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***Note changes made by the
 Court to page 7***

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16
 17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**
 19

20 Mavrix Photo, Inc.,
 21 Plaintiff,
 22 v.
 23 Intermedia Vibe Holdings, LLC; and DOES
 24 1-10 INCLUSIVE,
 25 Defendants.
 26

Case No. CV12-02643 JST (JPRx)
STIPULATED PROTECTIVE ORDER

1 **STIPULATION REGARDING CONFIDENTIAL INFORMATION**

2 **1. PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve production of
4 confidential, proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may be
6 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this Order does not
8 confer blanket protections on all disclosures or responses to discovery and that the
9 protection it affords from public disclosure and use extends only to the limited information
10 or items that are entitled to confidential treatment under the applicable legal principles. The
11 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
12 Protective Order does not entitle them to file confidential information under seal; Civil
13 Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and
14 the standards that will be applied when a party seeks permission from the court to file
15 material under seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
20 is generated, stored or maintained) or tangible things that qualify for protection under
21 Federal Rule of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
23 (as well as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or items
25 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” and/or
26 “ATTORNEYS EYES ONLY.”

27 2.5 Disclosure or Discovery Material: all items or information, regardless of the
28 medium or manner in which it is generated, stored, or maintained (including, among other

1 things, testimony, transcripts, and tangible things), that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action. House
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or other
9 legal entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
11 action but are retained to represent or advise a party to this action and have appeared in this
12 action on behalf of that party or are affiliated with a law firm which has appeared on behalf
13 of that party.

14 2.10 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their support
16 staffs).

17 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
18 Material in this action.

19 2.12 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
21 and organizing, storing, or retrieving data in any form or medium) and their employees and
22 subcontractors.

23 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
24 “CONFIDENTIAL” and/or “ATTORNEYS EYES ONLY.”

25 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
26 a Producing Party.

27 2.15 Attorneys’ Eyes Only: extremely sensitive CONFIDENTIAL information,
28 disclosure of which to another Party or Non-Party would create substantial risk of harm that

1 could not be avoided by less restrictive means. Relevant examples of such “Attorneys Eyes
2 Only” information may include, without limitation, currently competitive trade secrets,
3 minutes of Board meetings, pricing data, financial data, sales information, customer-
4 confidential information, agreements or relationships with non-parties, market projections
5 or forecasts, strategic business plans, selling or marketing strategies, or information about
6 employees.

7 **3. SCOPE**

8 The protections conferred by this Stipulation and Order cover not only Protected
9 Material (as defined above), but also (1) any information copied or extracted from
10 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
11 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
12 that might reveal Protected Material. However, the protections conferred by this Stipulation
13 and Order do not cover the following information: (a) any information that is in the public
14 domain at the time of disclosure to a Receiving Party or becomes part of the public domain
15 after its disclosure to a Receiving Party as a result of publication not involving a violation
16 of this Order, including becoming part of the public record through trial or otherwise; and
17 (b) any information known to the Receiving Party prior to the disclosure or obtained by the
18 Receiving Party after the disclosure from a source who obtained the information lawfully
19 and under no obligation of confidentiality to the Designating Party. Any use of Protected
20 Material at trial shall be governed by a separate agreement or order.

21 **4. DURATION**

22 Even after final disposition of this litigation, the confidentiality obligations imposed
23 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or
24 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
25 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
26 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
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1 trials, or reviews of this action, including the time limits for filing any motions or
2 applications for extension of time pursuant to applicable law.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
5 Party or Non-Party that designates information or items for protection under this Order
6 must take care to limit any such designation to specific material that qualifies under the
7 appropriate standards. The Designating Party must designate for protection only those parts
8 of material, documents, items, or oral or written communications that qualify – so that
9 other portions of the material, documents, items, or communications for which protection is
10 not warranted are not swept unjustifiably within the ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber or retard the case development process or to impose unnecessary
14 expenses and burdens on other parties) expose the Designating Party to sanctions.

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

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
19 Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
20 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
21 must be clearly so designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but
24 excluding transcripts of depositions or other pretrial or trial proceedings), that the
25 Producing Party affix the legend “CONFIDENTIAL” and/or “ATTORNEYS EYES
26 ONLY” to each page that contains protected material. If only a portion or portions of the
27 material on a page qualifies for protection, the Producing Party also must clearly identify
28 the protected portion(s) (e.g., by making appropriate markings in the margins).

