

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTREPRENEUR MEDIA, INC., a
California corporation,

Plaintiff,

vs.

RIEVA LESONSKY d/b/a SMB
CONNECTS, an individual, MARIA
ANTON, an individual,
ALLBUSINESS.COM, INC., a
California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO. SACV 08-1066 DOC (ANx)

**[PROPOSED] STIPULATED ORDER
GOVERNING THE DESIGNATION
AND HANDLING OF
CONFIDENTIAL MATERIALS**

JUDGE: Hon. David O. Carter
ACTION FILED: Sept. 24, 2008

1 GOOD CAUSE APPEARING, the Stipulation Governing the Designation
2 and Handling of Confidential Materials filed by the parties on November 6, 2008 is
3 hereby approved. IT IS HEREBY ORDERED THAT:

4 **A. GENERAL PROVISIONS AND DEFINITIONS**

5 1. Scope

6 a. This Stipulated Order Governing the Designation and
7 Handling of Confidential Materials (“Order”) shall apply to all “writings,”
8 “recordings” and “photographs” as defined in sections 1001(1) and (2) of the
9 Federal Rules of Evidence and to any other tangible thing produced pursuant to
10 Rule 34 of the Federal Rules of Civil Procedure. This definition applies equally to
11 original as well as to derivative writings, recordings and photographs (including,
12 but not limited to, copies, extracts therefrom, digests, compilations and summaries
13 thereof).

14 b. This Order shall govern any document or information
15 furnished by any party, or third parties, to any other party in connection with the
16 discovery and pre-trial phase of this action. This includes, but is not limited to,
17 material produced in connection with initial disclosures or in response to demands
18 for production of documents or other things; responses to interrogatories;
19 responses to requests for admission; responses to subpoenas; deposition testimony
20 and exhibits; and all copies, extracts, summaries, compilations, designations, and
21 portions of the foregoing. This Order does not govern proceedings during trial, nor
22 does it prohibit any party from seeking a protective order to govern proceedings
23 during trial.

24 2. Materials Outside Of This Order’s Scope

25 The restrictions of this Order will not apply to:

26 a. Any material that, at the time of disclosure, is in the
27 public domain, in a form the same as or substantially similar to that disclosed; and

28 b. Any material that, after disclosure, becomes part of the

1 public domain, in a form the same as or substantially similar to that disclosed, as a
2 result of publication not involving a violation of this Order.

3 3. “Confidential Material” Defined

4 For the purposes of this Order, “Confidential Material” shall mean
5 those documents or information of any type, kind or character that is designated as
6 “CONFIDENTIAL – SUBJECT TO COURT ORDER” or “HIGHLY
7 CONFIDENTIAL – SUBJECT TO COURT ORDER” by any of the producing or
8 receiving parties, including, but not limited to documents (in any form),
9 information contained in a document, information revealed during a deposition and
10 information revealed in written discovery responses.

11 In designating information as Confidential Matter, a party will make
12 such designation only as to that information which it, in good faith, believes
13 contains confidential or proprietary trade secrets, operations, research, know-how,
14 developmental information, or other non-public information. Should such
15 information be publicly disclosed, it would cause significant competitive harm to
16 the designating party, and could impair property rights.

17 Confidentiality is necessary in this case because this matter is a
18 dispute between competitors, which involves allegations regarding, among other
19 things, trade secret misappropriation. Accordingly, trade secrets and other
20 proprietary information have been, and will continue to be, the subject of
21 discovery. Public disclosure of trade secrets generally impairs the property right,
22 and public disclosure of operations, research, know-how, developmental
23 information, or other non-public information could impair the ability to seek
24 intellectual property protection including but not limited to patent protection and/or
25 trade secret protection, as well as undermine a businesses competitive advantage
26 and remove the incentive for innovation. In addition, public disclosure of
27 Confidential Materials could violate an obligation of confidentiality to a third
28 person, including a court.

1 Nothing shall be designated as “HIGHLY CONFIDENTIAL –
2 SUBJECT TO COURT ORDER” except Confidential Matter that discloses highly
3 sensitive competitive information, that the other party in this litigation may be able
4 to use to inflict direct competitive harm on the designating party. In making this
5 designation, the party shall act in good faith. Such information includes, but is not
6 limited to: trade secrets, business plans; sales or marketing strategies; product
7 development information; corporate strategies and processes; profit information;
8 financial results and projections; sales data; and highly sensitive competitive
9 information concerning customers, vendors, dealers, employees or consultants.
10 Because the parties compete in the same field of commerce, disclosure of such
11 highly sensitive competitive information to the party’s employees could be unfairly
12 used to undermine the competitive advantage afforded by the restrictions placed
13 herein, on materials designated “HIGHLY CONFIDENTIAL – SUBJECT TO
14 COURT ORDER.”

