

1 THE HONORABLE RICARDO S. MARTINEZ
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 CEN COM, INC., a Washington Corporation
11 doing business as American Digital
Monitoring,

12 Plaintiff,

13 v.

14 NUMEREX CORP., a Pennsylvania
15 Corporation; NextAlarm, LLC, a Georgia
Limited Liability Company; and DOES 1-10,

16 Defendants.

Case No.: 2:17-cv-00560-RSM

STIPULATED PROTECTIVE ORDER

18 1. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential, proprietary, or
20 private information for which special protection may be warranted. Accordingly, the parties
21 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
22 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
23 protection on all disclosures or responses to discovery, the protection it affords from public
24 disclosure and use extends only to the limited information or items that are entitled to confidential
25 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
26 confidential information under seal.

1 2. **“CONFIDENTIAL” MATERIAL**

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: the financial information of the parties and their subsidiaries;
4 the personnel files of the parties and their subsidiaries.

5 3. **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

6 Information or items marked “Attorneys’ Eyes Only” shall include documents and tangible
7 things produced or otherwise exchanged between the parties, or obtained by nonparties, which is
8 of a highly sensitive nature, the disclosure of which, either to an opposing party or other person,
9 would be detrimental to the designating party. This specifically includes, but is not limited to: the
10 trade secrets of the parties, the customer lists of the parties, the personal information of their
11 customers or clients, the marketing or product-development strategies of the parties, the parties’
12 dispatching protocols or procedures, and any and all information relating to Numerex’s acquisition
13 of NextAlarm.

14 4. **SCOPE**

15 The protections conferred by this agreement cover not only material designated
16 confidential or as attorneys’ eyes only (as defined above), but also (1) any information copied or
17 extracted from material designated confidential or as attorneys’ eyes only; (2) all copies, excerpts,
18 summaries, or compilations of material designated confidential or as attorneys’ eyes only; and
19 (3) any testimony, conversations, or presentations by parties or their counsel that might reveal
20 material designated confidential or as attorneys’ eyes only. However, the protections conferred
21 by this agreement do not cover information that is in the public domain or becomes part of the
22 public domain through trial or otherwise.

1 5. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 5.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the persons authorized under this agreement.

8 5.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
9 by the court, or permitted in writing by the designating party, a receiving party may disclose any
10 confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees of
12 counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless a party
15 designates a particular document, material, or information as Attorney’s Eyes Only;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
25 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal confidential material must

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this agreement; and

3 (g) the author or recipient of a document containing the information or a custodian
4 or other person who otherwise possessed or knew the information.

5 5.3 Disclosure of information marked "Attorneys' Eyes Only." Unless otherwise
6 ordered by the court or permitted in writing by the designating party, a receiving party may disclose
7 any information or item designated "Attorneys' Eyes Only" only to:

8 (a) the receiving party's outside counsel of record in this action, as well as
9 employees of said counsel to whom it is reasonably necessary to disclose the information for this
10 litigation;

11 (b) Experts (1) to whom disclosure is reasonably necessary for this litigation and
12 (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

13 (c) the court and its personnel;

14 (d) court reporters and their staff, provided that counsel for the party that retained
15 the court reporter or court reporting service instructs the same not to disclose any material that is
16 the subject of this protective order and further instructs the same to return all originals and copies
17 of any protected material upon the completion of any court reporting service;

18 (e) copy or imaging services retained by counsel to assist in the duplication of
19 material that is subject to an attorneys' eyes only designation, provided that counsel for the party
20 retaining the copy or imaging service instructs the service not to disclose the same to third parties
21 and to immediately return all originals and copies of any confidential material; and

22 (f) the author of the document or the original source of the information.

23 5.4 Filing Confidential Material. Before filing confidential material or discussing or
24 referencing such material in court filings, the filing party shall confer with the designating party
25 to determine whether the designating party will remove the confidential designation, whether the
26 document can be redacted, or whether a motion to seal or stipulation and proposed order is

1 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
2 that will be applied when a party seeks permission from the court to file material under seal.

