

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 19th day of July, 2016 (hereinafter, "Effective Date"), between VP Imaging, Inc. d/b/a DocuNav Solutions, ("DocuNav") and the Attorney General for the State of Texas (the "Attorney General").

WHEREAS, the Attorney General has been investigating potential violations of the antitrust laws in connection with the provision of enterprise content management ("ECM") software and services offered to public and private entities in Texas (the "Attorney General's Investigation");

WHEREAS, based on information obtained in the Attorney General's investigation, the Attorney General would be prepared to assert on behalf of the State of Texas all available claims for civil penalties, disgorgement, restitution, damages, and equitable relief under federal and state law arising from DocuNav's marketing of ECM software ("the Attorney General's Claims");

WHEREAS, DocuNav represents that it has terminated all agreements that were the subject of the Attorney General's Investigation that the Attorney General may have challenged as potential violations of the antitrust laws;

WHEREAS, in order to avoid further expense and the risks inherent in litigation, DocuNav and the Attorney General desire to settle the Attorney General's Claims; and

WHEREAS, the Attorney General finds that the agreed relief and other provisions contained in this Settlement Agreement are appropriate and in the public interest;

NOW THEREFORE, in exchange for the mutual obligations described below, DocuNav and the Attorney General hereby agree as follows:

DEFINITIONS

1. The term "ECM" or "Enterprise Content Management" means a type of software used to capture, manage, store, preserve, and deliver content and documents related to organizational processes.
2. The term "Laserfiche" means Compulink Management Center, Inc. d/b/a Laserfiche, a corporation that sells ECM software.
3. The term "VAR" or "Value Added Reseller" means a company licensed to resell Laserfiche software.
4. The term "VAR of Record" means the VAR that has an existing contractual relationship with and End User to provide Laserfiche software and services.
5. The term "End User" means the ultimate purchaser of ECM software.

PARTIES

6. VP Imaging, Inc. d/b/a DocuNav Solutions is a corporation organized under the laws of the State of Texas. DocuNav markets, installs, and maintains ECM software for private and public sector customers within Texas and the United States.
7. The Attorney General is the chief law enforcement officer of the State of Texas, responsible for enforcing state and federal antitrust laws to promote competition and protect the State's citizens, general welfare, and economy from anticompetitive conduct.

THE ATTORNEY GENERAL'S ALLEGATIONS

A. Background Information

8. Laserfiche is one of the largest providers of ECM software worldwide. Laserfiche's primary business model is to license its software to Value Added Resellers, who in turn sell the software to the End User. VARs are responsible for installing, maintaining and upgrading the Laserfiche software, and serve as the End User's primary Laserfiche contact. DocuNav competes against other VARs to sell Laserfiche software and services to private and public sector End Users. Laserfiche does not grant VARs exclusive rights to sell within geographic territories or otherwise prohibit VARs from competing against each other for new or existing business. Laserfiche established a process allowing End Users to transfer their accounts from the VAR of Record to another VAR.

9. Many Laserfiche End Users are state and local government entities ("Public Entity End Users") required by state law to purchase certain goods and services, including software, through competitive procurements such as requests for proposals ("RFPs") or requests for information ("RFIs").

10. Laserfiche allows VARs to create and sell their own software that interoperates with Laserfiche software. DocuNav sells a program called GeoDocs, which is a mapping automation tool that integrates geographic information systems with Laserfiche. DocuNav sells Geodocs to End Users directly, in addition to using resellers that sell GeoDocs to End Users.

11. On June 6, 2012, DocuNav entered into a written agreement ("the DocuNav Agreement") with a competing VAR, MCCi, LLC, authorizing MCCi, LLC to be a licensed reseller of Geodocs.

B. The Agreement Not to Compete

12. The DocuNav Agreement included a provision where the parties agreed not to solicit each other's customers or accept a VAR transfer request without the other VAR's consent. The agreements not to compete extended to all current Laserfiche customers of DocuNav and MCCi regardless of whether they purchased GeoDocs.

C. The Agreement Not to Solicit Employees

13. The DocuNav Agreement included a provision where the parties agreed “to not solicit for employment, entertain a request for employment, nor hire, any person employed by the other entity....” This agreement was unlimited in scope and geography.

D. Sole Source Procurements

14. Certain Public Entity End Users were misinformed or operating under the mistaken impression that Laserfiche software or services, such as upgrade software or support services, were available only through the VAR of Record and the Public Entity End Users could not seek quotes from or transfer their accounts to another VAR to obtain such software and services. Public Entity End Users who were unaware of the VAR transfer process may have believed that Laserfiche software and services could be obtained without using competitive procurement methods that may be required by law.

BUSINESS PRACTICES

15. For a period of five years from the Effective Date, DocuNav and its directors, officers, managers, agents, and employees agree not to enter into any agreement with a similar purpose or effect as the agreements described in paragraphs 12 and 13.