15 4. “Qualified Persons” Defined

16 For the purposes of this Order, “Qualified Persons” shall mean:

- 17 a. The Parties’ outside counsel of record in this action and
18 regular and temporary partners, associates, employees or service contractors (such
19 as document copy services, graphic design services, jury consultants, mock jurors,
20 and messengers) of such counsel to whom it is necessary that the information or
21 material be shown for the purposes of this litigation;
- 22 b. Any independent outside expert or consultant retained by
23 the Parties’ outside counsel who is assisting in this action;
- 24 c. Personnel of the Court, pursuant to this Order;
- 25 d. Any interpreter, or court or other shorthand reporter or
26 typist translating, recording or transcribing testimony;
- 27 e. the Parties;
- 28 f. Any person who authored or was an identified original

1 recipient of the Confidential Material; and

2 g. Any other person only upon order of the Court or upon
3 written consent of the Parties.

4 **B. DESIGNATION PROCEDURES**

5 Documents or information may be designated as Confidential Material
6 as follows:

7 1. Written Materials And Objects

8 Written materials or objects may be designated as Confidential
9 Material by placing on the written materials or physical objects in a conspicuous
10 place the legend: “CONFIDENTIAL – SUBJECT TO COURT ORDER” or
11 “HIGHLY CONFIDENTIAL – SUBJECT TO COURT ORDER.”

12 2. Non-Written Materials

13 Materials not in the form of writings or physical objects (including,
14 but not limited to, depositions or other pre-trial testimony) or materials that cannot
15 be conveniently designated as set forth in the above paragraph may be designated
16 as Confidential Material by a statement on the record, by a counsel, during such
17 deposition or other proceeding that the entire transcript or a specific portion thereof
18 shall be designated as “CONFIDENTIAL – SUBJECT TO COURT ORDER” or
19 “HIGHLY CONFIDENTIAL – SUBJECT TO COURT ORDER.”

20 3. Time of Designation

21 It is preferred that the designation shall be made at the time such
22 Confidential Material is produced or disclosed. However, a party or third party
23 may designate any written or non-written materials or objects as Confidential
24 Material by giving written notice within 30 days after the information is produced
25 or disclosed. No party or third party shall have any obligation or liability due to
26 any disclosure of the information that occurred prior to the receipt of such notice.

27 **C. OBJECTIONS TO DESIGNATION**

28 A party may object to a designation of documents or information as

1 Confidential Material by serving a written objection upon the designating party.
2 The designating party shall notify the objecting party in writing of the bases for the
3 asserted designation within ten (10) calendar days after receiving any written
4 objection. The Parties shall confer in good faith as to the validity of the
5 designation within five (5) calendar days after the challenging party has received
6 the notice of the bases for the asserted designation. To the extent the Parties are
7 unable to reach an agreement as to the designation, the objecting party may make
8 an appropriate application to this Court within fifteen (15) court days after
9 conferring with the producing party, with confidential portions thereof to be kept
10 under seal, requesting that specifically identified documents, information, and/or
11 testimony be excluded from the provisions of this Order. The burden of proving
12 the confidentiality of the designated document and/or information remains with the
13 party asserting such confidentiality. Failure to make an application within this
14 period shall constitute a waiver of the objection. Until the Parties or the Court
15 finally resolve a dispute over the asserted designation, all Parties and persons shall
16 treat the information or materials in question as Confidential Material, pursuant to
17 the terms of this Order.

18 **D. DISSEMINATION OF CONFIDENTIAL MATERIAL**

19 1. Disclosure Of Confidential Material

20 Confidential Material shall be used solely to prepare for and try this
21 litigation and any appeal, and for no other purpose whatsoever, and shall not be
22 disclosed to any person except in accordance with the terms of this Order.

23 Confidential Matter shall not be disclosed or made available by any
24 party to this litigation to persons other than Qualified Persons as defined in
25 Paragraph A(4) above; provided, however, Confidential Matter designated as
26 “HIGHLY CONFIDENTIAL – SUBJECT TO COURT ORDER” shall be
27 restricted in circulation to Qualified Persons described in paragraph A(4)(a), (b),
28 (c), (d), (f) and (g) above.

