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15 MP NEXLEVEL OF CALIFORNIA, INC.
and Cross-Defendant
16 WESTERN SURETY COMPANY

17 **UNITED STATES DISTRICT COURT**

18 **EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION**

19 MP NEXLEVEL OF CALIFORNIA, INC.,

20 Plaintiff,

21 v.

22 CVIN, LLC dba VAST NETWORKS, *et al.*,

23 Defendants.

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

**STIPULATION AND PROTECTIVE
ORDER**

24 AND RELATED COUNTER-, CROSS-, AND
25 THIRD-PARTY CLAIMS

26 Upon stipulation of the parties (individually referred to herein as a “Party” and collectively
27 referred to as the “Parties”) for an order pursuant to Fed. R. Civ. P. 26(c) that confidential
28 information be disclosed only in designated ways:

1 1. As used in the Protective Order, these terms have the following meanings:

2 “Attorneys” means counsel of record, in-house counsel, and their support staff, and pro se
3 parties.

4 The “Attorneys Eyes Only” designation shall be reserved for “Confidential” information, the
5 disclosure of which would provide a particularly broad competitive advantage to the producing
6 party’s competitors and/or would likely cause significant harm to the competitive position of the
7 Producing Party.

8 A document is deemed to be “Confidential” if the document or information pertains to the
9 Producing Party’s trade or business, such as estimating or trade secret information (as “trade secret”
10 is defined in California Civil Code section 3426.1(d)), the producing party believes in good faith has
11 competitive value, is not known to others in the producing party’s trade or business, and the
12 producing party has not revealed to third parties except in confidence and taken reasonable steps to
13 maintain its confidential nature. MP Nexlevel agrees that it will not, and will not be entitled to,
14 mark as “Confidential” MP Nexlevel’s invoices to CVIN, CVIN’s payments to MP Nexlevel, the
15 contracts and change orders between CVIN and MP Nexlevel, and the correspondence between MP
16 Nexlevel and CVIN.

17 “Designating Party” and “Producing Party” means a Party who has produced the Document
18 in question.

19 “Documents” are all materials that meet the definition of Fed. R. Civ. P. 34(a)(1)(A).

20 “Outside Vendors” means translation, data storage and hosting, messenger, copy, coding, and
21 other clerical-services vendors retained by a party or its Attorneys.

22 “Receiving Party” means a Party who has received the Document in question.

23 “Written Assurance” means an executed document in the form attached as Exhibit A.

24 2. A Party or third-party from whom documents are requested may designate a
25 document “Confidential” or “Attorneys Eyes Only” by affixing the designation to the protected
26 information or where not possible, affixing the designation to the container or device storing the
27 protected information.

28 3. All Confidential or Attorneys Eyes Only documents, along with the information

1 contained in the documents, shall be used solely for the purpose of this action, and no person
2 receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any
3 way the documents or their contents to any person other than those specified in paragraph 4. Any
4 other use is prohibited unless disclosed under a court order after having given reasonable notice to
5 the producing party or their counsel in this action. If a Receiving Party learns that, by inadvertence
6 or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized
7 under this Stipulated Protective Order, the Receiving Party must immediately: (a) notify in writing
8 the Designating Party of the unauthorized disclosures; and (b) use its best efforts to retrieve all
9 unauthorized copies of the Protected Material; and (c) inform the person or persons to whom
10 unauthorized disclosures were made of all the terms of this Order; and (d) request such person or
11 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
12 Exhibit A.

13 4. Access to any Confidential documents shall be limited to:

- 14 (a) The Court and its staff and jurors impaneled to hear the case;
- 15 (b) Attorneys who have signed this Stipulation and their staff, and their Outside
16 Vendors;
- 17 (c) Persons shown on the face of the document to have authored or received it, or
18 a custodian or other person who otherwise possessed or knew the Confidential
19 information;
- 20 (d) Court reporters and videographers retained to transcribe and record testimony,
21 who have signed the “Written Assurance” (Exhibit A);
- 22 (e) The officers, directors, and employees (including House Counsel) of the
23 Parties to whom disclosure is reasonably necessary for this litigation and who
24 have signed the “Written Assurance” (Exhibit A);
- 25 (f) Outside independent persons (i.e., persons not currently or formerly employed
26 by, consulting with, or otherwise associated with any party) who are retained
27 by a Party or its Attorneys to provide assistance as mock jurors or focus group
28 members or the like, or to furnish technical or expert services and/or to give

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expert testimony in this action, and who have signed the “Written Assurance” (Exhibit A);

(g) Persons who the Producing Party agrees in writing or on the record may have access, and who have signed the “Written Assurance” (Exhibit A); and

(h) Mediators retained by the Parties to conduct alternative dispute resolution.