1 A Party or Non-Party that makes original documents or materials available for
2 inspection need not designate them for protection until after the inspecting Party has
3 indicated which material it would like copied and produced. During the inspection and
4 before the designation, all of the material made available for inspection shall be deemed
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or portions
7 thereof, qualify for protection under this Order. Then, before producing the specified
8 documents, the Producing Party must affix the “CONFIDENTIAL” and/or “ATTORNEYS
9 EYES ONLY” legend to each page that contains Protected Material. If only a portion or
10 portions of the material on a page qualifies for protection, the Producing Party also must
11 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
12 margins).

13 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
14 Designating Party identifies on the record, before the close of the deposition, hearing, or
15 other proceeding, all protected testimony. This provision does not apply to any court
16 proceedings. At the time of any such proceeding, the parties must seek guidance from the
17 judicial officer assigned to this case on how the use of protected material in such
18 proceedings will be handled.

19 (c) for information produced in some form other than documentary and for any other
20 tangible items, that the Producing Party affix in a prominent place on the exterior of the
21 container or containers in which the information or item is stored the legend
22 “CONFIDENTIAL” and/or “ATTORNEYS EYES ONLY.” If only a portion or portions
23 of the information or item warrant protection, the Producing Party, to the extent practicable,
24 shall identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
26 designate qualified information or items does not, standing alone, waive the Designating
27 Party’s right to secure protection under this Order for such material. Upon timely correction
28 of a designation, the Receiving Party must make reasonable efforts to assure that the

1 material is treated in accordance with the provisions of this Order.

2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
4 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
5 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
6 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party
7 does not waive its right to challenge a confidentiality designation by electing not to mount
8 a challenge promptly after the original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
10 process by providing written notice of each designation it is challenging and describing the
11 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
12 written notice must recite that the challenge to confidentiality is being made in accordance
13 with this specific paragraph of the Protective Order. The parties shall attempt to resolve
14 each challenge in good faith and must begin the process by conferring directly (in voice to
15 voice dialogue; other forms of communication are not sufficient) within 10 days of the date
16 of service of notice, as required by Local Rule 37-1. In conferring, the Challenging Party
17 must explain the basis for its belief that the confidentiality designation was not proper and
18 must give the Designating Party an opportunity to review the designated material, to
19 reconsider the circumstances, and, if no change in designation is offered, to explain the
20 basis for the chosen designation. A Challenging Party may proceed to the next stage of the
21 challenge process only if it has engaged in this meet and confer process first or establishes
22 that the Designating Party is unwilling to participate in the meet and confer process in a
23 timely manner.

24 If the parties cannot resolve a challenge without court intervention, the Designating
25 Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 or 37
26 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial
27 notice of challenge or within 14 days of the parties agreeing that the meet and confer
28 process will not resolve their dispute, whichever is later.

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

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this case only
4 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
5 may be disclosed only to the categories of persons and under the conditions described in
6 this Order. When the litigation has been terminated, a Receiving Party must comply with
7 the provisions of section 13 below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a location
9 and in a secure manner that ensures that access is limited to the persons authorized under
10 this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
13 may disclose any information or item designated “CONFIDENTIAL” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
15 employees of said Outside Counsel of Record to whom it is reasonably necessary to
16 disclose the information for this litigation;

17 (b) the officers, directors, and employees (including House Counsel) of the
18 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
19 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
21 reasonably necessary for this litigation and who have signed the “Acknowledgment and
22 Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
25 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
26 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
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1 necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.
3 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
4 Material must be separately bound by the court reporter and may not be disclosed to
5 anyone except as permitted under this Stipulated Protective Order.

6 (g) the author or recipient of a document containing the information or a custodian
7 or other person who otherwise possessed or knew the information.

8 7.3 Disclosure of “ATTORNEYS EYES ONLY” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated “ATTORNEYS EYES
11 ONLY” only to the categories of persons identified in subparagraphs (a) and (c) –(g).

12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
13 **OTHER LITIGATION**

14 If a Party is served with a subpoena or a court order issued in other litigation that
15 compels disclosure of any information or items designated in this action as
16 “CONFIDENTIAL,” that Party must:

17 (a) promptly notify in writing the Designating Party. Such notification shall include
18 a copy of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to issue in
20 the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this Protective Order. Such notification shall include a copy of this Stipulated
22 Protective Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
24 Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with the
26 subpoena or court order shall not produce any information designated in this action as
27 “CONFIDENTIAL” and/or “ATTORNEYS EYES ONLY” before a determination by the
28 court from which the subpoena or order issued, unless the Party has obtained the

1 Designating Party’s permission. The Designating Party shall bear the burden and expense
2 of seeking protection in that court of its confidential material – and nothing in these
3 provisions should be construed as authorizing or encouraging a Receiving Party in this
4 action to disobey a lawful directive from another court.