3 **6. DESIGNATING PROTECTED MATERIAL**

4 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
5 or non-party that designates information or items for protection under this agreement must take
6 care to limit any such designation to specific material that qualifies under the appropriate
7 standards. The designating party must designate for protection only those parts of material,
8 documents, items, or oral or written communications that qualify, so that other portions of the
9 material, documents, items, or communications for which protection is not warranted are not swept
10 unjustifiably within the ambit of this agreement.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
14 and burdens on other parties) expose the designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it designated for
16 protection do not qualify for protection, the designating party must promptly notify all other parties
17 that it is withdrawing the mistaken designation.

18 6.2 Manner and Timing of Designations. Except as otherwise provided in this
19 agreement, or as otherwise stipulated or ordered, disclosure of discovery material that qualifies for
20 protection under this agreement must be clearly so designated before or when the material is
21 disclosed or produced as described below:

22 (a) Information in documentary form: (e.g., paper or electronic documents and
23 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
24 the designating party must affix the word "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"
25 to each page that contains confidential material. If only a portion or portions of the material on a
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1 page qualifies for protection, the producing party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
4 parties must identify on the record, during the deposition, hearing, or other proceeding, all
5 protected testimony, without prejudice to their right to so designate other testimony after reviewing
6 the transcript. Any party or non-party may, within fifteen days after receiving a deposition
7 transcript, designate portions of the transcript, or exhibits thereto, as confidential or designate the
8 same as “Attorney’s Eyes Only.”

9 (c) Other tangible items: the producing party must affix in a prominent place on the
10 exterior of the container or containers in which the information or item is stored the word
11 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
12 information or item warrant protection, the producing party, to the extent practicable, shall identify
13 the protected portion(s).

14 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
15 designate qualified information or items does not, standing alone, waive the designating party’s
16 right to secure protection under this agreement for such material. Upon timely correction of a
17 designation, the receiving party must make reasonable efforts to ensure that the material is treated
18 in accordance with the provisions of this agreement.

19 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 7.1 Timing of Challenges. Any party or non-party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed.

1 7.2 Meet and Confer. The parties must make every attempt to resolve any dispute
2 regarding confidential designations without court involvement. Any motion regarding
3 confidential designations or for a protective order must include a certification, in the motion or in
4 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
5 with other affected parties in an effort to resolve the dispute without court action. The certification
6 must list the date, manner, and participants to the conference. A good faith effort to confer requires
7 a face-to-face meeting or a telephone conference.

8 7.3 Judicial Intervention. If the parties cannot resolve a challenge without court
9 intervention, the designating party may file and serve a motion to retain confidentiality under Local
10 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
12 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
13 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
14 the material in question as confidential until the court rules on the challenge.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
16 LITIGATION

17 If a party is served with a subpoena or a court order issued in other litigation that compels
18 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
19 “ATTORNEYS’ EYES ONLY” that party must:

20 (a) promptly notify the designating party in writing and include a copy of the
21 subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to issue
23 in the other litigation that some or all of the material covered by the subpoena or order is subject
24 to this agreement. Such notification shall include a copy of this agreement; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
26 designating party whose confidential material may be affected.

1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately (a) notify the designating party in writing of the unauthorized disclosures,
5 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
6 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
7 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
8 Bound” that is attached hereto as Exhibit A.

9 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
14 is not intended to modify whatever procedure may be established in an e-discovery order or
15 agreement that provides for production without prior privilege review. Parties shall confer on an
16 appropriate non-waiver order under Fed. R. Evid. 502.

17 11. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material, and material designated as attorneys' eyes only, to the
20 producing party, including all copies, extracts and summaries thereof. Alternatively, the parties
21 may agree upon appropriate methods of destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
25 product, even if such materials contain material designated confidential for attorneys' eyes only.

26 The confidentiality obligations imposed by this agreement shall remain in effect until a
designating party agrees otherwise in writing or a court orders otherwise.

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3 IT IS SO STIPULATED THIS 22ND DAY OF JUNE 2017.

4 McDougald & Cohen, P.S.

5 By: s/Shannon L. McDougald

6 By: s/Trent M. Latta

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25 NextAlarm, LLC

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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3 DATED: June 26, 2017
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7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ [date] in the case of 2:17-cv-00560-RSM **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: