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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SECURITIES AND EXCHANGE)	No. 2:06-CV-0502-PHX-JAT
COMMISSION,)	
Plaintiff,)	
vs.)	FINAL PRETRIAL ORDER
IBIZ TECHNOLOGY CORP.,)	
KENNETH W. SCHILLING,)	
H. MARK PERKINS,)	
JEFFREY S. FIRESTONE,)	
D. SCOTT ELLIOTT, AND)	
JERROLD B. MCROBERTS,)	
Defendants.)	

The following is the joint Final Pretrial Order considered at the Final Pretrial Conference on February 23, 2009 at 11:00 a.m.

A. COUNSEL FOR THE PARTIES

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11 **B. STATEMENT OF JURISDICTION.**

12 1. The Court has jurisdiction over this action pursuant to Section 22(a) of the
13 Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77v (a), and Sections 21(e) and 27 of the
14 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u (e) and 78aa.

15 2. Jurisdiction is not disputed.

16 **C. STIPULATED AND UNCONTESTED FACTS AND LAW.**

17 1. **The following facts are admitted by the parties and require no proof:**

18 **a. General Information about the Parties.**

19 1. In connection with the transactions, acts, practices, and courses of business
20 at issue, the defendants, directly and indirectly, have made use of the means or
21 instrumentalities of interstate commerce, of the mails, or of the means and
22 instruments of transportation or communication in interstate commerce.

23 2. iBiz Technology Corporation (“iBiz” or the “company”) is a Florida
24 corporation which had its principal place of business in Phoenix, Arizona.

25 3. The company registered its common stock with the Commission pursuant to
26 Section 12(g) of the Exchange Act since 1999. From the spring of 2003 through
27 the end of 2004, the prices of offers to buy iBiz stock were quoted on the Over-
28 The-Counter Bulletin Board. Exhibit 145.

- 1 4. The company was obligated to file annual and quarterly reports with the
2 Securities and Exchange Commission. iBiz Technology, Schilling and Perkins
3 joint Answer (“iBiz Answer”) ¶ 13.
- 4 5. The common stock of iBiz was a penny stock because the shares of the
5 company were sold at prices of less than \$5.00 per share during the time periods
6 alleged in the Complaint. Exhibit 145.
- 7 6. iBiz Technology began incurring losses in 2000. iBiz Answer ¶19.
- 8 7. The fiscal year for iBiz ends on October 31 of each year. iBiz reported that
9 it had 45,000,097 common shares outstanding and held by its shareholders on
10 October 31, 2002. Exhibit 139, Form 10-K 2002 at p. 24.
- 11 8. During times relevant to this case, iBiz operated a wholly owned subsidiary
12 under the name iBiz, Inc. Exhibit 145.
- 13 9. Kenneth W. Schilling has been the president, chief executive officer, and
14 director of iBiz since at least 1999. At the time of the conduct alleged in the
15 Complaint, he lived in Phoenix, Arizona.
- 16 10. Mark Perkins has been the executive vice president of iBiz and a director of
17 the company since 1999. At the time of the conduct alleged in the Complaint, he
18 lived in Phoenix, Arizona.
- 19 11. D. Scott Elliott lives in Ana Maria Island, Florida.
- 20 12. Jerrold B. McRoberts lives in Santa Fe, New Mexico.
- 21 13. Mr. Schilling gave sworn testimony in the Commission’s investigation of
22 this matter on September 30, and October 1, 2004, and on February 8 and 9, 2005.
- 23 14. Mark Perkins gave sworn testimony in the Commission’s investigation of
24 this matter on October 28, and 29, 2004, and February 9, and 10, 2005.
- 25 15. On May 11, 2005, Mr. Elliott gave sworn testimony in the Commission’s
26 investigation in this matter.
- 27 16. On September 24, 2007, Mr. McRoberts gave sworn testimony during a
28 deposition in this case.

1 17. On September 9, 2007, Daniel Voykin gave sworn testimony during a
2 deposition in this case.

3 **b. iBiz's, Schilling's and Perkins' Activities Related to the Virtual**
4 **Keyboard**

5 18. In June 2003, Schilling met with Endeavour Capital, AG ("Endeavour") in
6 Israel and proposed that Endeavour consider transferring its Virtual Keyboard
7 license to the a prospective iBiz spin-off company, iBiz Inc. in exchange for
8 Endeavour obtaining control of the spin-off company. In early July 2003,
9 Endeavour's chief executive officer emailed Schilling a preliminary term sheet for
10 the transaction. iBiz Answer ¶ 22 and 23.

