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8
 9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

11 MICHAEL SINEL, an individual,
 12 Plaintiff,
 13 v.

CASE NO: 2:22-cv-03961-FMO-MAA
 [Lower Court Case No.: 21SMCV01977
 Los Angeles County Superior Court,
 Santa Monica Courthouse]

14 GENEXA, INC., a Delaware corporation;
 MAX SPIELBERG, an individual; DAVID
 15 JOHNSON, an individual; and DOES 1
 through 50, inclusive,
 16 Defendants

**STIPULATED PROTECTIVE
 ORDER**

17
 18 GENEXA, INC., a Delaware corporation;
 MAX SPIELBERG, an individual; DAVID
 19 JOHNSON, an individual;
 20 Counter-Claimants.

Judge: Hon. Fernando M. Olguin
 Dept.: 6D

Complaint Filed:
 December 20, 2021

21 v.
 22 MICHAEL SINEL, an individual, and
 MSSMD INVESTMENTS, INC., a
 23 Delaware Corporation, and MOES 1
 through 20,
 24 Counter-Defendants.

First Amended Complaint Filed:
 May 16, 2022

Trial Date: None Set

25
 26 **I. PURPOSES AND LIMITATIONS**

27 Discovery in this action is likely to involve production of confidential, proprietary, or
 28 private information for which special protection from public disclosure and from use

1 for any purpose other than prosecuting this litigation may be warranted. Accordingly,
2 the parties hereby stipulate to and petition the Court to enter the following Stipulated
3 Protective Order. The parties acknowledge that this Order does not confer blanket
4 protections on all disclosures or responses to discovery and that the protection it affords
5 from public disclosure and use extends only to the limited information or items that are
6 entitled to confidential treatment under the applicable legal principles. The parties
7 further acknowledge, as set forth in Section XIII(C), below, that this Stipulated
8 Protective Order does not entitle them to file confidential information under seal; Civil
9 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
10 will be applied when a party seeks permission from the Court to file material under seal.

11 **II. GOOD CAUSE STATEMENT**

12 This action is likely to involve shareholder investment information, capitalization
13 tables, documents pertaining to valuations of the Defendant Genexa, Inc., documents
14 pertaining to the criminal case of Michael Sinel which were filed under seal in this court,
15 financial records, bank statements, trade secrets, business records and other valuable
16 research, development, commercial, financial, technical and proprietary information for
17 which special protection from public disclosure and from use for any purpose other than
18 prosecution of this action is warranted. Such confidential and proprietary materials and
19 information consist of, among other things, confidential business or financial
20 information, information regarding confidential business practices, or other confidential
21 research, development, or commercial information (including information implicating
22 privacy rights of third parties), information otherwise generally unavailable to the
23 public, or which may be privileged or otherwise protected from disclosure under state
24 or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite
25 the flow of information, to facilitate the prompt resolution of disputes over
26 confidentiality of discovery materials, to adequately protect information the parties are
27 entitled to keep confidential, to ensure that the parties are permitted reasonable
28 necessary uses of such material in preparation for and in the conduct of trial, to address

1 their handling at the end of the litigation, and to serve the ends of justice, a protective
2 order for such information is justified in this matter. It is the intent of the parties that
3 information will not be designated as confidential for tactical reasons and that nothing
4 be so designated without a good faith belief that it has been maintained in a confidential,
5 non-public manner, and there is good cause why it should not be part of the public
6 record of this case.

7 **III. DEFINITIONS**

8 A. Action: *Michael Sinel v. Genexa Inc., et al.* Case No. 2:22-cv-03961-
9 FMO-MAA

10 B. Challenging Party: A Party or Non-Party that challenges the designation
11 of information or items under this Order.

12 C. “CONFIDENTIAL” Information or Items: Information (regardless of
13 how it is generated, stored or maintained) or tangible things that qualify for
14 protection under Federal Rule of Civil Procedure 26(c), and as specified above
15 in the Good Cause Statement.

16 D. Counsel: Outside Counsel of Record and In-House Counsel (as well as
17 their support staff).

18 E. Designating Party: A Party or Non-Party that designates information
19 or items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL.

21 F. Disclosure or Discovery Material: All items or information, regardless
22 of the medium or way it is generated, stored, or maintained
23 (including, among other things, testimony, transcripts, and tangible things), that
24 is produced or generated in disclosures or responses to discovery in this matter.

