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10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5**

12 In re:) Case No. 01-55899-MSJ
13 VM LABS, INC.)
14) Chapter 11
15 Debtor(s)) Date: January 7, 2002
16) Time: 1:30 p.m.
17) Place: Courtroom 3070
18) 280 South First Street
19) San Jose, California

20 **NOTICE OF MOTION FOR ORDER ESTABLISHING AUCTION, NOTICE AND**
21 **OVERBID PROCEDURES FOR SALE OF ASSETS AND MOTION TO**
22 **ASSUME AND ASSIGN LEASES AND EXECUTORY CONTRACTS**

23 TO ALL CREDITORS AND PARTIES IN INTEREST, SECURED CREDITORS
24 PARADISE IV, INC., EMERGING ALLIANCE FUND, L.P. AND MOTOROLA, INC.,
25 ALL PARTIES REQUESTING SPECIAL NOTICE, AND THE UNITED STATES
26 TRUSTEE AND THEIR COUNSEL:

27 PLEASE TAKE NOTICE that on January 7, 2002, at 1:30 p.m., a hearing will be
28 held in Courtroom 3070 on the Motion for Order Establishing Auction, Notice and
Overbid Procedures for Sale of Assets and Motion to Assume and Assign Leases and
Executory Contracts (the "Motion") brought by debtor and debtor in possession VM
Labs, Inc. ("VM").

1 By the Motion, VM seeks an order to establish notice and overbid procedures for
2 the proposed sale of all of its assets in a bankruptcy auction for a credit bid of the
3 \$9,350,000 in indebtedness held by proposed purchaser Paradise IV, Inc., subject to
4 overbid.
5

6 The proposed sale procedures for the consideration of overbids to be
7 considered at the January 7th hearing are as follows¹:

8 1. Notice. VM shall provide the following notice of the sale hearing:

9 (a) Notice to Interested Parties. No later than two business days after
10 entry by the United States Bankruptcy Court for the Northern District of California of the
11 Order Granting Motion for Order Establishing Auction, Notice and Overbid Procedures
12 for Sale of Assets and Motion to Assume and Assign Leases and Executory Contracts
13 (the "Bidding Procedures Order")(the "Bidding Procedures Order"), VM shall serve a
14 copy of a notice of the hearing on the sale motion, the sale motion itself, the Purchase
15 Agreement, the proposed sale order, and the Bidding Procedures Order, upon the
16 following persons by first-class mail, postage prepaid: (i) the United States Trustee; (ii)
17 all entities known to have expressed an interest in a transaction with respect to the
18 Acquired Assets during the past four months; (iii) all entities known to have asserted
19 any lien, claim, interest or encumbrance in or upon the Acquired Assets; (iv) all federal,
20 state, and local regulatory or taxing authorities or recording offices which have a
21 reasonably known interest in the relief requested by the sale motion; (v) all parties to
22 contracts and leases which are proposed to be assumed and assigned or otherwise
23
24
25
26

27 ¹ Capitalized terms are defined in the Asset Purchase Agreement that is
28 attached as Exhibit "A" to the Declaration of Richard Miller filed in support
of the Motion.

1 treated in accordance with the terms of the Purchase Agreement; (vi) the Internal
2 Revenue Service; (vii) all parties that have filed requests for notices in VM's bankruptcy
3 case pursuant to Bankruptcy Rule 2002; and (viii) counsel to any creditors' committee
4 that has been appointed in VM's bankruptcy case.
5

6 (b) Publication Notice. On or before January 15, 2002, VM shall
7 cause notice of the proposed sale, substantially in the form of the notice attached
8 hereto as Exhibit A, to be published in The Wall Street Journal (West Coast edition)
9 and The San Jose Mercury News.
10

11 2. Qualified Bids. No bid will be considered unless it complies with all of the
12 requirements set forth below, unless, for good cause shown, the Bankruptcy Court
13 orders otherwise:

14 (a) The bid must be filed with the Bankruptcy Court and served on
15 (i) VM Labs, Inc., 520 San Antonio Road, Mountain View, CA 94040, Attn: Richard
16 Miller, (ii) Debtor's counsel, Binder & Malter, LLP, 2775 Park Avenue, Santa Clara, CA
17 95050, attn: Robert G. Harris, Esq. and (iii) counsel to Paradise IV, Inc., Gibson, Dunn
18 & Crutcher LLP, One Montgomery Street, 31st Floor, San Francisco, CA 94104, attn:
19 Desmond Cussen, Esq. Such bid must be filed with the Bankruptcy Court and received
20 by the parties named above no later than three (3) days prior to the date of the sale
21 hearing.
22

23 (b) The bid must be an all cash bid.