16. For a period of five years from the Effective Date, DocuNav and its directors, officers, managers, agents, and employees agree not to represent or imply that DocuNav is a sole source provider of Laserfiche software or services.

17. This Settlement Agreement does not prohibit DocuNav from entering into, attempting to enter into, or complying with a written agreement with any other VAR to market and sell products belonging to DocuNav or the other VAR so long as such agreement (1) is reasonably related to a lawful joint venture agreement or sale agreement; and (2) is reasonably necessary and narrowly tailored to achieve such agreement’s procompetitive benefits.

SETTLEMENT PAYMENT

18. Within 30 days of the Effective Date, DocuNav agrees to pay the total sum of \$20,000, as a payment in lieu of civil penalties for the Supreme Court Judicial Fund pursuant to Texas Government Code §402.007. Payment is to be made by certified check or wire transfer, payable to the “STATE OF TEXAS,” bearing the reference AG# 153556972, and if not by wire transfer, delivered/mailed to the Office of the Attorney General, ATTN: Accounting Division, 300 W. 15th Street, MC-003, Austin, Texas 78701.

RELEASE BY THE ATTORNEY GENERAL

19. Effective upon DocuNav's compliance with its obligations to make the payment set forth above in paragraph 18 the Attorney General releases DocuNav and its past and current parents, subsidiaries, affiliates, officers, directors, attorneys and employees (collectively the "Released Parties"), from all civil claims, counterclaims, cross claims, setoffs, civil causes of action of any type (whether common law, equitable, statutory, regulatory or administrative, class, individual or otherwise in nature, and whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured), demands, disputes, damages, restitution, whenever incurred and liabilities of any nature whatsoever, including, without limitation, costs, fines, debts, expenses, penalties and attorneys' fees, known or unknown, arising out of the Attorney General's Claims that could have been asserted by the Attorney General in his sovereign capacity as chief law enforcement officer of the State of Texas (the "Released Claims").

20. The Attorney General intends by this Settlement Agreement to settle with and release only the Released Party, and does not intend this Settlement Agreement, or any part hereof or any other aspect of the settlement or the release, to extend to, to release or otherwise to affect in any way any rights that the Attorney General has or may have against any other person, party, or entity whatsoever.

21. Paragraphs 19 and 20 pertain only to claims that could have been asserted by the Attorney General in his sovereign capacity and do not affect civil or administrative claims, causes of action, counterclaims, set-offs, demands, actions, suits, rights and liabilities for damages, restitution, disgorgement or taxes arising from the Attorney General's Claims that the Attorney General may assert on behalf of any state entity or political subdivision. As of the Effective Date of this Agreement, the Attorney General is unaware of any such actual claims against DocuNav and has no knowledge that any DocuNav customer intends to pursue litigation in connection with this matter.

22. Nothing herein shall be construed to prevent the Attorney General from pursuing an action to enforce or interpret this Settlement Agreement.

NOTICES AND CORRESPONDENCE

23. All notices and correspondence required to be provided to the Attorney General shall be sent electronically or by first-class mail, postage pre-paid as follows:

Bret Fulkerson
Assistant Attorney General, Antitrust Section
Office of the Texas Attorney General
300 W. 15th Street, Seventh Floor
Austin, TX 78701
bret.fulkerson@texasattorneygeneral.gov

All notices and correspondence required to be provided to DocuNav shall be sent electronically or by first-class mail, postage pre-paid as follows:

Will C. Griffis
McCleskey, Harriger, Brazill, & Graf, L.L.P.
P.O. Box 6170
Lubbock, Texas 79493-6170
WGriffis@MHBG.com

OTHER PROVISIONS

24. This Settlement Agreement is entered into voluntarily and solely for the purpose of resolving the potential claims and causes of action between DocuNav, the Attorney General, and the State of Texas. This Settlement Agreement shall not be used for any other purpose in any legal proceeding or action, except in proceedings or actions to enforce or interpret this Settlement Agreement.
25. This Settlement Agreement shall not confer any rights upon, and is not enforceable by, any persons or entities other than the Attorney General and the Released Parties.
26. This Settlement Agreement may be modified by the mutual agreement of DocuNav and the Attorney General. Any such modification shall be in writing and signed by all parties to this Settlement Agreement.
27. The parties agree that the state or federal courts located in Travis County, Texas, shall be the exclusive forum for resolving any disputes arising from the terms of this Settlement Agreement. DocuNav specifically agrees that courts located in Travis County, Texas, may exercise personal jurisdiction over them to resolve such disputes. Texas law shall apply in any action brought by the Attorney General, to enforce or interpret this Settlement Agreement.
28. This Settlement Agreement may be executed in counterparts.

WHEREFORE, IT IS SO AGREED AND the following signatures are affixed hereto on this 19th day of July, 2016.

For
VP Imaging, Inc. d/b/a DocuNav Solutions

For
Attorney General for the State of Texas

By: 
Cody Hettis

By: 
Bret Fulkerson
Assistant Attorney General
Antitrust Section