25 G. Expert: A person with specialized knowledge or experience in a matter
26 pertinent to the litigation who has been retained by a Party or its counsel to serve
27 as an expert witness or as a consultant in this Action.

28 H. House Counsel: Attorneys who are employees of a party to this Action.

1 House Counsel does not include Outside Counsel of Record or any other
2 outside counsel.

3 I. Non-Party: Any natural person, partnership, corporation, association,
4 or other legal entity not named as a Party to this action.

5 J. Outside Counsel of Record: Attorneys who are not employees of a
6 party to this Action but are retained to represent or advise a party to this Action
7 and have appeared in this Action on behalf of that party or are affiliated with a
8 law firm which has appeared on behalf of that party, and includes support staff.

9 K. Party: Any party to this Action, including all of its officers,
10 directors, employees, consultants, retained experts, and
11 Outside Counsel of Record (and their support staffs).

12 L. Producing Party: A Party or Non-Party that produces Disclosure or
13 Discovery Material in this Action.

14 M. Professional Vendors: Persons or entities that provide litigation
15 support services (e.g., photocopying, videotaping, translating, preparing exhibits
16 or demonstrations, and organizing, storing, or retrieving data in any form or
17 medium) and their employees and subcontractors.

18 N. Protected Material: Any Disclosure or Discovery Material that is
19 designated as “CONFIDENTIAL.”

20 O. Receiving Party: A Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22 **IV. SCOPE**

23 The protections conferred by this Stipulation and Order cover not only Protected
24 Material (as defined above), but also (1) any information copied or extracted from
25 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
26 Material; and (3) any testimony, conversations, or presentations by Parties or their
27 Counsel that might reveal Protected Material.

28 Any use of Protected Material at trial shall be governed by the orders of the trial

1 judge. This Order does not govern the use of Protected Material at trial.

2 **V. DURATION**

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

10 **VI. DESIGNATING PROTECTED MATERIAL**

- 11 A. Exercise of Restraint and Care in Designating Material for Protection.
- 12 1. Each Party or Nonparty that designates information or items for
13 protection under this Order must take care to limit any such designation
14 to specific material that qualifies under the appropriate standards. The
15 Designating Party must designate for protection only those parts of
16 material, documents, items, or communications that qualify so that other
17 portions of the material, documents, items, or communications for which
18 protection is not warranted are not swept unjustifiably within the ambit
19 of this Order.
- 20 2. Mass, indiscriminate, or routinized designations are prohibited.
21 Designations that are shown to be clearly unjustified or that have been
22 made for an improper purpose (*e.g.*, to unnecessarily encumber the case
23 development process or to impose unnecessary expenses and burdens on
24 other parties) may expose the Designating Party to sanctions.
- 25 3. If it comes to a Designating Party's attention that information or items
26 that it designated for protection do not qualify for protection, that
27 Designating Party must promptly notify all other Parties that it is
28 withdrawing the inapplicable designation.

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- B. Manner and Timing of Designations.
 - 1. Except as otherwise provided in this Order (*see, e.g.*, Section B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.
 - 2. Designation in conformity with this Order requires the following:
 - a. For information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).
 - b. A Party or Nonparty that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).
 - c. For testimony given in depositions, that the Designating Party identify the

1 Disclosure or Discovery Material on the record, before the close of the
2 deposition, all protected testimony.

3 d. For information produced in form other than document and for any other
4 tangible items, that the Producing Party affix in a prominent place on the
5 exterior of the container or containers in which the information is stored
6 the legend "CONFIDENTIAL." If only a portion or portions of the
7 information warrants protection, the Producing Party, to the extent
8 practicable, shall identify the protected portion(s).

9 C. Inadvertent Failure to Designate.

10 1. If timely corrected, an inadvertent failure to designate qualified
11 information or items does not, standing alone, waive the Designating Party's right
12 to secure protection under this Order for such material. Upon timely correction
13 of a designation, the Receiving Party must make reasonable efforts to assure that
14 the material is treated in accordance with the provisions of this Stipulated
15 Protective Order.

16 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 A. Timing of Challenges.

18 1. Any party or Non-Party may challenge a designation of confidentiality at
19 any time that is consistent with the Court's Scheduling Order.

