

1 DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
2 ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
3 CHRISTOPHER L. MARCHAND, ESQ.
Nevada State Bar No. 011197
4 610 South Ninth Street
Las Vegas, Nevada 89101
5 (702) 386-0536 - FAX: (702) 386-6812
Attorneys for Defendant Michael Simmons
6

FILED RECEIVED
ENTERED SERVED ON
COUNSEL/PARTIES OF RECORD

2014 OCT 20 A 11: 37

CLERK US DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 CPALEAD, LLC, a Nevada limited
liability company,
10

11 Plaintiffs,

Case No. 2:14-cv-01449-JCM-CWH

12 vs.

(Filed Under Seal)

13 ADEPTIVE ADS, LLC, a Nevada limited
liability company; JASON BUTLER, an
14 individual; and MICHAEL BELMONTE,
an individual,
15

16 Defendants.
17 _____/

18 **DEFENDANT MICHAEL BELMONTE'S (SIMMONS') MOTION TO UNSEAL**

19 COMES NOW the Defendant Michael Belmonte (Simmons), by and through his counsel, Daniel
20 Marks, Esq., and Christopher L. Marchand, Esq. of the Law Offices of Daniel Marks, and hereby submits

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 his Motion to Unseal. The grounds for Defendant's Motion are set forth in the attached memorandum
2 of Points and Authorities.

3 DATED this 20 day of October, 2014.

4 LAW OFFICE OF DANIEL MARKS

5
6 DANIEL MARKS, ESQ.
Nevada Bar No. 002003
7 CHRISTOPHER L. MARCHAND, ESQ.
Nevada Bar No. 11197
8 610 South Las Vegas Blvd.
Las Vegas, Nevada 89101
9 Attorneys for Defendant Michael Simmons

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 On September 8, 2014, Plaintiff filed a Motion to Open and Maintain Action Under Seal.
12 Plaintiff claimed the need for this matter to be filed and maintained under seal: "(1) until the Court has
13 ruled on Plaintiff's emergency, *ex parte*, motion for a temporary restraining order, which seeks to
14 prohibit Defendants from any further disclosure or use of Plaintiff's trade secret and otherwise
15 confidential customer lists and proprietary software; and (2) until Plaintiff has had three business days to
16 serve the Defendants with any temporary restraining order the Court may enter."

17 Both of these conditions have long been satisfied. All Defendants in the present matter have long
18 since been served and this Court entered the Temporary Restraining Order on September 10, 2014
19 (which has subsequently expired and been replaced with a Preliminary Injunction). As the reasons for
20 why this matter should have been sealed have expired the matter should be unsealed.

21 This Country has long recognized the right of the public to inspect and copy public records and
22 documents, including judicial records and documents. **Nixon v. Warner Communications, Inc.**, 435
23 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978) (internal citations omitted). The Supreme Court has also
24 found that pursuant to the First Amendment to the United States Constitution the public has a right to
25 attend trials. **Richmond Newspapers, Inc. v. Virginia**, 448 U.S. 555, 580, n. 17 (1980), *see also e.g.*,
26 **Lugosch v. Pyramid Co.**, 435 F.3d 110, 121 (2d Cir. 2006); **Publicker Indus., Inc. v. Cohen**, 733 F.2d
27 1059, 1061 (3d Cir. 1984); **Rushford v. New Yorker Magazine, Inc.**, 846 F.2d 249, 253 (4th Cir.
28 1988).

1 In light of the fact that there appears to be no reason to maintain this action under seal pursuant to
2 Plaintiff's Motion, and in light of the fact that there is a right for the public to have access to the records
3 filed in this case or to attend the Court hearings and trial, this matter should be unsealed.

4 DATED this 20 day of October, 2014.

5 LAW OFFICE OF DANIEL MARKS

6
7
8 DANIEL MARKS, ESQ.
Nevada Bar No. 002003
CHRISTOPHER L. MARCHAND, ESQ.
Nevada Bar No. 11197
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Defendant Michael Simmons

11
12 **ORDER**

13 IT IS SO ORDERED.

14 Dated: October 22, 2014

15
16
17 
18 United States Magistrate Judge
19
20
21
22
23
24
25
26
27
28

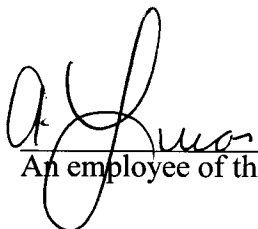
1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the
3 20th day of October, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed
4 envelope with first class postage fully prepaid thereon, a true and correct copy of the foregoing
5 **DEFENDANT MICHAEL BELMONTE'S (SIMMONS') MOTION TO UNSEAL**, to the addresses
6 as follows:

7
8 Richard B. Newman, Esq.
HINCH NEWMAN, LLP
1450 Broadway, 35th Floor
9 New York, NY 100018

10 Jonathan W. Fountain, Esq.
LEWIS ROCA ROTHGERBER, LLP
11 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

12
13 Shane W. Clayton, Esq.
DURHAM JONES & PINEGAR, PC
10785 W. Twain Ave. #200
14 Las Vegas, Nevada 89135

15
16 
An employee of the