11 19. On July 23, 2003, iBiz Technology and Schilling issued a press release
12 stating the iBiz Technology had entered into "a definitive agreement to acquire the
13 assets of [Endeavour]." Exhibit 196.

14 20. Following additional negotiations in late July 2003, Schilling and
15 Endeavour tentatively agreed that Endeavour would transfer the Virtual Keyboard
16 license to the spin-off company in exchange for 11,200,000 of the 13,440,000
17 shares to be issued by the new company. iBiz Answer ¶ 27.

18 21. On or about July 29, 2003, Schilling and Endeavour signed a revised term
19 sheet. This two and a half page document stated that it was a "term sheet"
20 specifying "basic terms and conditions" and that any final agreement on the terms
21 was "subject to . . . the completion and execution of mutually acceptable definitive
22 agreements." The term sheet stated that Endeavour will assign the worldwide
23 production and marketing license for the Virtual Keyboard to the new spin-off
24 company, not to iBiz Technology. The term sheet did not contain any terms which
25 gave iBiz Technology the right to distribute the Virtual Keyboard or benefit from
26 sales of the Virtual Keyboard in any way. iBiz Answer ¶ 28.

27 22. On August 22 and September 12, 2003, iBiz Technology, at the direction of
28 its Board of Directors, who were Schilling and Perkins, filed preliminary and
definitive proxy statements soliciting shareholder approval to spin-off its

1 subsidiary. On September 12 and September 22, 2003, iBiz Technology at the
2 direction of its Board of Directors, who were Schilling and Perkins, filed
3 preliminary and definitive information statements that stated the company had
4 received shareholder approval for the spin-off. iBiz Answer ¶ 30.

5 23. Schilling reviewed and approved these four proxy and information
6 statement filings. iBiz Answer ¶ 31.

7 24. In December 2003, iBiz Technology, Schilling, and Perkins initiated a
8 publicity campaign regarding the Virtual Keyboard. From December 30, 2003
9 through the end of February 2004, iBiz Technology, Schilling and Perkins issued at
10 least ten press releases that referred to the product as the "iBIZ Technology Virtual
11 Keyboard" or, in one case, as iBiz Technology's "latest creation." Several of these
12 releases linked iBiz Technology's financial success to the success of the keyboard
13 by asserting, for instance, that demand for the Virtual Keyboard would "result in
14 significant increases in [iBiz Technology's] revenues and earnings." iBiz Answer ¶
15 33.

16 25. Schilling and Perkins knew that no definitive agreement had been signed as
17 of December 2003. iBiz Answer ¶ 35.

18 26. During January 2004, Schilling also provided two online interviews regarding iBiz
19 Technology and the Virtual Keyboard. During the second interview, which began with the
20 interviewer welcoming Schilling as the CEO of "iBIZ Tech Corp., trading symbol IBZT on the
21 OTCBB exchange," Schilling asserted that the market for the Virtual Keyboard was
22 "enormous" and "the largest market I've ever had a product address," that "we're about ready to
23 deliver the product to the consumer," and that "this company has the ability to reach sales
24 milestones we have not seen in the past as a result of [the Virtual Keyboard]." Schilling did not
25 mention Endeavour or the spinoff company in the interview. iBiz Answer ¶ 36.

26 27. By October 2003, Schilling and Perkins knew that Endeavour's license to the Virtual
27 Keyboard was non-exclusive and that another license had been granted to a large
28 manufacturing conglomerate headquartered in Hong Kong. iBiz Answer ¶ 38.

1 28. In an October 17, 2003 email to Schilling, Endeavour stated that its license was "not
2 exclusive" and noted that the patent holder had issued another license to this Hong Kong
3 licensee. Schilling forwarded the email to Perkins. iBiz Answer ¶ 39.

4 29. On January 8, 2004, iBiz Technology, Schilling and Perkins issued a press
5 release that "announced today that its Virtual Laser Keyboard is now shipping."
6 Exhibit 204.

7 30. On January 13, 2004, Schilling gave an interview with CEOcast in which he
8 stated, "The virtual keyboard's intellectual property is protected via US patents and
9 it's held by a company in Jerusalem, Israel by the name of VKB. We do [have] an
10 exclusive licensing agreement for that technology to imbed it into our accessory
11 device and, moving forward, we'll continue to enhance that exclusivity and either it
12 will be through an outright buyout of the technology or a much broader relationship
13 with that type of company." Exhibit 209.

