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8
 9 UNITED STATES DISTRICT COURT
 10 DISTRICT OF ARIZONA

11 JENNA MASSOLI p/k/a JENNA)
 JAMESON,)
 12)
 Plaintiff,)

No. CV 05-0854 PHX EHC

13 vs.)
 14 "REGAN MEDIA," and JUDITH)
 REGAN, an individual,)
 15)
 Defendants.)

**RULE 37.1 STATEMENT IN
 SUPPORT OF REGAN MEDIA'S
 SECOND MOTION TO COMPEL
 AND REQUEST FOR
 SANCTIONS**

**(ORAL ARGUMENT
 REQUESTED)**

16 _____)
 17 REGAN MEDIA, INC., a New York)
 corporation, and JUDITH REGAN, an)
 18 individual,)
 19 Defendants/Counterclaimants,)

(Assigned to the Honorable
 Earl H. Carroll)

20 vs.)
 21 JENNA MASSOLI p/k/a JENNA)
 JAMESON, an individual,)
 22)
 Plaintiff/Counterdefendant,)

23 and)
 24 JAY GRDINA, an individual, and)
 25 DOLCE AMORE, INC., a Colorado)
 corporation,)
 26)
 Counterdefendants.)

1 Pursuant to Local Rule 37.1, Defendant/Counterclaimant Regan Media, Inc.
2 (“Regan Media”) submits this Rule 37.1 Statement in Support of its Motion to Compel and
3 Request for Sanctions.
4

5 **Request for Production No. 1**

6 All documents reflecting, identifying or relating to any amounts of money or
7 other compensation received by Jameson, Grdina or Dolce Amore in
8 connection with the A&E Contract.

9 Counterdefendants’ Response:

10 As set forth in Counterdefendants’ response to Interrogatory No. 1, Dolce
11 Amore received \$150,000 from A&E in February 2005 pursuant to the A&E
12 Contract. Counterdefendants have been unable to locate a copy of that
13 check, and do not know that a copy was even made.

14 Counterdefendants have produced no bank records or any other documents relating
15 to the \$150,000 payment from A&E. Counterdefendants’ response to Request No. 1 is
16 deficient because it does not indicate that all responsive documents have been produced or
17 that Counterdefendants have conducted a reasonable search to locate responsive
18 documents. In light of the sparse production of documents received from
19 Counterdefendants, Regan Media believes that Counterdefendants have made little or no
20 effort to locate documents responsive to Request No. 1.
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22 **Request for Production No. 2**

23 All documents relating to any communications between any of the
24 Counterdefendants, on the one hand, and A&E, on the other, relating to the
25 Agreement, the A&E Contract or any proposed television program featuring
26 Jameson.
27

1 Counterdefendants' Response:

2 E-mails previously disclosed and produced, as well as those attached to this
3 document, are responsive to this Request.

4 Counterdefendants have produced some e-mails with A&E responsive to this
5 Request. Counterdefendants' response to Request No. 2 is deficient because it does not
6 indicate that all responsive documents have been produced or that Counterdefendants have
7 conducted a reasonable search to locate responsive documents. In light of the sparse
8 production of documents received from Counterdefendants, Regan Media believes that
9 Counterdefendants have made inadequate effort to locate documents responsive to Request
10 No. 2.

11 **Request for Production No. 3**

12 All documents relating to any communications between any of the
13 Counterdefendants, on the one hand, and any of the Counterclaimants, on the
14 other, relating to the Agreement, the A&E Contract or any proposed
15 television program featuring Jameson.
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17 Counterdefendants' Response:

18 E-mails previously disclosed and produced, as well as those attached to this
19 document, are responsive to this Request.

20 Counterdefendants have produced some communications responsive to this
21 Request. Counterdefendants' response to Request No. 3 is deficient because it does not
22 indicate that all responsive documents have been produced or that Counterdefendants have
23 conducted a reasonable search to locate responsive documents. In light of the sparse
24 production of documents received from Counterdefendants, Regan Media believes that
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1 Counterdefendants have made inadequate effort to locate documents responsive to Request
2 No. 3.