5. Access to any Attorneys Eyes Only documents shall be limited to:

(a) the Court and its staff and jurors impaneled to hear the case;

(b) Attorneys who have signed this Stipulation and their staff, and their Outside Vendors;

(c) Persons shown on the face of the document to have authored or received it;

(d) Court reporters and videographers retained to transcribe and record testimony who have signed the “Written Assurance” (Exhibit A);

(e) Outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a Party or its Attorneys to provide assistance as mock jurors or focus group members or the like, or retained to furnish consulting, technical or expert services and/or to give expert testimony in this action and who have signed the “Written Assurance” (Exhibit A);

(f) Persons who the Producing Party agrees in writing or on the record may have access, and who have signed the “Written Assurance” (Exhibit A); and

(g) Mediators retained by the Parties to conduct alternative dispute resolution.

6. Third-parties producing documents in the course of this action may also designate documents as “Confidential” or “Attorneys Eyes Only” subject to the same protections and constraints as the parties to the action. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third-parties shall be treated as “Confidential” for a period of 14 days from the date of their production, and during that period any Party may designate such documents as “Confidential”

1 pursuant to the terms of the Protective Order. No person identified in 4(b), (e) or (f) shall receive
2 Confidential information produced by a third-party unless and until they execute this Stipulation.
3 All Confidential information produced by a third-party are subject to the protections described
4 herein even if all Parties and their Attorneys do not execute this Stipulation or the Order is not
5 entered.

6 (a) In the event that a Party is required, by a valid discovery request, to produce a
7 Non-Party's confidential information in its possession, and the Party is subject
8 to an agreement with the Non-Party not to produce the Non-Party's
9 confidential information, then the Party shall:

10 i. promptly notify in writing the Requesting Party and the Non-Party that
11 some or all of the information requested is subject to a confidentiality
12 agreement with a Non-Party;

13 ii. promptly provide the Non-Party with a copy of the Stipulated
14 Protective Order in this litigation, the relevant discovery request(s),
15 and a reasonably specific description of the information requested; and

16 iii. make the information requested available for inspection by the Non-
17 Party.

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

27 7. Opposing and third-party counsel shall be notified at least 14 days prior to disclosure
28 to any such person who is known to be an employee or agent of, or consultant to, any competitor of

1 the Party or third-party whose designated documents are sought to be disclosed. Such notice shall
2 provide a reasonable description of the outside independent person to whom disclosure is sought
3 sufficient to permit objection to be made. If a Party or third-party objects in writing to such
4 disclosure within 14 days after receipt of notice, no disclosure shall be made until the party seeking
5 disclosure obtains the prior approval of the Court or the objecting {arty.

6 8. All depositions or portions of depositions taken in this action that contain confidential
7 information may be designated “Confidential” or “Attorneys Eyes Only” and thereby obtain the
8 protections accorded other “Confidential” or “Attorneys Eyes Only” documents. “Confidential” and
9 “Attorneys Eyes Only” designations for depositions shall be made either on the record or by written
10 notice to the other Parties within 14 days of receipt of the transcript. Unless otherwise agreed,
11 depositions shall be treated as “Confidential” during the 14-day period following receipt of the
12 transcript. The deposition of any witness (or any portion of such deposition) that encompasses
13 Confidential or Attorneys Eyes Only information shall be taken only in the presence of persons who
14 are qualified to have access to such information.

15 9. Any Party or third-party who inadvertently fails to identify documents as
16 “Confidential” shall promptly upon discovery of its oversight, provide written notice of the error and
17 substitute appropriately-designated documents. If timely corrected, an inadvertent failure to
18 designate qualified information or items does not, standing alone, waive the Designating Party’s
19 right to secure protection under this Order for such material. Any Party receiving such improperly-
20 designated documents shall retrieve such documents from persons not entitled to receive those
21 documents and, upon receipt of the substitute documents, shall return or destroy the improperly-
22 designated documents.