14 31. In early January 2004, iBiz Technology's stock price reached a high of
15 \$0.06. iBiz Technology's stock traded above \$0.04 for several weeks thereafter,
16 and above \$0.03 through early May 2004. iBiz Answer ¶ 51.

17 32. On February 19, 2004, Perkins sent an email to Ed Lewis that stated "VKB
18 in Israel owns the patents to the technology used inside of our keyboard. We have
19 an exclusive worldwide agreement to market that technology. The Virtual
20 Keyboard is owned by iBIZ." Exhibit 265.

21 33. On May 3, 2004, iBiz Technology and Schilling issued a press release that
22 stated "The much anticipated Virtual Laser Keyboard [is] now in stock" and "ready
23 for shipping." On this date, iBiz received a shipment of Virtual Keyboards from
24 the factory. iBiz Answer ¶ 48.

25 34. On June 15, 2004, iBiz Technology announced "recent information" indicating that
26 Endeavour would not ship anymore keyboards. The company's stock price fell more than 30
27 percent and closed below \$0.01. iBiz Answer ¶ 54.

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1 35. Over the next several months, as it became clear that iBiz Technology would not
2 meaningfully benefit from the Virtual Keyboard, the company's stock price continued to fall,
3 ultimately settling in the \$0.003-\$0.005 range, returning to where it stood in early December
4 2003 before Schilling and Perkins began their publicity campaign regarding the keyboard. iBiz
5 Answer ¶ 55.

6 36. In June 2004, Schilling and Perkins directed iBiz Technology to offer, sell and deliver
7 10 million shares to Firestone. iBiz Answer ¶ 78.

8 **c. iBiz Registration Statements**

9 37. Between March 14, 2003 and December 31, 2004, iBiz filed five
10 registration statements with the Securities and Exchange Commission to register
11 the sales of iBiz securities: a Form SB-2 registration on March 14, 2003 (“Form
12 SB-2”); a Form S-8 registration on June 13, 2003 (June Form S-8”); a Form S-8
13 registration on July 24, 2003 (“July Form S-8”); a Form S-8 registration on October
14 30, 2003 (“October Form S-8”); and a Form S-8 registration on April 19, 2004
15 (April Form S-8”). Exhibit 96.

16 38. iBiz also filed two amendments to the Form SB-2 registration statement on
17 March 14, and May 7, 2003. The second amendment to Form SB-2 registered for
18 resale 874,565,216 shares by three shareholders: AJW Partners, LLC; AJW
19 Offshore, Ltd.; and AJW Qualified Partners, LLC. The second amendment to the
20 Form SB-2 does not list Elliott as a selling shareholder whose shares are registered
21 for resale. Exhibit 116.

22 39. The June Form S-8 registration statement registered for resale 67,740,459 shares
23 held by eleven shareholders as part of the 2003-A Stock Plan and Compensation
24 Agreement. The June Form S-8 contains a reoffer prospectus, but it does not list Elliott
25 as a selling shareholder whose resales are registered by this Form S-8. Exhibit 118.

26 40. The July Form S-8 registration statement registered for sale 50,000,000
27 shares by iBiz as part of the Company’s Non-Employee Directors and Consultants
28 Retainer Stock Plan. The July Form S-8 does not contain a reoffer prospectus and

1 does not list Elliott as a selling shareholder whose shares are registered for resale.
2 Exhibit 119.

3 41. The October Form S-8 registration statement registered for sale 22,000,000
4 shares by iBiz as part of its 2003 Stock Incentive Plan. The October Form S-8 does
5 not contain a reoffer prospectus and does not list Elliott as a shareholder whose
6 resale are registered by this Form S-8. Exhibit 97.

7 42. iBiz also filed two amendments to its October Form S-8 registration
8 statement. Amendment No. 1 to the October Form S-8 registration statement was
9 filed on December 8, 2003 ("December Form S-8") to register an additional
10 450,000,000 shares by iBiz under the company's 2003 Stock Incentive Plan. The
11 December Form S-8 does not contain a reoffer prospectus and does not list Elliott
12 as a selling shareholder whose shares are registered for resale. Exhibit 98.