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4 **Request for Production No. 5**

5 All documents relating to any communications between any of the
6 Counterdefendants, on the one hand, and VH1, on the other, relating to the
7 one-hour special featuring Jameson broadcast by VH1 on or about August
8 16, 2004, including, without limitation, any videotape, digital images or
9 other photographic depictions of or relating to that VH1 feature.

10 Counterdefendants' Response:

11 E-mails previously disclosed and produced, as well as those attached to this
12 document, are responsive to this Request.

13 Counterdefendants have produced some e-mails responsive to this Request, but did
14 not produce a copy of the VH1 special featuring Jameson. Counterdefendants' response to
15 Request No. 5 is deficient because it does not indicate that all responsive documents have
16 been produced or that Counterdefendants have conducted a reasonable search to locate
17 responsive documents. In light of the sparse production of documents received from
18 Counterdefendants, Regan Media believes that Counterdefendants have made inadequate
19 effort to locate documents responsive to Request No. 5.

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21 **Request for Production No. 6**

22 All documents relating to the relationship between Jameson and Dolce
23 Amore, including, without limitation, the "Exclusive Acting Services
24 Agreement" between Jameson and Dolce Amore as referenced in the A&E
25 Contract.

26 Counterdefendants' Response:

27 OBJECTION: Overly broad. Massoli's relationship with Dolce Amore
28 dates back to Dolce Amore's incorporation in November 1999. Not
everything having to do with that relationship constitutes discoverable

1 evidence, or constitutes evidence reasonably calculated to lead to
2 discoverable evidence. Without waiving that objection, however,
3 Counterdefendants respond as follows: as of this date, and other than the
4 Exclusive Acting Services Agreement itself, Counterdefendants have been
5 unable to locate any documents that are responsive to this Request.

6 Counterdefendants' objection to Request No. 6 is improper. Counterdefendants'
7 written response to Regan Media's Request for Production was served over two months
8 late; therefore, any objections to Regan Media's Request for Production is waived. *See*
9 *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) ("It is
10 well established that a failure to object to discovery requests within the time required
11 constitutes a waiver of any objection").

12 Moreover, Counterdefendants' response to Request No. 6 is deficient.
13 Counterdefendants failed to produce the "Exclusive Acting Services Agreement"
14 referenced. Counterdefendants' response to Request No. 6 is also deficient because it does
15 not indicate that all responsive documents have been produced or that Counterdefendants
16 have conducted a reasonable search to locate responsive documents. In light of the sparse
17 production of documents received from Counterdefendants, Regan Media believes that
18 Counterdefendants have made little or no effort to locate documents responsive to Request
19 No. 6.

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22 **Request for Production No. 7**

23 All documents reflecting, identifying or relating to any amounts of money or
24 other compensation received by Jameson from Dolce Amore from its
25 incorporation to the present.

1 Counterdefendants' Response:

2 OBJECTION: Overly broad. Massoli's relationship with Dolce Amore
3 dates back to Dolce Amore's incorporation in November 1999. Not
4 everything having to do with that relationship constitutes discoverable
5 evidence, or constitutes evidence reasonably calculated to lead to
6 discoverable evidence. Without waiving that objection, however,
7 Counterdefendants respond as follows: as of this date, and other than the
8 Exclusive Acting Services Agreement itself, Counterdefendants have been
9 unable to locate any documents that are responsive to this Request.

10 Counterdefendants' objection to Request No. 7 is improper. Counterdefendants'
11 written response to Regan Media's Request for Production was served over two months
12 late; therefore, any objections to Regan Media's Request for Production is waived. *See*
13 *Richmark*, 959 F.2d at 1473.

14 Moreover, Counterdefendants' response to Request No. 7 is deficient.
15 Counterdefendants failed to produce the "Exclusive Acting Services Agreement"
16 referenced or any other documents, such as bank or financial records, evidencing any
17 payments from Dolce Amore to Jameson. Counterdefendants' response to Request No. 7
18 is also deficient because it does not indicate that all responsive documents have been
19 produced or that Counterdefendants have conducted a reasonable search to locate
20 responsive documents. In light of the sparse production of documents received from
21 Counterdefendants, Regan Media believes that Counterdefendants have made little or no
22 effort to locate documents responsive to Request No. 7.

