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EXHIBIT A

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November 15, 2013

VIA EMAIL mario.moore@morganlewis.com AND U.S. MAIL

Mario Moore, Esq.
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Re: *N4D, LLC v. Legend3D, Inc., et al.*
U.S. Dist. Ct. (S.D. Cal.) Case No. 13-CV-2656-BEN-NLS

PRIVILEGED COMMUNICATION (Cal. Civ. Code § 47(b))
MALICIOUS-PROSECUTION NOTICE (*Zamos v. Stroud* (2004) 32 Cal.4th 958)

Dear Mr. Moore:

This law office represents Charles Gregory (“Greg”) Passmore and Bird Rock MultiMedia, Inc. d/b/a Passmore Lab and/or Z Media (collectively, “Passmore”). We are informed that you have named Passmore as a defendant in the above-referenced matter, although Passmore has not yet been formally served with the summons and complaint..

Pursuant to *Zamos v. Stroud* (2004) 32 Cal.4th 958, we hereby put you, your firm, and your client N4D, LLC, and its principals (collectively “N4D”) on notice that the continued maintenance of this action against Passmore:

- Is without probable cause,
- Is being prosecuted with malice,
- Exposes you, your firm, and N4D to monetary sanctions under Rule 11(b) of the Federal Rules of Civil Procedure for bringing an action that is presented to harass or cause unnecessary delay, and
- Upon termination in Passmore’s favor, will subject you, your firm, and N4D to liability for malicious prosecution.

Under California Business and Professions Code section 6068(c) and Rule 3-200 of the California Rules of Professional Conduct, you have an ethical obligation to the court and to the legal profession “[t]o counsel or maintain those actions, proceedings, or defenses only

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as appear...legal or just” and not “[t]o bring an action...[or] assert a position in litigation...without probable cause and for the purpose of harassing or maliciously injuring any person.” *Sorenson v. State Bar* (1991) 52 Cal.3d 1036. The prosecution and maintenance of this action are barred on various legal grounds, specifically the statute of limitations, the issues of ownership and consent, and waiver and estoppel, and those bars have been the subject of judicial decisions in another court in which N4D sued Passmore.

Be advised that any continued prosecution of this action by you, after this notice is received, will be used as evidence of bad faith under California Civil Code section 3426.4. Therefore, this office demands that you dismiss the federal lawsuit against Passmore immediately.

N4D’S RELATED CASES

N4D has been in ongoing litigation with Passmore in at least three (3) separate court actions related to this matter: *Bird Rock Multimedia, Inc. v. 3DH Communications, Inc., et al.*, San Diego Superior Court Case No. 37-2009-00100935-CU-BC-CTL (“the 3DH case”); *Bird Rock Multimedia, Inc. v. N4D, LLC*, San Diego Superior Court Case No. 37-2010-00103118-CU-MC-CTL (“the N4D case”); and *N4D, LLC v. Passmore, et al.*, Gwinnett County, Georgia Superior Court Case No. 10-A-11197-7 (“the Georgia case”).¹ Thus, N4D has had access to all of the underlying facts and circumstances with the aid of legal discovery.

N4D has also sued Defendant Legend3D, Inc. (“Legend”) in a separate related case: *N4D, LLC v. Legend3D, Inc.*, San Diego Superior Court Case No. 37-2012-00088480-CU-NP-CTL (“the Legend case”). In the Legend case, N4D alleges the same common facts as in the Georgia case and this case, albeit couched in slightly different causes of action. Before suing Legend in the California superior courts, N4D unsuccessfully moved in 2011 to have Legend added as a co-defendant in the Georgia case.

It must be noted that in the civil cover sheet that you filed with the United States District Court, you left the section for “related cases” blank.

¹A copy of your client’s complaint against Passmore in the Georgia case is attached as Exhibit 1 to this letter. The Georgia complaint includes, as Exhibits A and F respectively, the 2003 and 2009 Software Development Agreements (“SDAs”) that you quote in, but did not attach to, your complaint in this case.

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CHOICE OF VENUE AND CLAIMS OF JURISDICTION

In your complaint, you allege that your client is a Delaware LLC with its principal place of business in Fresno County, California, and that a "substantial part of the events or omissions giving rise to the claim occurred" in the Southern District of California. Complaint, § 32. However, your client, *in the Georgia case which has factual claims nearly identical to the claims alleged in your complaint*, alleged that venue was properly in Georgia because "a substantial part of the business was transacted [or] the tortious act, omission, or injury occurred" in Georgia (O.C.G.A. § 9-10-93), and that your client's principal place of business was in Georgia. Therefore, your client can be deemed to be venue-shopping, with you as the enabler.

STATUTE OF LIMITATIONS

As an initial matter, your various causes of action, including the breach of contract claim, are barred by the one-year contractual limitations period agreed to in the 2003 and 2009 Software Development Agreements (SDAs) between N4D and Passmore, which (as stated *infra*) you cite in the complaint as the basis for Passmore's liability but did not attach to the complaint. See Order on Plaintiff's and Defendants' Motions for Summary Judgment in the Georgia Case ["Georgia MSJ Order"] attached hereto as Exhibit 2 for reference, pp. 2-5.

Although the statute of limitations for breach of a written contract or for "an action upon any contract, obligation or liability founded upon an instrument in writing" is four years in California (and six years in Georgia), the parties to a contract can agree to a shorter period than what the statute provides, provided that the contractual limitation for bringing suit is not so unreasonable as to show imposition or undue advantage. *Schram v. Robertson*, 111 F.2d 722 (9th Cir. 1940)(diversity case applying California law); *Hamaker v. Williams* (1937) 22 Cal.App.2d 256. Both the 2003 SDA (Complaint (Georgia Case), Exh. A, para. 34) and the 2009 SDA (Complaint (Georgia Case), Exh. F, para. 33) have a one-year contractual limitation of actions.

Based on the evidence presented in Passmore's motions for summary judgment in the Georgia case, which N4D's other counsel neither refuted nor disputed, N4D was on notice of these claims against Passmore for breach of contract and unauthorized transfer of technology to Legend on November 3, 2009, at the latest. Since the agreed-upon contractual limitation period is one year, N4D's complaint in this case, as with its complaint in the Georgia case, is time-barred.

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