5 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
6 **IN THIS LITIGATION**

7 (a) The terms of this Order are applicable to information produced by a Non-Party
8 in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
9 Parties in connection with this litigation is protected by the remedies and relief provided by
10 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
11 from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to produce a
13 Non-Party’s confidential information in its possession, and the Party is subject to an
14 agreement with the Non-Party not to produce the Non-Party’s confidential information,
15 then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-
17 Party that some or all of the information requested is subject to a confidentiality agreement
18 with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
21 specific description of the information requested; and

22 (3) make the information requested available for inspection by the
23 Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order from this court
25 within 14 days of receiving the notice and accompanying information, the Receiving Party
26 may produce the Non-Party’s confidential information responsive to the discovery request.
27 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
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1 information in its possession or control that is subject to the confidentiality agreement with
2 the Non-Party before a determination by the court.¹ Absent a court order to the contrary,
3 the Non-Party shall bear the burden and expense of seeking protection in this court of its
4 Protected Material.

5 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the
9 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
10 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
11 unauthorized disclosures were made of all the terms of this Order, and (d) request such
12 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
13 attached hereto as Exhibit A.

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of
18 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
19 This provision is not intended to modify whatever procedure may be established in an e-
20 discovery order that provides for production without prior privilege review. Pursuant to
21 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
22 effect of disclosure of a communication or information covered by the attorney-client
23 privilege or work product protection, the parties may incorporate their agreement in the
24 stipulated protective order submitted to the court. No modification of the Protective Order,
25 however, will have the force or effect of a court order unless the Court approves the

26 _____
27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 modification.

2 **12. MISCELLANEOUS**

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
4 to seek its modification by the court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
6 Order no Party waives any right it otherwise would have to object to disclosing or
7 producing any information or item on any ground not addressed in this Stipulated
8 Protective Order. Similarly, no Party waives any right to object on any ground to use in
9 evidence of any of the material covered by this Protective Order.

10 12.3 Filing Protected Material. Without written permission from the Designating
11 Party or a court order secured after appropriate notice to all interested persons, a Party may
12 not file in the public record in this action any Protected Material. A Party that seeks to file
13 under seal any Protected Material must comply with Civil Local Rule 79-5 and General
14 Order 62. Protected Material may only be filed under seal pursuant to a court order
15 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
16 Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing
17 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
18 entitled to protection under the law. If a Receiving Party's request to file Protected Material
19 under seal pursuant to Civil Local Rule 79-5 and General Order 62 is denied by the court,
20 then the Receiving Party may file the information in the public record pursuant to Civil
21 Local Rule 79-5 unless otherwise instructed by the court.

22 **13. FINAL DISPOSITION**

23 Within 60 days after the final disposition of this action, as defined in paragraph 4,
24 each Receiving Party must return all Protected Material to the Producing Party or destroy
25 such material. As used in this subdivision, "all Protected Material" includes all copies,
26 abstracts, compilations, summaries, and any other format reproducing or capturing any of
27 the Protected Material. Whether the Protected Material is returned or destroyed, the
28 Receiving Party must submit a written certification to the Producing Party (and, if not the

1 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
2 (by category, where appropriate) all the Protected Material that was returned or destroyed
3 and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,
4 summaries or any other format reproducing or capturing any of the Protected Material.
5 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
6 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
7 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
8 consultant and expert work product, even if such materials contain Protected Material. Any
9 such archival copies that contain or constitute Protected Material remain subject to this
10 Protective Order as set forth in Section 4 (DURATION).

11
12 **IT IS SO STIPULATED.**

13
14 DATED: October 5, 2012

/s/ John E. Lord
John E. Lord
Attorneys for Plaintiff,
Mavrix Photo, Inc.

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18 DATED: October 5, 2012

/s/ Alex E. Spjute
Alex E. Spjute
Attorneys for Defendant,
Intermedia Vibe Holdings, LLC

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22 **PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.**

23
24 DATED: October 15, 2012



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Hon. Jean P. Rosenbluth
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of _____
4 _____ [enter full address], declare under penalty of perjury that I have read
5 in its entirety and understand the Stipulated Protective Order that was issued by the United
6 States District Court for the Central District of California on _____ in the case of
7 Mavrix Photo, Inc. v. Intermedia Vibe Holdings, LLC, Case No. CV12-02643 JST (JPRx).
8 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
9 and I understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
11 manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Central District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this
16 action.

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or any
20 proceedings related to enforcement of this Stipulated Protective Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26 Signature: _____