23 **Request for Production No. 8**

24 All documents relating to the relationship between Grdina and Dolce Amore.
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1 Counterdefendants' Response:

2 OBJECTION: Overly broad. Grdina's relationship with Dolce Amore dates
3 back to Dolce Amore's incorporation in November 1999. Not everything
4 having to do with that relationship constitutes discoverable evidence, or
5 constitutes evidence reasonably calculated to lead to discoverable evidence.
6 Without waiving that objection, however, Counterdefendants respond as
7 follows: as of this date, and other than the Exclusive Acting Services
8 Agreement itself, Counterdefendants have been unable to locate any
9 documents that are responsive to this Request.

10 Counterdefendants' objection to Request No. 8 is improper. Counterdefendants'
11 written response to Regan Media's Request for Production was served over two months
12 late; therefore, any objections to Regan Media's Request for Production is waived. *See*
13 *Richmark*, 959 F.2d at 1473.

14 Counterdefendants have produced some documents relating to Grdina's relationship
15 with Dolce Amore. Counterdefendants' response to Request No. 8 is deficient because it
16 does not indicate that all responsive documents have been produced or that
17 Counterdefendants have conducted a reasonable search to locate responsive documents. In
18 light of the sparse production of documents received from Counterdefendants, Regan
19 Media believes that Counterdefendants have made little or no effort to locate documents
20 responsive to Request No. 8.

21 **Request for Production No. 9**

22 All documents reflecting, identifying or relating to any amounts of money or
23 other compensation received by Grdina from Dolce Amore from its
24 incorporation to the present.

25 Counterdefendants' Response:

26 OBJECTION: Overly broad. Grdina's relationship with Dolce Amore dates
27 back to Dolce Amore's incorporation in November 1999. Not everything
28

1 having to do with that relationship constitutes discoverable evidence, or
2 constitutes evidence reasonably calculated to lead to discoverable evidence.
3 Without waiving that objection, however, Counterdefendants respond as
4 follows: as of this date, and other than the Exclusive Acting Services
5 Agreement itself, Counterdefendants have been unable to locate any
6 documents that are responsive to this Request.

7 Counterdefendants' objection to Request No. 9 is improper. Counterdefendants'
8 written response to Regan Media's Request for Production was served over two months
9 late; therefore, any objections to Regan Media's Request for Production is waived. *See*
10 *Richmark*, 959 F.2d at 1473.

11 Moreover, Counterdefendants' response to Request No. 9 is deficient.
12 Counterdefendants failed to produce any documents, such as bank or financial records,
13 evidencing any payments from Dolce Amore to Grdina. Counterdefendants' response to
14 Request No. 9 is deficient because it does not indicate that all responsive documents have
15 been produced or that Counterdefendants have conducted a reasonable search to locate
16 responsive documents. In light of the sparse production of documents received from
17 Counterdefendants, Regan Media believes that Counterdefendants have made little or no
18 effort to locate documents responsive to Request No. 9.

19
20 **Request for Production No. 10**

21 All documents relating to the organizational structure of Dolce Amore,
22 including, without limitation, any documents reflecting the incorporation,
23 ownership, offices and directors of Dolce Amore.