23 10. When a Producing Party gives notice to Receiving Parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

26 11. If a Party files a document designated as containing Confidential information with the
27 Court, it shall do so in compliance with the rules for requesting the document be filed under seal,
28 Local Rule 141. Prior to disclosure at trial or a hearing of materials or information designated

1 “Confidential” or “Attorneys Eyes Only,” the Parties or third-parties may seek further protections
2 against public disclosure from the Court.

3 12. Any Party may request a change in the designation of any information designated
4 “Confidential” or “Attorneys Eyes Only.” Any such document shall be treated as designated until
5 the change is completed. If the requested change in designation is not agreed to, the Party seeking
6 the change may move the Court for appropriate relief, providing notice to any third-party whose
7 designation of produced documents as “Confidential” or “Attorneys Eyes Only” in the action may be
8 affected. The Party asserting that the material is Confidential or Attorneys Eyes Only shall have the
9 burden of proving that the information in question is within the scope of protection afforded by Fed.
10 R. Civ. P. 26(c). Unless a prompt challenge to a Designating Party’s confidentiality designation is
11 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
12 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
13 confidentiality designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 13. Within 60 days of the termination of this action, including any appeals, each Party
16 shall either destroy or return to the opposing party or third-party all documents designated by the
17 opposing party or third-party as “Confidential” or “Attorneys Eyes Only,” and all copies of such
18 documents, and shall destroy all extracts and/or data taken from such documents. Each Party shall
19 provide a certification as to such return or destruction within the 60-day period. However, Attorneys
20 shall be entitled to retain a set of all documents filed with the Court and all correspondence
21 generated in connection with the action.

22 14. Any Party or third-party may apply to the Court for a modification of the Protective
23 Order, and nothing in the Protective Order shall be construed to prevent a Party from seeking such
24 further provisions enhancing or limiting confidentiality as may be appropriate.

25 15. No action taken in accordance with the Protective Order shall be construed as a
26 waiver of any claim or defense in the action or of any position as to discoverability or admissibility
27 of evidence.

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1 16. The obligations imposed by the Protective Order shall survive the termination of this
2 action.

3 **Stipulated to:**

4
5 DATED: March 3, 2015

WILSON, ELSER, MOSKOWITZ EDELMAN &
DICKER, LLP

7 By: /s/ Ben Patrick, Esq. _____
Ben Patrick

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9 DEWITT MACKALL CROUNSE & MOORE S.C.
Holly J. Newman
James D. Kremer

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11 MARTIN & SQUIRES, P.A.
David W. Larson

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13 Attorneys for Plaintiff
MP NEXLEVEL OF CALIFORNIA, INC.
14 and Cross-Defendant
WESTERN SURETY COMPANY

15 Signature authorized February 19, 2015

RUTAN & TUCKER, LLP

16 By: /s/ William T. Eliopoulos, Esq. _____
17 William T. Eliopoulos
Kaveh Badiei

18 DOWLING | AARON INCORPORATED
19 Matthew Dildine

20 Attorneys for Defendant
CVIN, LLC dba Vast Networks

21 Signature authorized February 19, 2015

NOVAK DRUCE CONNOLLY BOVE + QUIGG,
22 LLP

23 By: /s/ Dean A. Morehous, Esq. _____
Dean A. Morehous

24 Attorneys for Member Defendants
25 Sebastian Enterprises, Volcano Communications,
26 Stageline Communications, The Ponderosa, Sierra
27 Tel, Carnet, Cal-Ore, Calaveras, Ducor and
28 Consolidated Communications Holdings

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Signature authorized February 19, 2015

TONKON TORP, LLP

By: /s/ David Rabbino, Esq.
David Rabbino

Attorneys for Third-Party Defendant
Apex Directional Drilling, LLC

Signature authorized February 18, 2015

ROGERS JOSEPH O'DONNELL

By: /s/ Joseph C. McGowan, Esq.
Joseph C. McGowan

Attorneys for Third-Party Defendant
JK Communications & Construction, Inc. d/b/a
Kleven

ORDER

The foregoing Stipulation of the parties is hereby approved and adopted by the Court, and its terms shall govern this action. (The Stipulation and its Exhibit A are also filed as Doc. 160 on the case docket).

IT IS SO ORDERED.

Dated: March 3, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE