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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

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11 VBCONVERSIONS, LLC, a California
12 limited liability company,

13 Plaintiff,

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vs.

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16 VM INNOVATIONS, INC., a Nebraska
17 corporation; LAPKOSOFT, a Nebraska
18 business entity; VITALI LAPKO, an
19 individual; JEFF RAPP, an individual;
DOES 1-10, INCLUSIVE,

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Defendant.

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INTRODUCTION

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Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Stipulated Protective Order; and [Proposed] Order ("Stipulation") filed on July 30, 2013, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms

CASE NO. CV13-00852-GAF-MAN

**PROTECTIVE ORDER ENTERED
PURSUANT TO THE PARTIES'
STIPULATION**

1 have been substantively modified by the Court's amendment of paragraphs 7, 8, 10,
2 12, 13, and 14 of, and Exhibit A to, the Stipulation.

3 The parties are expressly cautioned that the designation of any information,
4 document, or thing as CONFIDENTIAL, CONFIDENTIAL-ATTORNEYS' EYES
5 ONLY, or other designation(s) used by the parties, does not, in and of itself, create
6 any entitlement to file such information, document, or thing, in whole or in part,
7 under seal. Accordingly, reference to this Protective Order or to the parties'
8 designation of any information, document, or thing as CONFIDENTIAL,
9 CONFIDENTIAL-ATTORNEYS' EYES ONLY, or other designation(s) used by
10 the parties, is wholly insufficient to warrant a filing under seal.

11 There is a strong presumption that the public has a right of access to judicial
12 proceedings and records in civil cases. In connection with non-dispositive motions,
13 good cause must be shown to support a filing under seal. The parties' mere
14 designation of any information, document, or thing as CONFIDENTIAL,
15 CONFIDENTIAL-ATTORNEYS' EYES ONLY, or other designation(s) used by
16 parties, does not -- **without the submission of competent evidence, in the form of**
17 **a declaration or declarations, establishing that the material sought to be filed**
18 **under seal qualifies as confidential, privileged, or otherwise protectable --**
19 constitute good cause.

20 Further, if sealing is requested in connection with a dispositive motion or
21 trial, then compelling reasons, as opposed to good cause, for the sealing must be
22 shown, and the relief sought shall be narrowly tailored to serve the specific interest
23 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th
24 Cir. 2010). For each item or type of information, document, or thing sought to be
25 filed or introduced under seal in connection with a dispositive motion or trial, the
26 party seeking protection must articulate compelling reasons, supported by specific
27 facts and legal justification, for the requested sealing order. **Again, competent**
28 **evidence supporting the application to file documents under seal must be**

1 **provided by declaration.**

2 Any document that is not confidential, privileged, or otherwise protectable in
3 its entirety will not be filed under seal if the confidential portions can be redacted.
4 If documents can be redacted, then a redacted version for public viewing, omitting
5 only the confidential, privileged, or otherwise protectable portions of the document,
6 shall be filed. Any application that seeks to file documents under seal in their
7 entirety should include an explanation of why redaction is not feasible.

8 Notwithstanding any other provision of this Protective Order, in the event that
9 this case proceeds to trial, all information, documents, and things discussed or
10 introduced into evidence at trial will become public and available to all members of
11 the public, including the press, unless sufficient cause is shown in advance of trial to
12 proceed otherwise.

13 **THE PARTIES ARE DIRECTED TO REVIEW CAREFULLY AND**
14 **ACT IN COMPLIANCE WITH ALL ORDERS ISSUED BY THE**
15 **HONORABLE GARY A. FEES, UNITED STATES DISTRICT JUDGE,**
16 **INCLUDING THOSE APPLICABLE TO PROTECTIVE ORDERS AND**
17 **FILINGS UNDER SEAL.**

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TERMS OF PROTECTIVE ORDER

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21 1. The Parties **have stipulated and consented** that the terms and
22 conditions of this Stipulated Protective Order (“Protective Order”) shall govern the
23 handling of documents and information produced by the Parties to preserve the
24 confidentiality of the information that has been or will be requested and produced in
25 **document** production request, or at a deposition. The Parties agree that a protective
26 order is necessary to protect the integrity of this information, the rights of each of
27 the Parties, and the rights of certain third parties.

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2. For the purposes of this Protective Order, **the term** “DOCUMENTS”

1 means all written, recorded, computerized, electronic, or graphical material or
2 information and things, whether produced or created by a Party **or** another person,
3 and whether produced in response to a discovery request, subpoena, agreement, or
4 otherwise.

5 3. For the purposes of this Protective Order, **the term** “DISCOVERY
6 MATERIALS” means all written interrogatory responses, responses to requests for
7 admission, all deposition testimony, and any items marked at any deposition.