24 Counterdefendants' Response:

25 Documents relating to Dolce Amore's incorporation are attached.
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1 Counterdefendants did produce the articles of incorporation for Dolce Amore.
2 Counterdefendants' response to Request No. 10 is deficient because it does not indicate
3 that all responsive documents have been produced or that Counterdefendants have
4 conducted a reasonable search to locate responsive documents. In light of the sparse
5 production of documents received from Counterdefendants, Regan Media believes that
6 Counterdefendants have made little or no effort to locate documents responsive to Request
7 No. 10.
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10 **Request for Production No. 11**

11 Tax returns filed on behalf of Dolce Amore from its incorporation to the
12 present.

13 Counterdefendants' Response:

14 Dolce Amore's federal tax returns from 2003 and 2002 are attached.

15 Counterdefendants' response to Request No. 11 is deficient. Counterdefendants'
16 fail to produce returns from 1999, when Dolce Amore was incorporated, through 2001, or
17 from 2004, the most relevant time period.
18

19 **Request for Production No. 12**

20 All documents relating to Dolce Amore's bank accounts from its
21 incorporation to the present, including, without limitation, monthly and
22 annual account statements, summaries of account activity, deposit slips and
23 canceled checks.

24 Counterdefendants' Response:

25 OBJECTION: Overly broad. Dolce Amore has been in existence since
26 November 1999. Not all information having to do with Dolce Amore's
27 financial activities constitutes discoverable evidence, or constitutes evidence
28 reasonably calculated to lead to discoverable evidence. Without waiving
that objection, however, Counterdefendants respond as follows: as of this

1 date, Counterdefendants have been unable to locate any documents that are
2 responsive to this Request.

3 Counterdefendants' objection to Request No. 12 is improper. Counterdefendants'
4 written response to Regan Media's Request for Production was served over two months
5 late; therefore, any objections to Regan Media's Request for Production is waived. *See*
6 *Richmark*, 959 F.2d at 1473. Regardless, the documents requested are relevant (1) to trace
7 any amounts received under the A&E Contract, and (2) to establish a number of factors
8 relevant to Counterclaimants' alter ego allegations, including the capitalization of Dolce
9 Amore, commingling of funds and property, the operation of Dolce Amore as a separate
10 entity, etc.
11

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13 Counterdefendants' production is deficient because it includes no bank records or
14 other documents responsive to Request No. 12. Counterdefendants' response to Request
15 No. 12 is also deficient because it does not indicate that responsive documents do not
16 exist, that all responsive documents have been produced or that Counterdefendants have
17 conducted a reasonable search to locate responsive documents. In light of the sparse
18 production of documents received from Counterdefendants, Regan Media believes that
19 Counterdefendants have made little or no effort to locate documents responsive to Request
20 No. 12.
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23 **Request for Production No. 13**

24 All books, records and documents relating to the financial condition of
25 Dolce Amore for the fiscal years 2003 to the present, including, without
26 limitation:

- 26 a. financial statements;
- 27 b. journals (or other books of original entry) and ledgers, including cash
28 receipts journals, cash disbursements journals, sales journals, general

- 1 journals, general ledgers, trial balance sheets and supporting
2 workpapers;
- 3 c. charts of accounts with a description of each account;
 - 4 d. general correspondence and administrative files;
 - 5 e. a list of all bank accounts, including names of banks, account
6 numbers and addresses;
 - 7 f. stock ownership records, including the name and address of the
8 registrar and transfer agent;
 - 9 g. charts, graphs and other documents showing the organizational
10 relationship between, or ownership of, Dolce Amore and its parent,
11 subsidiary and affiliate companies; and
 - 12 h. documents relating to transactions between Dolce Amore and its
13 officers, directors and affiliates, including documents showing direct
14 and indirect compensation, remuneration, dividends, bonuses,
15 interest, profits and employment contracts.

16
17 Counterdefendants' Response:

18
19 OBJECTION: Overly broad and unduly burdensome. Dolce Amore has
20 been in existence since November 1999. Not all information requested
21 above constitutes discoverable evidence, or constitutes evidence reasonably
22 calculated to lead to discoverable evidence. Without waiving that objection,
23 however, Counterdefendants respond as follows: as of this date, and other
24 than the Minutes of Organizational Action attached, Counterdefendants have
25 been unable to locate any documents that are responsive to this Request.

