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14

UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

16

17 GERARD A. MCHALE, Jr., P.A., as
 Liquidation Trustee for the 1031 Debtors
 Liquidation Trust,

CASE NO. CV10-4864 JW

18

**STIPULATION WITH RESPECT TO
ROBERT McELROY**

19

Plaintiff,

20

v.

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22 SILICON VALLEY LAW GROUP, a
 California Law Corporation,

23

Defendant.

24

TRIAL STIPULATION NO. 2

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WHEREAS, the Plaintiff has noticed the deposition of Robert McElroy for August 29,

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2011, in Richmond, Virginia, and has served a subpoena on Mr. McElroy with respect thereto;

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1 WHEREAS, the undersigned parties agree that the fees and expenses in connection with
2 such a deposition can be avoided by entering into this stipulation with respect to certain documents;

3 THEREFORE, THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

4 1. Mr. McElroy is, and in November 2006 was, a partner in the law firm
5 McGuireWoods, Richmond, Virginia. In November 2006, Timothy Heaphy was also a partner at
6 McGuireWoods and joined the firm in 2006. Mr. Heaphy was an assistant United States Attorney
7 before joining McGuireWoods, and in 2010 left McGuireWoods to become the United States
8 Attorney for the Western District of Virginia and still serves in that capacity.
9

10 2. The document attached hereto as Exhibit 1 and marked as Deposition Exhibit
11 678 (Heaphy 3) and marked with Bates No. MW 1335-1342 is admissible as a business record
12 pursuant to Fed. R. Evid. 803 (5) and (6).
13

14 3. The document attached hereto as Exhibit 2 and marked as Deposition Exhibit
15 679 (Heaphy 4) and marked with Bates No. MW 0026 is admissible as a business record pursuant
16 to Fed. R. Evid. 803 (5) and (6). With respect to the statements to Mr. McElroy recorded in
17 Exhibit 2 (i) these are accurate statements of the statements to Mr. McElroy on the date indicated,
18 and (ii) all parties reserve their rights as to the admission in evidence of the statements in Exhibit 2
19 made to Mr. McElroy as non-hearsay or an exception to the hearsay rule and as to the relevancy of
20 the evidence, which are reserved for later determination by the Court.
21

22 4. The memorandum attached hereto as Exhibit 3 and marked as Deposition
23 Exhibit 680 (Heaphy 5) and marked with Bates No. MW 002-03 is admissible as a business record
24 pursuant to Fed. R. Evid. 803 (5) and (6). With respect to the statements of Mr. Simring recorded
25 in Exhibit 3 (i) these are accurate statements of Mr. Simring's statements to Mr. McElroy on
26 November 21, 2006, and (ii) all parties reserve their rights as to the admission in evidence of Mr.
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1 Simring's statements in Exhibit 3 as non-hearsay or an exception to the hearsay rule and as to the
2 relevancy of the evidence, which are reserved for later determination by the Court.

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4 5. The document attached hereto as Exhibit 4 and marked with Bates No. MW
5 0004 is admissible as a business record pursuant to Fed. R. Evid. 803 (5) and (6). With respect to
6 the statements of Mr. Simring recorded in Exhibit 4 (i) these are accurate transcriptions of the
7 telephone message left by Mr. Simring on November 21, 2006, and (ii) all parties reserve their
8 rights as to the admission in evidence of Mr. Simring's statements in Exhibit 4 as non-hearsay or an
9 exception to the hearsay rule, and to the relevancy of the evidence, which are reserved for later
10 determination by the Court.

11
12 6. The document attached hereto as Exhibit 5 and marked as Deposition Exhibit
13 681 (Heaphy 6) and marked with Bates No. MW 1053-59 is admissible as a business record
14 pursuant to Fed. R. Evid. 803 (5) and (6) to show what Mr. McElroy received from Eric Perkins on
15 November 3, 2006. Nothing in this stipulation is intended to waive any relevancy objection as to
16 the admissibility of Exhibit 5 and the parties stipulate that those objections are reserved for later
17 determination by the Court.