8 4. The Parties to this action have the right to designate as
9 “CONFIDENTIAL” OR “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” any
10 DOCUMENTS and DISCOVERY MATERIALS in this action which either Party
11 believes in good faith contains nonpublic and sensitive personal information of
12 individual persons, trade secrets, confidential research, developments, commercial
13 financial information, and/or any other proprietary, confidential, or competitively
14 sensitive business information. By **having entered** into this Protective Order
15 providing for the designation of DOCUMENTS and other DISCOVERY
16 MATERIALS as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’
17 EYES ONLY,” no party is admitting that the contents of any such DOCUMENTS
18 or other DISCOVERY MATERIALS are, in fact, confidential. No party receiving
19 DOCUMENTS or DISCOVERY MATERIALS designated “CONFIDENTIAL” or
20 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” however, has the unilateral
21 right to disregard such a designation. Rather, the procedures set forth herein must
22 be followed to challenge such a designation

23 4. Unless agreed to in writing by the respective counsel or otherwise
24 ordered by the Court, any DOCUMENTS or DISCOVERY MATERIALS
25 designated “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES
26 ONLY,” and all information derived therefrom, shall be used only in connection
27 with and/or in preparation for the trial of this action, *VBCONVERSIONS, LLC v. VM*
28 *INNOVATIONS, INC., et al.*, United States District Court Case No. CV 13-00852

1 GAF (MANx) (this “ACTION”), and shall not be used for any other purpose
2 whatsoever, and shall not be used or disclosed in any cases designated as “related”
3 cases under state or federal law.

4 5. By producing the DOCUMENTS or DISCOVERY MATERIALS
5 designated “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES
6 ONLY,” producing Parties do not waive any objection to the admissibility,
7 relevance, or any other ground for objection to the DOCUMENTS or DISCOVERY
8 MATERIALS, all of which grounds are specifically reserved.

9 6. DOCUMENTS or DISCOVERY MATERIALS designated
10 “CONFIDENTIAL” and any copies, summaries, extracts, notes, or memoranda
11 relating thereto may be disclosed by counsel of record for the Parties to this
12 ACTION *only* to the following:

- 13 a. The Parties, their officers, employees, and agents who are
14 working on this specific case;
- 15 b. Counsel of record for the Parties, counsel’s employees, and/or
16 agents who are working on this specific case;
- 17 c. Consultants and experts employed by counsel of record for the
18 purpose of assisting in the preparation for and/or trial of this
19 specific case but only to the extent such persons need such
20 confidential information for that preparation;
- 21 d. The Court and **its** personnel;
- 22 e. Employees of outside copy services used to make copies of
23 CONFIDENTIAL documents;
- 24 f. The jury selected for trial in this matter (if any); and,
- 25 g. Any other person under such terms as may be agreed by the
26 Parties in writing or as the Court may hereafter order.

27 7. Each person, other than **those identified in Paragraphs 6(a), 6(b),**
28 **6(d), and 6(f)**, to whom information designated as CONFIDENTIAL is disclosed

1 shall be informed of the terms of this Protective Order and agree to be bound by it
2 before disclosure to such persons of any such information. The persons described in
3 Paragraphs 6(c), 6(e), and 6(g) shall not have access to either CONFIDENTIAL
4 information, as the case may be, until they have certified that they have read this
5 Protective Order and have manifested their assent to be bound thereby by signing a
6 copy of the Assurance of Compliance attached hereto as Exhibit A. Once a person
7 has executed such an Assurance of Compliance, it shall not be necessary for that
8 person to sign a separate Assurance of Compliance each time that person is
9 subsequently given access to confidential material.

10 8. DOCUMENTS or DISCOVERY MATERIALS designated
11 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” and any copies, summaries,
12 extracts, notes, or memoranda relating thereto may be disclosed by counsel of record
13 for the Parties to this ACTION *only* to the following:

- 14 a. Attorneys acting on behalf of the parties in this matter;
- 15 b. The office personnel employed by the counsel working under the
16 direct supervision of said counsel;
- 17 c. **The Court and its personnel;**
- 18 d. Experts and consultants necessarily retained by counsel of record
19 in this litigation, but only if these experts and consultants comply
20 with this agreement in full and read, sign, and agree to be bound
21 by all of its terms.

22 9. Any Party wishing to attach DOCUMENTS or DISCOVERY
23 MATERIALS designated “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” as an
24 exhibit to any deposition in this ACTION shall inform the court reporter or
25 transcriber who reports or transcribes testimony about this Protective Order before
26 the beginning of the deposition. Portions of deposition transcripts marked
27 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” shall be
28 treated as if they were the CONFIDENTIAL documents.