26
27 Counterdefendants' objection to Request No. 13 is improper. Counterdefendants'
28 written response to Regan Media's Request for Production was served over two months
late; therefore, any objections to Regan Media's Request for Production is waived. *See*
Richmark, 959 F.2d at 1473. Regardless, the documents requested are relevant (1) to trace
any amounts received under the A&E Contract, and (2) to establish a number of factors
relevant to Counterclaimants' alter ego allegations, including the capitalization of Dolce
Amore, commingling of funds and property, the operation of Dolce Amore as a separate
entity, etc.

1 Counterdefendants' production is deficient because it includes no financial
2 documents responsive to Request No. 13. Counterdefendants' response to Request No. 13
3 is also deficient because it does not indicate that all responsive documents have been
4 produced or that Counterdefendants have conducted a reasonable search to locate
5 responsive documents. In light of the sparse production of documents received from
6 Counterdefendants, Regan Media believes that Counterdefendants have made little or no
7 effort to locate documents responsive to Request No. 13.
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10 **Request for Production No. 14**

11 All minutes of meetings of the board of directors, executive committee or
12 stockholders of Dolce Amore from its incorporation to the present,
13 including, without limitation, all data used or presented and notes taken at
14 those meetings.

14 Counterdefendants' Response:

15 OBJECTION: Overly broad. Dolce Amore has been in existence since
16 November 1999. Not all of the minutes of meetings referred to in this
17 Request constitute discoverable evidence, or constitute evidence reasonably
18 calculated to lead to discoverable evidence. Without waiving that objection,
19 however, Counterdefendants respond as follows: as of this date, and other
20 than the Minutes of Organizational Action attached, Counterdefendants have
21 been unable to locate any documents that are responsive to this Request.

22 Counterdefendants' objection to Request No. 14 is improper. Counterdefendants'
23 written response to Regan Media's Request for Production was served over two months
24 late; therefore, any objections to Regan Media's Request for Production is waived. *See*
25 *Richmark*, 959 F.2d at 1473. Regardless, the documents requested are relevant to factors
26 relevant to Counterclaimants' alter ego allegations, such as Jameson's and Grdina's
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1 control over Dolce Amore, Dolce Amore's operation as an instrumentality of Jameson and
2 Grdina, the extent of Dolce Amore's independence, etc.

3 Counterdefendants' have produced no corporate minutes for Dolce Amore,
4 although they reference "Minutes of Organizational Action" in their response. Moreover,
5 Counterdefendants' response to Request No. 14 is deficient because it does not indicate
6 that no responsive documents exist, that all responsive documents have been produced or
7 that Counterdefendants have conducted a reasonable search to locate responsive
8 documents. In light of the sparse production of documents received from
9 Counterdefendants, Regan Media believes that Counterdefendants have made little or no
10 effort to locate documents responsive to Request No. 14.
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13 **Request for Production No. 15**

14 All annual and interim reports to shareholders of Dolce Amore from its
15 incorporation to the present.

16 Counterdefendants' Response:

17 As of this date, Counterdefendants have been unable to locate any
18 documents that are responsive to this Request.

19 Counterdefendants' response to Request No. 15 is deficient because it does not
20 indicate that no responsive documents exist, that all responsive documents have been
21 produced or that Counterdefendants have conducted a reasonable search to locate
22 responsive documents. In light of the sparse production of documents received from
23 Counterdefendants, Regan Media believes that Counterdefendants have made little or no
24 effort to locate documents responsive to Request No. 15.
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Request for Production No. 16

All documents relating to web log, journal or other postings on any website owned or controlled by Jameson, Dolce Amore, Jennasis Entertainment, Inc. or any other entity in which Jameson owns any interest, relating to the Agreement, the A&E Contract or the one-hour VH1 special, or containing any reference to a reality television series involving Jameson.

Counterdefendants' Response:

As of this date, Counterdefendants have been unable to locate any documents that are responsive to this Request.

Counterdefendants' response to Request No. 16 is deficient because it does not indicate that no responsive documents exist, that all responsive documents have been produced or that Counterdefendants have conducted a reasonable search to locate responsive documents. Regan Media specifically requested the production of electronic documents, including hard drives. In light of the sparse production of documents received from Counterdefendants, Regan Media believes that Counterdefendants have made little or no effort to locate documents responsive to Request No. 16.

