action, including the time for any appeal,
18 any Party may serve a written notice on the other Parties demanding that
19 the "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY"
20 documents and things that were produced by that Party and that are still in
21 existence, including all copies, summaries, excerpts, and abstracts thereof,
22 be returned or destroyed. Within thirty (30) calendar days of receipt of such
23 demand, counsel shall certify in writing that such documents and things
24 have been returned or destroyed. To the extent any Party disclosed
25 information and materials designated as "CONFIDENTIAL-ATTORNEYS'
26 EYES ONLY" to experts or other third parties identified in Paragraph 8 of
27 this Protective Order, such Party shall, upon receipt of the demand, obtain a
28

1 certification in writing from the expert or third party in possession of such
2 information or materials that such documents or things have been returned.

3 19. The Parties to this agreement may change its terms or effects at
4 any time by further mutual agreements in writing as approved by the Court.

5 20. This Protective Order is entered solely for the purpose of
6 facilitating the exchange of documents, things, and information between the
7 Parties in this action. Nothing in this Protective Order nor the production of
8 any documents, things, or information under the terms of this Protective
9 Order nor any proceedings pursuant to this Protective Order shall be
10 deemed to have the effect of an admission or waiver of any kind by any
11 Party.

12 21. The Parties and their attorneys and any other persons subject to
13 the terms of this Protective Order agree that the Court shall have jurisdiction
14 over them for the purpose of enforcing this Protective Order.

15 22. The Parties expressly covenant that the terms of this Protective
16 Order shall survive any final disposition of this litigation.

17 23. The Parties and their attorneys and any other persons subject to
18 the terms of this Protective Order further agree that upon the signing of this
19 Stipulation and Protective Order by the Court, this Protective Order shall be
20 effective against each Party as of the date of the signature of that Party or its
21 representative. The Parties agree to abide by the terms of this Protective
22 Order prior to its approval by the Court and whether or not it is ultimately
23 approved by the Court.

24 **23A. Nothing in this Protective Order limits the rights of any party**
25 **in another action to conduct discovery or the subpoena power of**
26 **another court. (FFM)**

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

24. On May 10, 2012, the parties previously filed the same stipulation but it was rejected by the court for procedural issues.

IT IS SO ORDERED.

DATED: May 29, 2012

By: /S/ FREDERICK F. MUMM
Hon. Frederick F. Mumm

Attachment "A"
NONDISCLOSURE AGREEMENT

I, _____, state that:

1. My address is

2. My present employer is

3. My present occupation or job description is

4. I have received a copy of the Protective Order entered in the case of Mindlab Media, LLC, et. al. v. LWRC International, LLC, et. al., United States District Court – Central District of California Case No. CV11 03405 CAS.

5. I have read and understand the Protective Order. I hereby agree to comply with all of the terms of the Protective Order, including holding in confidence and not disclosing to any unqualified person all documents, things, or information designated "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY."

6. I hereby expressly covenant that I will only use the documents, things, or information designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" in connection with the above-referenced litigation and that I will not use such documents, things, or information for any other purpose. Further, I expressly covenant that I will not use such documents, things, or information for the benefit of myself or any other person or entity.

7. Within thirty (30) calendar days of notice by any Party that this litigation is over, or that my involvement is no longer deemed necessary, I expressly covenant that I will return all information and materials provided to me with the designation of "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY." I will also provide a Declaration, submitted under penalty of perjury, that identifies by Bates Number, the information and materials that I am returning.

8. I hereby consent to the jurisdiction of the United States District Court – Central District of California – Western Division for the purpose of enforcing the Protective Order and this agreement to be bound thereby.

Dated: _____

Signature

Print Name