13 43. Amendment No. 2 to the October Form S-8 registration statement was filed
14 on January 30, 2004 ("January Form S-8") to register for resale 30,000,000 shares
15 owned by Schilling and 30,000,000 shares owned by Perkins. Exhibit 105.

16 44. The January Form S-8 contains a reoffer prospectus that lists Schilling and
17 Perkins as the reselling shareholders. The January Form S-8 reoffer prospectus
18 does not list Elliott as a selling shareholder whose shares are registered for resale.
19 Exhibit 105.

20 45. The April Form S-8 registration statement registered for sale 200,000,000
21 shares by iBiz as part of the company's Stock Incentive Plan. The April Form S-8
22 does not contain a reoffer prospectus and does not list Elliott as a selling
23 shareholder whose shares are registered for resale. Exhibit 106.

24 46. The April Form S-8 registration statement was filed on April 19, 2004 after
25 iBiz had issued the 22,352,941 shares to Elliott on March 17, and April 12, 2004,
26 and after Elliott had sold these shares.

27 47. Although Schilling's letter directing to the transfer agent to issue the
28 75,000,000 shares to Elliott indicates the company's transaction is covered by the

1 December Form S-8 and the April Form S-8, these registration statements only
2 sought to register the initial offer and sale by iBiz. Exhibit 108.

3 48. Both the December Form S-8 and the April Form S-8 were filed before the
4 75,000,000 shares were issued to Elliott on December 6, 2004. Exhibits 98 and
5 106.

6 49. The December Form S-8 and the April Form S-8 do not contain reoffer
7 prospectuses and do not list Elliott as a shareholder whose shares are registered for
8 resale. Exhibits 98 and 106.

9 **d. Elliott December 2003 Sales**

10 50. iBiz filed an Amended Form S-8 registration statement on December 8,
11 2003 (“December Form S-8 registration statement”) to register the company’s sales
12 of an additional 450,000,000 shares to its consultants under the company’s 2003
13 Stock Incentive Plan. Exhibit 98.

14 51. The December Form S-8 registration statement does not contain a reoffer
15 prospectus and does not list Elliott as a selling shareholder whose sales of iBiz
16 shares are registered. Exhibit 98.

17 52. On December 9, 2003, Schilling sent instructions by fax to iBiz’s transfer
18 agent located in Utah, Interwest Stock Transfer, directing it to issue 25,000,000
19 shares to Elliott and to issue an additional 25,000,000 shares, but not to deliver
20 them to Elliott until receipt of further instructions. Schilling stated in the letter that
21 the stock certificates should be issued without restrictive legend “[p]ursuant to the
22 Amended S-8 Registration, filed December 8, 2003.” Exhibit 63.

23 53. On December 10, 2003, Schilling sent a second letter by fax to iBiz’s
24 transfer agent, Interwest Stock Transfer, directing it to issue an additional
25 60,000,000 shares to Elliott. Schilling stated in the letter that the stock certificates
26 should be issued without restrictive legend “[p]ursuant to the Amended S-8
27 Registration, filed December 8, 2003.” Exhibit 63.

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1 54. On December 10, 2003, Interwest Stock Transfer sent stock certificate
2 number 4457 for 60,000,000 shares and stock certificate number 4453 for
3 25,000,000 shares to Elliott at his address in Florida. Exhibit 63.

4 55. On or about December 11, 2003, Elliott offered and sold the 60,000,000
5 iBiz shares to Sprout Investments LLC for \$96,720. The brokerage account
6 statement of Sprout Investments LLC at WestPark Capital, Inc. shows the receipt
7 of 60,000,000 shares of iBiz stock on December 12, 2003. Exhibit 92.

8 56. On December 12, 2003, Elliott offered and sold an additional 18,375,000
9 iBiz shares through his brokerage account at West Park Capital, Inc. for
10 \$40,864.80. Exhibit 95.

11 57. On December 15, 2003, Elliott offered and sold an additional 6,625,000
12 iBiz shares through his brokerage account at West Park Capital, Inc. for
13 \$15,556.30. Exhibit 95.

14 **e. Elliott's March and April 2004 Sales**

15 58. Schilling directed the transfer agent to issue the 7,352,941 shares to Elliott
16 without legend, pursuant to the December Form S-8 registration statement. Exhibit
17 100.

18 59. On March 22, 2004, Elliott offered and sold 3,377,941 iBiz shares through
19 his brokerage account with WestPark Capital, Inc. for \$125,801.53. Exhibit 101.