1 10. In the event DOCUMENTS or DISCOVERY MATERIALS designated
2 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” either
3 by agreement among counsel or by order of the Court, are **lodged or filed** with the
4 Court, or used in connection with any **motion, application, or pre-trial proceeding**
5 in this ACTION, they shall be **submitted with an application to file such**
6 **documents under seal and shall be placed** in an envelope bearing the caption of
7 this matter and the proper “CONFIDENTIAL” or “CONFIDENTIAL
8 ATTORNEYS’ EYES ONLY” notation. The Parties shall comply with **Local Rule**
9 **79-5 with respect to filing documents and/or things** under seal **and shall**
10 **carefully review and comply with this Court’s instructions -- as set forth under**
11 **the caption “INTRODUCTION” -- in this Order.**

12 11. All DOCUMENTS or DISCOVERY MATERIALS designated
13 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,”
14 including all copies and information obtained from such shall be used, subject to the
15 provisions hereof, by the person receiving them only in connection with prosecuting
16 or defending persons or entities named in and in connection with this action, unless
17 otherwise ordered by the Court. All DOCUMENTS or DISCOVERY
18 MATERIALS designated “CONFIDENTIAL” or “CONFIDENTIAL-
19 ATTORNEYS’ EYES ONLY” documents shall not be used for any business,
20 competitive, or other purposes, and shall not be disclosed to any person or entity,
21 except as provided herein. However, the Protective Order is not intended to apply to
22 documents or information that **are** or **were** already publicly available, or documents
23 or information already possessed by a person without restriction on use or
24 disclosure.

25 12. In the event that a Party receiving DOCUMENTS or DISCOVERY
26 MATERIALS designated as “CONFIDENTIAL” or “CONFIDENTIAL-
27 ATTORNEYS’ EYES ONLY” disagrees with such a designation, that Party shall
28 serve a written notice of objection to the Party **who or which** so designated the

1 DOCUMENTS or DISCOVERY MATERIALS. The Parties shall then attempt in
2 good faith to resolve the dispute. If the Parties are unable to come to a resolution
3 after a good faith attempt to resolve the dispute, the Party challenging the protection
4 of the DOCUMENTS or DISCOVERY MATERIALS shall arrange a conference
5 with the Court to resolve the dispute, if possible, or proceed with a noticed motion
6 (or *ex parte* application if warranted) to resolve the dispute. The designation may
7 not be disregarded unless and until it is ordered changed by the Court. **The Party**
8 **who or which designated the DOCUMENTS OR DISCOVERY MATERIALS**
9 **as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”**
10 **shall bear the burden of establishing the propriety of the challenged**
11 **designation.**

12 13. The parties, their counsel, and all others bound by this agreement agree
13 that upon coming across material from an adversary that is apparently confidential
14 or privileged, and that appears was disclosed inadvertently, **counsel** (including
15 those the materials have been shared with) has a duty to: (1) examine the material
16 only to the extent necessary to determine that it is privileged or confidential; (2)
17 immediately notify the sender of the **disclosure**; and (3) attempt to resolve the
18 dispute informally, or refrain from using the material until further Court order. *See*
19 *Rico v. Mitsubishi Motors Corp.*, 42 Cal. 4th 807 (2007) (California Supreme Court
20 defining a lawyer’s ethical duties when coming across material from an adversary
21 that is obviously confidential or privileged and it appears that the material was
22 disclosed inadvertently).

23 14. Upon final determination of this action, whether by judgment,
24 settlement, or otherwise, including all appeals:

25 a. The Parties’ counsel of record and any other person who has
26 received DOCUMENTS or DISCOVERY MATERIALS
27 designated as “CONFIDENTIAL” or “CONFIDENTIAL-
28 ATTORNEYS EYES ONLY” shall maintain, destroy or, if

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The Parties to this agreement may exercise any rights they may have, at law or in equity, to enforce its terms.

IT IS SO ORDERED.

DATED: August 14, 2013

Margaret A. Nagle

MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A
ASSURANCE OF COMPLIANCE

I, _____, under penalty of perjury under the laws of the United States of America, declare and state as follows:

I reside at _____, in the City/County of _____ and State/Country of _____;

I have read the annexed Stipulated Protective Order, (“Protective Order”) dated August 14, 2013, in this action entitled *VBCONVERSIONS, LLC v. VM INNOVATIONS, INC. et al.*, United States District Court Case No. CV 13-00852 GAF (MANx), which currently is pending in the United states District Court, Central District of California; that I am familiar with and agree to comply with and be bound by the provisions of that Protective Order;

I will not divulge to persons other than those specifically authorized by the Protective Order, and will not copy or use any Litigation Materials designated as CONFIDENTIAL except solely as permitted by the Protective Order; and

I consent to the jurisdiction of **this Court** for the purpose of enforcing said Protective Order, enjoining any violation or threatened violation of the Protective Order or seeking damages for the breach of said Protective Order.

(Signature)

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