1 Confidential Material shall not be disclosed to persons described in
2 section (b) or (g) unless or until such person has executed an affidavit in the form
3 attached as Exhibit "A."

4 2. Attorneys' Actions

5 a. Nothing in this Order will bar or otherwise restrict an
6 attorney who is authorized to receive Confidential Material from rendering advice
7 to his or her client with respect to this action or generally referring to or relying on
8 his or her examination of Confidential Material that has been produced under this
9 Order.

10 b. In rendering such advice or in otherwise communicating
11 with his or her client, the attorney will not disclose the specific content of any
12 Confidential Material produced, if disclosure would not otherwise be permitted
13 under the terms of this Order.

14 **E. USE AND HANDLING OF CONFIDENTIAL MATERIAL**

15 1. Use Of Confidential Material

16 Any Confidential Material will be held in confidence by each
17 receiving party; will be used by the Parties solely in connection with this litigation,
18 and not for any business, competitive, or governmental purpose or function; will be
19 used by each receiving party for purposes of this action only and not for any
20 business or other purpose unless agreed to in writing by all Parties to this action or
21 as authorized by the further Order of the Court; and will not be disclosed to, or the
22 substance discussed with, any person who is not authorized to receive such
23 Confidential Material pursuant to this Order.

24 2. Use Of Confidential Material In Pleadings Or Evidence

25 Pleadings, memoranda or other papers that contain Confidential
26 Material shall not be delivered to the Clerk of the Court, except in compliance with
27 Local Rule 79-5. Specifically, any Party wishing to present such information to
28 the Court will attempt to file such information under seal, pursuant to Local Rule

1 79-5.

2 3. Use Of Confidential Material In Testimony And Depositions

3 Any person may be interviewed and examined as a witness at
4 depositions and may testify concerning (1) all Confidential Material of which the
5 person has prior knowledge, and (2) as to Confidential Material for which his or
6 her company is the producing party, unless the person would not have access to the
7 Confidential Material during the normal course of his or her employment, the
8 producing party objects to such disclosure, and such objection is based on a good-
9 faith assertion that the producing party has a legitimate business reason why such
10 disclosure should not be made. If an interview or examination concerns
11 Confidential Material, any party will have the right to exclude from the portion of
12 the examination or interview concerning the Confidential Material any person
13 other than the witness, the witness' attorneys, and persons authorized to review
14 such Confidential Material. If the witness is represented by an attorney who is not
15 authorized to review the Confidential Material, then before the interview or
16 examination, the producing party will be given the opportunity to seek a further
17 protective order or the attorney will be requested to provide a declaration, in the
18 form of Exhibit "A" to this Order.

19 4. Subpoenas

20 If any person or party having possession, custody or control of any
21 Confidential Material receives a subpoena or other process or order to produce
22 Confidential Material, he or she will promptly:

- 23 a. Notify in writing the attorneys of record of the party
24 claiming confidentiality of the Confidential Material sought by the subpoena or
25 other process or order;
- 26 b. Furnish those attorneys with a copy of the subpoena or
27 other process or order; and
- 28 c. Provide reasonable cooperation with respect to a

1 procedure to protect the Confidential Material. If the party asserting
2 confidentiality makes a motion to quash or modify the subpoena, process or order,
3 there will be no disclosure, process or order until the Court has ruled on the
4 motion, and then only in accordance with the ruling. If no motion is made despite
5 a reasonable opportunity to do so, the person or party receiving the subpoena or
6 other process or order will be entitled to comply with it, if the person or party has
7 fulfilled its obligations under this Order.

8 5. Safekeeping Of Confidential Material

9 Confidential Material shall be maintained in the custody of outside
10 trial counsel of record for the Parties except that: (a) any court reporter who
11 transcribes testimony given in this action may maintain any such designated
12 documents for the purpose of rendering his or her normal transcribing services; and
13 (b) partial or complete copies of these documents may be retained by authorized
14 recipients entitled to access to such documents under the terms of this Order to the
15 extent necessary for their study, analysis and preparation of the case. A person
16 with custody of documents designated as Confidential Material shall maintain
17 them in a manner that limits access to those persons entitled under this Order to
18 examine the documents so designated.