20 B. Meet and Confer.

21 1. The Challenging Party shall initiate the dispute resolution process
22 which shall comply with Local Rule 37.1 et seq., and with Section
23 4 of Judge Audero's Procedures ("Mandatory Telephonic
24 Conference for Discovery Disputes").¹

25 C. The burden of persuasion in any such challenge proceeding shall be on the
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27 ¹ Judge Audero's Procedures are available at
28 <https://www.cacd.uscourts.gov/honorable-maria-audero>.

1 Designating Party. Frivolous challenges, and those made for an improper
2 purpose (e.g., to harass or impose unnecessary expenses and burdens on
3 other parties) may expose the Challenging Party to sanctions. Unless the
4 Designating Party has waived or withdrawn the confidentiality
5 designation, all parties shall continue to afford the material in question the
6 level of protection to which it is entitled under the Producing Party's
7 designation until the Court rules on the challenge.

8 **VIII. ACCESS TO AND USE OF PROTECTED MATERIALS**

9 A. Basic Principles.

10 1. A Receiving Party may use Protected Material that is disclosed or
11 produced by another Party or by a Non-Party in connection with this Action only for
12 prosecuting, defending, or attempting to settle this Action. Such Protected Material may
13 be disclosed only to the categories of persons and under the conditions described in this
14 Order. When the Action has been terminated, a Receiving Party must comply with the
15 provisions of Section XIV below.

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

19 B. Disclosure of "CONFIDENTIAL" Information or Items.

20 1. Unless otherwise ordered by the Court or permitted in writing by the
21 Designating Party, a Receiving Party may disclose any information or item designated
22 "CONFIDENTIAL" only to:

23 a. The Receiving Party's Outside Counsel of Record in this Action, as well
24 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
25 disclose the information for this Action;

26 b. The officers, directors, and employees (including House Counsel) of the
27 Receiving Party to whom disclosure is reasonably necessary for this Action;

28 c. Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 d. The Court and its personnel;
4 e. Court reporters and their staff;
5 f. Professional jury or trial consultants, mock jurors, and Professional
6 Vendors to whom disclosure is reasonably necessary or this Action and who have signed
7 the “Acknowledgment and Agreement to be Bound” attached as Exhibit A hereto;

8 g. The author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information;

10 h. During their depositions, witnesses, and attorneys for witnesses, in the
11 Action to whom disclosure is reasonably necessary provided: (i) the deposing party
12 requests that the witness sign the “Acknowledgment and Agreement to Be Bound;” and
13 (ii) they will not be permitted to keep any confidential information unless they sign the
14 “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the
15 Designating Party or ordered by the Court. Pages of transcribed deposition testimony
16 or exhibits to depositions that reveal Protected Material may be separately bound by the
17 court reporter and may not be disclosed to anyone except as permitted under this
18 Stipulated Protective Order; and

19 i. Any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions.

21 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
22 **IN OTHER LITIGATION**

23 A. If a Party is served with a subpoena or a court order issued in other
24 litigation that compels disclosure of any information or items designated in this Action
25 as “CONFIDENTIAL,” that Party must:

- 26 1. Promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order;
28 2. Promptly notify in writing the party who caused the subpoena or order to

1 issue in the other litigation that some or all of the material covered by the
2 subpoena or order is subject to this Protective Order. Such notification
3 shall include a copy of this Stipulated Protective Order; and

4 3. Cooperate with respect to all reasonable procedures sought to be pursued
5 by the Designating Party whose Protected Material may be affected.

6 B. If the Designating Party timely seeks a protective order, the Party served
7 with the subpoena or court order shall not produce any information designated in this
8 action as “CONFIDENTIAL” before a determination by the Court from which the
9 subpoena or order issued, unless the Party has obtained the Designating Party’s
10 permission. The Designating Party shall bear the burden and expense of seeking
11 protection in that court of its confidential material and nothing in these provisions
12 should be construed as authorizing or encouraging a Receiving Party in this Action to
13 disobey a lawful directive from another court.

14 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
15 **PRODUCED IN THIS LITIGATION**

16 A. The terms of this Order are applicable to information
17 produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
18 information produced by Non-Parties in connection with this litigation is protected by
19 the remedies and relief provided by this Order. Nothing in these provisions should be
20 construed as prohibiting a Non-Party from seeking additional protections.