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19 7. The document attached hereto as Exhibit 6 and marked as Deposition Exhibit
20 682 (Heaphy 7) and marked with Bates No. MW 00937-952 is admissible as a business record
21 pursuant to Fed. R. Evid. 803 (5) and (6) to show what Mr. McElroy received from David Field on
22 December 2, 2006. Nothing in this stipulation is intended to waive any relevancy objection as to
23 the admissibility of Exhibit 6 and the parties stipulate that those objections are reserved for later
24 determination by the Court.

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26 8. The document attached hereto as Exhibit 7 and marked as Deposition Exhibit
27 683 (Heaphy 8) and marked with Bates No. MW 00851-00887 is admissible as a business record
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1 pursuant to Fed. R. Evid. 803 (5) and (6) to show what Mr. McElroy received from David Field on
2 December 2, 2006. Nothing in this stipulation is intended to waive any relevancy objection as to
3 the admissibility of Exhibit 7 and the parties stipulate that those objections are reserved for later
4 determination by the Court.
5

6 9. The document attached hereto as Exhibit 8 and marked as Deposition Exhibit
7 684 (Heaphy 9) and marked with Bates No. MW 0060-0066 is admissible as a business record
8 pursuant to Fed. R. Evid. 803 (5) and (6) to show what Mr. McElroy received from David Field on
9 on December 2, 2006. Nothing in this stipulation is intended to waive any relevancy objection as to
10 the admissibility of Exhibit 8 and the parties stipulate that those objections are reserved for later
11 determination by the Court.
12

13 10. The document attached hereto as Exhibit 9 and marked as Deposition Exhibit
14 685 (Heaphy 10) and marked with Bates No. MW 0277-0298 is admissible as a business record
15 pursuant to Fed. R. Evid. 803 (5) and (6) to show what Mr. McElroy received from David Field on
16 on December 2, 2006. Nothing in this stipulation is intended to waive any relevancy objection as to
17 the admissibility of Exhibit 9 and the parties stipulate that those objections are reserved for later
18 determination by the Court.
19

20 11. The document attached hereto as Exhibit 10 and marked as Deposition
21 Exhibit 335 and marked with Bates No. MW 1313-15 is admissible as a business record pursuant to
22 Fed. R. Evid. 803 (5) and (6). Nothing in this stipulation is intended to waive any relevancy
23 objection as to the admissibility of Exhibit 10 and the parties stipulate that those objections are
24 reserved for later determination by the Court.
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1 12. The document attached hereto as Exhibit 11 and marked as Deposition
2 Exhibit 367 and marked with Bates No. MW 0028 was received by Mr. McElroy on November 20
3 or 21, 2006.
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5 13. The document attached hereto as Exhibit 12 and marked as Deposition
6 Exhibit 336 was sent by Mr. McElroy to Mr. Okun on November 21, 2006, and is an accurate
7 record of statements made by Mr. McElroy and Mr. Perkins on November 21, 2006, and is
8 admissible as a business record pursuant to Fed. R. Evid. 803 (5) and (6).
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11 DATED: January 14, 2013

LERCH STURMER LLP

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13
14 By: /s/ Debra Sturmer
15 Jerome N. Lerch, Esq.
16 Debra Steel Sturmer, Esq.
Attorneys for Defendant Silicon Valley
Law Group

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18 //

19 DATED: January 14, 2013

GOLENBOCK EISEMAN ASSOR
BELL & PESKOE LLP

20
21 By: /s/ Michael Devorkin

22 Michael S. Devorkin, Esq. (*pro hac vice*)
23 Jacqueline G. Veit, Esq. (*pro hac vice*)
24 Allyson R. Albert, Esq. (*pro hac vice*)
25 Attorneys for Plaintiff Gerard A. McHale, Jr.,
26 P.A., as Liquidation Trustee for the 1031
27 Debtors Liquidation Trust
28

Dated: 1/16/13