24 (c) The bid must be at least \$9.45 million (i.e., \$100,000 higher than
25 the \$9.35 million purchase price proposed by Paradise IV, Inc. ("Paradise") in the Asset
26 Purchase Agreement dated December 27, 2001 between VM and Paradise (the
27
28

1 "Purchase Agreement").

2 (d) The bid must be accompanied by a deposit (in the form of a
3 cashier's check, certified check or wire transfer payable to VM) in the amount of at least
4 \$100,000. The deposit will be returned to the bidder within a reasonable period of time
5 following the conclusion of the Auction unless the bidder ultimately submits the
6 successful bid for the Acquired Assets in which case the deposit will be applied against
7 the purchase price.
8

9 (e) The bid must not be subject to any financing or due diligence
10 contingency.
11

12 (f) The bid must be accompanied by satisfactory evidence of
13 committed financing or other ability to perform.

14 (g) The bid must offer to purchase the Acquired Assets upon
15 substantially the same terms and conditions set forth in the draft Purchase Agreement
16 attached to the accompanying Miller Declaration (in other words, with the exception of
17 the Purchase Price and provisions relating to Paradise's claims, it is the intention of VM
18 that any other bidder shall bid the same Purchase Agreement).
19

20 (h) Each bid must include a commitment to consummate the purchase
21 of the Acquired Assets within not more than 15 days after entry of an order by the
22 Bankruptcy Court approving the sale.
23

24 3. No Qualified Bids Received. If no timely, conforming bids are submitted,
25 VM shall request at the sale hearing that the Bankruptcy Court approve the proposed
26 sale of the Acquired Assets to Paradise on the terms set forth in the Purchase
27 Agreement.
28

1 4. Qualified Bids Received. In the event that one or more timely, conforming
2 bids is submitted, VM shall request that the Bankruptcy Court conduct an auction (the
3 "Auction") for the Acquired assets in which the Purchaser and all qualified bidders may
4 participate (for purposes of the Auction, Paradise shall be a qualified bidder and the
5 Purchase Agreement shall constitute a qualified bid).
6

7 (a) The Auction shall be held in the United States Bankruptcy Court,
8 Courtroom 3070, 280 South First Street, San Jose, California, before The Honorable
9 Marilyn Morgan.
10

11 (b) Bidding will commence at the amount of the highest bid submitted
12 by a qualified bidder, all subsequent bids shall be in increments of at least \$100,000
13 above the previous bid and bidding will continue until the highest bid is determined.
14

15 (c) Any overbid submitted by Paradise may be in the form of a credit
16 bid against its claims against VM, up to the total amount of said claims. Any overbid
17 submitted by another qualified bidder must be an all-cash bid.

18 (d) Upon the conclusion of the Auction, VM shall recommend that the
19 Bankruptcy Court approve a sale of the Acquired Assets to the entity that submits the
20 highest bid for the assets.
21

22 (e) In the event that the entity that submits the highest bid for the
23 assets is not Paradise, no breakup fee or expense reimbursement shall be payable by
24 VM to Paradise.

25 The Motion will be based upon this Notice, the Declaration of Richard Hill in
26 support thereof, the pleadings on file herein, and upon such oral and documentary
27 evidence as may be presented at the hearing on the Motion.
28

1 PLEASE TAKE FURTHER NOTICE THAT by order of the Bankruptcy Court,

2 objections may be made at the hearing.

3
4 Dated: December 27, 2001

BINDER & MALTER

5 By: Robert G. Harris
6 Robert G. Harris

7 Attorneys for Debtor and Debtor In
8 Possession VM Labs, Inc.