Request for Production No. 17

Any videotape, digital images or other photographic depiction of or relating to the pilot created or other preliminary filming or footage taken in connection with the A&E Contract.

Counterdefendants' Response:

As of this date, Counterdefendants have been unable to locate any documents that are responsive to this Request.

Counterdefendants have confirmed that a pilot of the program was filmed, but have failed to produce a copy. Counterdefendants' response to Request No. 17 is deficient

1 because it does not indicate that all responsive documents have been produced or that
2 Counterdefendants have conducted a reasonable search to locate responsive documents.

3
4 **Request for Production No. 18**

5 All documents relating to any efforts by Counterdefendants, or any of them
6 acting solely or in concert with one another, to market a potential reality-
7 based television program featuring Jameson or Grdina.

8
9 Counterdefendants' Response:

10 E-mails previously disclosed and produced, as well as those attached to this
11 document, are responsive to this Request.

12 Counterdefendants have produced some e-mails and other documents responsive to
13 this Request. Counterdefendants' response to Request No. 18 is deficient because it does
14 not indicate that all responsive documents have been produced or that Counterdefendants
15 have conducted a reasonable search to locate responsive documents. In light of the sparse
16 production of documents received from Counterdefendants, Regan Media believes that
17 Counterdefendants have made little or no effort to locate documents responsive to Request
18 No. 18.

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20 **Request for Production No. 19**

21 All documents relating to any communications between any of the
22 Counterdefendants, on the one hand, and any media outlet, on the other,
23 relating to an actual or potential television program featuring Jameson or
24 Grdina.

25
26 Counterdefendants' Response:

27 E-mails previously disclosed and produced, as well as those attached to this
28 document, are responsive to this Request.

1 Counterdefendants have produced some e-mails and other documents responsive to
2 this Request. Counterdefendants' response to Request No. 19 is deficient because it does
3 not indicate that all responsive documents have been produced or that Counterdefendants
4 have conducted a reasonable search to locate responsive documents. In light of the sparse
5 production of documents received from Counterdefendants, Regan Media believes that
6 Counterdefendants have made little or no effort to locate documents responsive to Request
7 No. 19.
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9
10 **Request for Production No. 20**

11 All documents referring to Regan or Regan Media and relating to a potential
12 reality-based television program featuring Jameson or a potential one-hour
13 special featuring Jameson.

14 Counterdefendants' Response:

15 E-mails previously disclosed and produced, as well as those attached to this
16 document, are responsive to this Request.

17 Counterdefendants have produced some documents responsive to this Request.
18 Counterdefendants' response to Request No. 20 is deficient because it does not indicate
19 that all responsive documents have been produced or that Counterdefendants have
20 conducted a reasonable search to locate responsive documents. In light of the sparse
21 production of documents received from Counterdefendants, Regan Media believes that
22 Counterdefendants have made little or no effort to locate documents responsive to Request
23 No. 20.
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25 **Request for Production No. 21**

26 All documents relating to, supporting, identified in or referred to in drafting
27 your response to Defendants/Counterclaimants' First Set of Interrogatories.
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Counterdefendants' Response:

As of this date, and other than those previously disclosed and produced, as well as those documents attached to this document, Counterdefendants did not rely upon any documents that are responsive to this Request.

Counterdefendants' response to Request No. 21 is deficient because it does not indicate that all responsive documents have been produced or that Counterdefendants have conducted a reasonable search to locate responsive documents. In light of the sparse production of documents received from Counterdefendants, Regan Media believes that Counterdefendants have made little or no effort to locate documents responsive to Request No. 21.

Respectfully submitted this 17th day of February, 2006.

STEPTOE & JOHNSON LLP

By: /s/ David J. Bodney
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Counterclaimants Regan Media, Inc. and
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2006, I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electric Filing to the following CM/ECF

Registrants:

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I hereby certify that on the 17th day of February, 2006, I served the attached document by mail on the following, who are not registered participants of the CM/ECF System:

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