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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 FRESNO DIVISION

15 MP Nexlevel of California, Inc.,

16 Plaintiff,

17 vs.

18 CVIN, LLC et al.,

19 Defendants.

Case No. 1:14-CV-00288-LJO-GSA

**STATUS REPORT, INCLUDING STIPULATION
RE DEFENDANT CVIN, LLC'S MOTION FOR
PROTECTIVE ORDER AND TO QUASH, RE
VARIOUS THIRD PARTY SUBPOENAS;
ORDER THEREON**

(Doc. 104)

20
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22
23
24 AND RELATED COUNTER AND
25 CROSS-CLAIMS.

1 At the telephonic conference held on November 7, 2014, the Court informally addressed
2 the issues and arguments raised by the parties regarding CVIN's pending motion for a protective
3 order. (Doc. [104], the "Motion"). The parties were ordered to meet-and-confer to attempt to
4 resolve the discovery disputes at issue, and to submit, no later than November 25, 2014, via email
5 to gsaorders@caed.uscourts.gov, a joint status-report outlining the progress made and identifying
6 any issues that remain unresolved.

7 **STATUS REPORT AND STIPULATION**

8 Counsel for CVIN, LLC ("CVIN") and MP Nexlevel of California, Inc. ("MP") met and
9 conferred, telephonically, on November 17, 2014, and continued their efforts to resolve the issues
10 thereafter. The only remaining issue in dispute between the parties is the following: Whether,
11 based on CVIN's representation that it has full ownership and control of all Project documents and
12 data contained on the EADOC LLC's ("EADOC") system, the subpoena issued by MP to EADOC
13 is invalid as it violates the Stored Communication Act (18 U.S.C. §§ 2701 *et seq.*).

14 Notwithstanding the disputed issue above, CVIN and MP stipulate and agree to the
15 following [Proposed] Order to be entered by the Court so to resolve the issues raised by the
16 Motion.

17 Respectfully submitted,

18
19 Dated: November 25, 2014 RUTAN & TUCKER, LLP

20 By: /s/ Kaveh Badiei
21 William T. Eliopoulos
22 Kaveh Badiei
23 Attorneys for CVIN, LLC

24 Dated: November 25, 2014 WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP

25 /s/ Ben Patrick
26 Ben Patrick, Esq.
27 Attorneys for MP Nexlevel of California, Inc.

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1 **ORDER**

2 On September 24, 2014, CVIN filed a Notice of Motion and Motion for Protective Order
3 and to Quash, re Various Third Party Subpoenas. (Doc. [104], the “Motion”) The Motion
4 involved the subpoenas issued by MP to the following third parties: AECOM Technology
5 Corporation, Almendariz Consulting, Inc., Bennett Trenchless Engineers, BNSF Railway
6 Company, Carlton Engineering, Inc., CCI Systems, Inc., Compliance Solutions, Inc., David
7 Collins, EADOCS, LLC, EDX Wireless, Inc., Engineering Associates, Inc., Gateway Engineering,
8 Inc., Genesee & Wyoming, f/k/a Rail America, GrassRoots Environmental Consortium, ITC
9 Service Group, Inc., John Schieler, Jon Waggoner, K&B Engineering, Lane Engineers, Inc., Lars
10 Andersen & Associates, Inc., LightRiver Technologies, Inc., Randy Pierce, Solano Archaeological
11 Services, Vali Cooper & Associates, Inc., Yamabe & Horn Engineering, Inc., and Youngdahl
12 Consulting Group, Inc.

13 The Motion requested, *inter alia*, that (1) the term “Project,” as that term is used in each
14 and every subpoena, to be re-defined and narrowed; and (2) the Subpoena issued to EADOC,
15 LLC (“EADOC”) to be found in violation of the Stored Communication Act (18 U.S.C. §§ 2701 *et*
16 *seq.*).

17 On October 31, 2014, CVIN and MP submitted a Joint Statement to the Court, setting forth
18 their respective positions and arguments on the issues presented by the Motion. At the telephonic
19 conference held thereafter, on November 7, 2014, the Court informally addressed the issues and
20 arguments raised by the parties. Subsequently, the parties submitted the Status Report and
21 stipulation set forth above and filed on the docket as Doc. 138. The parties’ stipulation resolves
22 CVIN’s Motion in its entirety. Docs. 104, 138 at 2.

23 Accordingly, based on the stipulation of the parties, the Court ORDERS as follows:

24 1. The term “Project,” as used in each every subpoena subject to the Motion shall be
25 re-defined to include only the following 14 segments: Segment Nos. 8, 10, 12, 13, 14, 15, 18, 19,
26 21, 22, 25, 26, 27 and 30 (collectively “14-MP-Segments”). This Order is without prejudice to
27 MP’s right to seek discovery into other segments at a later time, should discovery in this case
28

1 demonstrate that such additional discovery would be relevant. At this time, third-parties in receipt
2 of subpoenas are directed to produce documents relating to the 14-MP-Segements only.
3 Documents shall be produced within 20-days of service of this order. Although production
4 pursuant to this Order is limited to the 14-MP-Segments, each third-party in receipt of a subpoena
5 is directed to retain all documents, information, and data responsive to the subpoena as originally
6 formulated, including documents and information pertaining to segments other than the 14-MP-
7 Segments for possible production at a later stage of this action.

8 2. By agreement of the parties and without prejudice to MP’s right to revisit the issues
9 underlying the present Motion based on later developments in the case, the EADOC subpoena is
10 quashed. The parties further agree, and the Court directs, that the documents stored by EADOC,
11 relating to the 14-MP-Segments, are to be produced by CVIN. Additionally, CVIN is directed to
12 retain and maintain all CVIN documents, information, and data associated metadata, document
13 associations, and hyperlinks in the form they were maintained during the course of the Project.¹
14 CVIN shall be responsible for the timely collection and production of relevant, non-privileged
15 documents and electronically-stored information stored on the EADOC system, including all
16 responsive and non-privileged metadata, in electronic form consistent with the manner in which
17 such documents and information were maintained in the ordinary course of the Project. Without
18 limiting the foregoing, CVIN shall produce documents, information, and data that preserves and
19 maintains all document associations, hyperlinks, and metadata to the extent such data is
20 reasonably available and technologically feasible to be produced. Said production shall comply
21 with the applicable Federal Rules of Civil Procedure. CVIN and MP are to meet and confer to
22 determine the most effective way to exchange the records stored by EADOC.

23 3. No later than five court days after the entry of this order, CVIN shall mail
24 notifications to the third parties regarding this Order, providing the third parties information

25 _____
26 ¹ The parties’ stipulation proposed that the Court direct *either CVIN or EADOC* “to retain and
27 maintain all CVIN documents, information, and data associated metadata, document associations,
28 and hyperlinks in the form they were maintained during the course of the Project.” *See* Doc. 138,
¶2, at 4. In light of Paragraph 3 of this order, the Court directs CVIN to retain and maintain the
documents, information, data and hyperlinks as described here, either directly or via instructions to
EADOC.

1 substantially equivalent to the letter attached hereto as Exhibit A, with a carbon-copy to MP's
2 counsel. See Doc. 138, Exhibit A. CVIN shall also notify EADOC that it does not have to
3 comply with the subpoena issued to it by MP, but that EADOC must retain all CVIN documents
4 and information, associated metadata, document associations, and hyperlinks in the form the
5 documents and information were maintained during the course of the project until directed
6 otherwise by CVIN or the Court. In the event CVIN terminates its use of the EADOC system,
7 CVIN shall retain and maintain the records previously held by EADOC.

8
9 IT IS SO ORDERED.

10 Dated: December 1, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE