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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 Merchant Transaction Systems, Inc., ) No. CV-02-1954-PHX-FJM

10 Plaintiff, ) **ORDER**

11 vs. )

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13 Nelcela, Inc., et al., )

14 Defendant. )

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16 And Related Counterclaims, Cross-  
17 Claims, and Third-Party Claims.

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19 On March 23, 2011, this case’s assigned District Judge, the Honorable Mary  
20 H. Murguia, “refer[red] this case to a magistrate judge for all post-judgment proceedings[.]”  
21 pursuant to 28 U.S.C. § 636(b)(3),<sup>1</sup> LRCiv 72.1(b), and LRCiv 72.2(a)(8). (Doc. 957) The

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23 <sup>1</sup> Although 28 U.S.C. § 636(b) does not expressly authorize a magistrate judge to  
24 consider post-judgment motions, a district judge may assign additional duties to the  
25 magistrate judge that “are not inconsistent with the Constitution and laws of the United  
26 States.” 28 U.S.C. § 636(b)(3). However, a magistrate judge exercising “additional duties”  
27 jurisdiction, absent the parties’ consent, lacks “authority to enter a final, appealable order”  
28 in a post-judgment proceeding. *Bank Tejarat v. Varsho-Saz*, 981 F.2d 1257 (9<sup>th</sup> Cir. 1992)  
(MJ without authority to deny judgment-debtor’s claim of property exemption to writ of  
execution) (citing with approval *Reynaga v. Cammisa*, 971 F.2d 414, 416 (9<sup>th</sup> Cir. 1992);  
*United States v. Thompson*, 285 Fed.Appx. 522, 524 (10<sup>th</sup> Cir. 2008)).

1 Honorable Frederick J Martone, United States District Judge, was reassigned this case due  
2 to Judge Murguia's recent elevation to the Ninth Circuit Court of Appeals. (*Id.*)

3 The docket reflects this lawsuit was filed on October 3, 2002 and resulted in  
4 significant jury awards nearly seven years later, on September 2, 2009, in favor of Plaintiff  
5 Merchant Transaction Systems, Inc. ("MTSI") and the "POST Parties" (POST Integrations,  
6 Ebocom, Mary Gerds, and Douglas McKinney) against Defendants Alec Dollarhide,  
7 Nelcela, Inc., and Len Campagna. (Docs. 1, 746, 939) "The factual and procedural  
8 background of this case is long, convoluted, and has been described by [Judge Murguia] at  
9 length in its June 25, 2009 Summary Judgment Order." (Doc. 858 at 2) A summary of the  
10 jury awards may be found in Judge Murguia's March 31, 2010 order granting and denying  
11 several post-verdict motions. (*Id.* at 2-3) An Amended Judgment was entered on April 16,  
12 2010. (Doc. 861) On March 31, 2011, significant sums were awarded in attorneys' fees to  
13 MTSI and the POST Parties. (Doc. 957) A notice of appeal was filed on April 30, 2010 and  
14 it appears the appeal is pending. (Doc. 863)

15 On March 11, 2011, MTSI, Gene Clothier and Tone Clothier (collectively, the  
16 "MTSI Parties") filed a Motion For Amended Order Re: Substitution of Counsel, indicating  
17 that their counsel "inadvertently omitted Nicholas J. DiCarlo of DiCarlo, Caserta & Phelps  
18 PLLC from [their prior motion] as one of the attorneys to be substituted out of the case."  
19 (Doc. 955) Counsel move the Court to issue an amended order that includes Nicholas J.  
20 DiCarlo as a lawyer to be substituted out of the case. (*Id.*) The docket reflects that on  
21 February 16, 2011, these same parties filed an Application for Substitution of Counsel, doc.  
22 948, which was granted on February 18, 2011, doc. 950. Attorney Nicholas J. DiCarlo is  
23 not identified as counsel to be substituted out of the case in the February 18, 2011 order.

24 Good cause appearing,

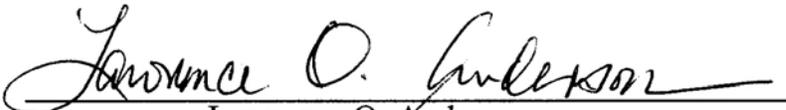
25 **IT IS ORDERED** that MTSI Parties' Motion For Amended Order Re:  
26 Substitution of Counsel, doc. 955, is **GRANTED**. The Court hereby approves the

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1 substitution of the law firm of Lewis and Roca LLP and attorneys Robert H. McKirgan,  
2 Kimberly A. Demarchi and Michael J. Hammer to represent MTSI, Gene Clothier and Tone  
3 Clothier in this matter. William McKinnon and Nicholas DiCarlo of DiCarlo, Caserta &  
4 Phelps PLLC are hereby withdrawn and substituted out as counsel of record for MTSI, Gene  
5 Clothier and Tone Clothier.

6 Dated this 4<sup>th</sup> day of April, 2011.

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9 Lawrence O. Anderson  
10 United States Magistrate Judge  
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