19 **F. MISCELLANEOUS PROVISIONS**

20 1. Effect

21 Entering into, agreeing to, and/or producing or receiving Confidential
22 Material, or otherwise complying with the terms of this Order shall not:

23 a. Operate as an admission by any party that any particular
24 Confidential Material does or does not contain or reflect trade secrets, proprietary
25 or commercially sensitive information, or any other type of confidential
26 information;

27 b. Operate as an admission by any party that the restrictions
28 and procedures set forth herein constitute or do not constitute adequate protection

1 for any particular information deemed by any party to be Confidential Material;

2 c. Prejudice in any way the rights of the Parties to object to
3 the production of documents or giving of information they consider not subject to
4 discovery;

5 d. Prejudice in any way the rights of any party to object to
6 the authenticity or admissibility into evidence of any document, testimony or other
7 evidence subject to this Order;

8 e. Prejudice in any way the rights of a party to petition the
9 Court for a further protective order relating to any purportedly confidential
10 information;

11 f. Prejudice in any way the rights of a party to make a
12 showing that materials of proprietary or competitive value, but not specifically
13 included in the category of Confidential Material, may be properly designated as
14 such;

15 g. Prevent the Parties to this Order from agreeing in writing
16 or on the record during a deposition or hearing in this action to alter or waive the
17 provisions or protections provided for in this Order with respect to any particular
18 Confidential Material; or

19 h. Prejudice in any way the rights of a party to apply to the
20 Court at any time to relax or rescind the restrictions of this Order, when
21 convenience or necessity so requires. The procedures set forth in this Order will
22 not affect the rights of the Parties to object to discovery on grounds other than
23 those related to trade secrets or proprietary information claims, nor will they
24 relieve a party of the necessity of proper response to discovery devices.

25 2. No Waiver

26 The taking of, or the failure to take, any action to enforce the
27 provision of this Order, or the failure to object to any designation or any such
28 action or omission, will not constitute a waiver of any right to seek and obtain

1 protection or relief, other than as specified in this Order, nor will it be construed to
2 be admissible or offered before any Court, agency or tribunal in this action or any
3 other action, as evidence for any claim or defense that any information is or is not
4 relevant, material, or otherwise discoverable; is or is not confidential or proprietary
5 to any party; or is or is not entitled to particular protection.

6 3. No Probative Value

7 This Order will not abrogate or diminish any contractual, statutory, or
8 other legal obligation or right of any party or person with respect to any
9 confidential information. The fact that Confidential Material is marked as
10 “CONFIDENTIAL – SUBJECT TO COURT ORDER” or “HIGHLY
11 CONFIDENTIAL – SUBJECT TO COURT ORDER” under this Order will not be
12 considered to be determinative of what a trier of fact may decide to be confidential
13 or proprietary. The fact that Confidential Material has been designated and/or
14 marked as such under this Order will not be relevant during the trial of this action,
15 and the Parties will jointly agree on an instruction to the jury regarding the lack of
16 relevance of this designation and/or marking.

17 4. Court’s Jurisdiction

18 The Court retains jurisdiction to make amendments, modifications,
19 deletions, and additions to this Order as the Court from time to time may consider
20 appropriate. The provisions of this Order regarding the use or disclosure of
21 Confidential Material will survive the termination of this action, and the Court will
22 retain jurisdiction with respect to this Order.

23 5. Notices

24 Any of the notice requirements in this Order may be waived, in whole
25 or in part, if such waiver is made in writing and signed by the attorney of record
26 for the party against whom such waiver is sought.

27 6. Amendments

28 The Parties may not amend this Order, except in writing and by Order

1 of this Court.

2 7. Privileged Documents

3 If any party inadvertently produces a document that it believes is
4 privileged, the receiving party shall immediately return the document and may not
5 claim a waiver based on the production.

6 8. Binding on All Parties

7 This Order, upon entry as such by the Court, shall bind the Parties
8 represented by the undersigned counsel, the Parties' agents, officers, directors,
9 employees, and representatives.

10 **IT IS SO ORDERED.**

11

12 DATED: _____

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

I, _____, declare under penalty of perjury as follows:

1. My present address is: _____.

2. My present occupation or job description is: _____.

3. My present employer is: _____.

4. I have received a copy of the Stipulated Order Governing the Designation and Handling of Confidential Materials (“Order”) entered in the matter of *Entrepreneur Media, Inc. v. Lesonsky*, Case No. SACV 08-1066-DOC (ANx). I have carefully read and understand the provisions of the Order.

5. I am bound by the terms and conditions and all provisions of the Order, and agree to comply with the terms and conditions of this Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Order, and will not copy or use except for the purposes of this action, any Confidential Material that I receive in this action.

6. I submit to the jurisdiction of this Court for the purposes of enforcement of this Order.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, 200__.

Signature of Declarant