21 B. In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party’s confidential information in its possession, and the Party is
23 subject to an agreement with the Non-Party not to produce the Non-Party’s confidential
24 information, then the Party shall:

- 25 1. Promptly notify in writing the Requesting Party and the Nonparty
26 that some or all of the information requested is subject to a confidentiality
27 agreement with a Non-Party;
28 2. Promptly provide the Nonparty with a copy of the Stipulated

1 Protective Order in this Action, the relevant discovery request(s), and a
2 reasonably specific description of the information requested; and

- 3 3. Make the information requested available for inspection by the Nonparty,
4 if requested.

5 C. If the Non-Party fails to seek a protective order from this Court within
6 14 days after receiving the notice and accompanying information, the Receiving Party
7 may produce the Non-Party's confidential information responsive to the discovery
8 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
9 produce any information in its possession or control that is subject to the confidentiality
10 agreement with the Non-Party before a determination by the Court. Absent a court order
11 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
12 in this court of its Protected Material.

13 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
15 disclosed Protected Material to any person or in any circumstance not authorized under
16 this Stipulated Protective Order, the Receiving Party must immediately (1) notify in
17 writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to
18 retrieve all unauthorized copies of the Protected Material, (3) inform the person or
19 persons to whom unauthorized disclosures were made of all the terms of this Order, and
20 (4) request such person or persons to execute the "Acknowledgment and Agreement to
21 be Bound" that is attached hereto as Exhibit A.

22 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**

24 A. When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other protection,
26 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
27 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
28 may be established in an e-discovery order that provides for production without prior

1 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
2 parties reach an agreement on the effect of disclosure of a communication or
3 information covered by the attorney-client privilege or work product protection, the
4 parties may incorporate their agreement in the Stipulated Protective Order submitted to
5 the Court.

6 **XIII. MISCELLANEOUS**

7 A. Right to Further Relief

8 1. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 B. Right to Assert Other Objections.

11 1. By stipulating to the entry of this Stipulated Protective Order, no Party
12 waives any right it otherwise would have to object to disclosing or
13 producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object
15 on any ground to use in evidence of any of the material covered by this
16 Stipulated Protective Order.

17 C. Filing Protected Material.

18 1. A Party that seeks to file under seal any Protected Material must comply
19 with Local Rule 79-5. Protected Material may only be filed under seal
20 pursuant to a court order authorizing the sealing of the specific Protected
21 Material at issue. If a Party's request to file Protected Material under seal
22 is denied by the Court, then the Receiving Party may file the information
23 in the public record unless otherwise instructed by the Court.

24 **XIV. FINAL DISPOSITION**

25 A. After the final disposition of this Action, as defined in Section V, within
26 sixty (60) days of a written request by the Designating Party, each Receiving Party must
27 return all Protected Material to the Producing Party or destroy such material. As used
28 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,

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

14 B. Any violation of this Order may be punished by any and all appropriate
15 measures including, without limitation, contempt proceedings and/or monetary
16 sanctions.

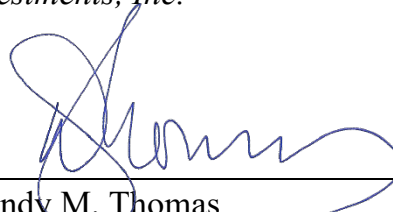
17 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

18
19 Dated: September 14, 2022

/s/ Robert S. Ross

20 Robert S. Ross
21 *Attorneys for Plaintiff Michael Sinel and Counter-*
22 *Defendants Michael Sinel and MSSMD*
23 *Investments, Inc.*

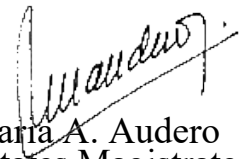
24 Dated: September 15, 2022


25 Wendy M. Thomas
26 Betty T. Huynh
27 Justin Rhee
28 *Attorneys for Defendants and Counter-Claimants*
Genexa, Inc., Max Spielberg, and David Johnson

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: September 15, 2022


Maria A. Audero
United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for the
7 Central District of California on [DATE] in the case of *Michael Sinel v. Genexa, Inc.*
8 *et al.* Case No. 2:22-cv-03961-FMO-MAA.. I agree to comply with and to be bound
9 by all the terms of this Stipulated Protective Order and I understand and acknowledge
10 that failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity except
13 in strict compliance with the provisions of this Stipulated Protective Order.

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

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

23 Date: _____

24 City and State Where Sworn and Signed: _____

25 Printed Name: _____

26 Signature: _____

27
28