20 60. On March 23, 2004, Elliott offered and sold 3,975,000 iBiz shares through
21 his brokerage account with WestPark Capital, Inc. for \$137,917.24. Exhibit 101

22 61. On April 12, 2004, Schilling directed Interwest Transfer, its transfer agent,
23 to issue the 15,000,000 shares to Elliott without a restrictive legend, pursuant to the
24 Form S-8 registration that was amended on December 8, 2003. Exhibit 102.

25 62. The December Form S-8 registration statement did not contain a reoffer
26 prospectus and did not list Elliott as a selling shareholder whose shares are
27 registered for resale. Exhibit 98.

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1 63. On April 14, 2004, Elliott offered and sold 3,000,000 iBiz shares through
2 his brokerage account with WestPark Capital, Inc. for \$100,039.61. Exhibit 101.

3 64. On April 15, 2004, Elliott offered and sold 7,000,000 iBiz shares through
4 his brokerage account with WestPark Capital, Inc. for net proceeds of \$219,325.36.
5 Exhibit 101.

6 65. On April 16, 2004, Elliott offered and sold 5,000,000 iBiz shares through
7 his brokerage account with WestPark Capital, Inc. for net proceeds of \$153,538.33.
8 Exhibit 101.

9 **f. Elliott's December 2004 Sales**

10 66. On December 6, 2004, Schilling directed the transfer agent to issue the
11 75,000,000 shares to Elliott without legend, pursuant to the Form S-8 registration
12 amended December 8, 2003, and the Form S-8 registration dated April 19, 2004.
13 Exhibit 108.

14 67. The December Form S-8 registration statement does not contain a reoffer
15 prospectus and does not list Elliott as a selling shareholder whose shares are
16 registered for resale. Exhibit 98.

17 68. On April 19, 2004, iBiz filed a Form S-8 registration statement to register
18 its sale of 200,000,000 shares under its 2004 Stock Incentive Plan (April Form S-8
19 registration statement"). The April Form S-8 registration statement does not
20 contain a reoffer prospectus. It does not list Elliott as a selling shareholder whose
21 shares are registered for resale. Exhibit 106.

22 69. Between December 7, and 10, 2004, Elliott offered and sold the 75,000,000
23 iBiz shares in a series of six transactions. Exhibit 112.

24 70. Elliott received \$388,423 from the sale of the 75,000,000 iBiz shares. Exhibit 112.

25 71. Elliott sent wire transfers of \$15,000 to iBiz on December 6, 2004,
26 \$200,000 on December 16, 2004 and \$78,000 on December 21, 2004. Exhibit 91.

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1 72. As discussed above in paragraphs 78, 79 and 80, between December 2003 and
2 December 2004, Elliott offered and sold 182,352,941 iBiz shares for which he received
3 \$1,273,187.41. Elliott transferred at least \$593,600 to iBiz Inc. Exhibit 290.

4 **g. McRoberts' Activities**

5 73. On August 18, 2003, iBiz, Schilling, and Perkins offered and sold
6 36,691,177 shares to Jeffrey Firestone. Exhibits 26 and 231.

7 74. Firestone and iBiz prepared a draft consulting agreement dated August 20,
8 2003, in which Firestone agreed to provide consulting services to the company in
9 exchange for an undetermined number of shares of iBiz common stock. Exhibit
10 237.

11 75. In August 2003, McRoberts participated in an effort to find a purchaser for
12 a block of iBiz shares issued to Firestone. McRoberts Answer ¶ 57.

13 76. In August 2003, Firestone made arrangement with McRoberts to offer and
14 sell 20,000,000 iBiz shares for approximately \$39,500. McRoberts Answer ¶ 62.

15 77. In August 2003, McRoberts called Paul Enright ("Enright"), told him that
16 Mr. Firestone was looking for a friendly buyer for Firestone's shares, and asked if
17 Enright could help Mr. Firestone, which he did.

18 78. On August 17, 2003, Firestone sent McRoberts and Schilling an email
19 directing them to send part of the money from Firestone's stock sales directly to the
20 Chinese manufacturer of one of iBiz's products. Exhibit 78.

21 79. On August 21, 2003, Firestone agreed with McRoberts to compensate him
22 by paying ten percent of the monies to be paid from the sale of Firestone's iBiz
23 shares to Eldorado Capital. Exhibit 25.

24 80. McRoberts is a member of Eldorado Capital LLC, a New Mexico limited
25 liability company that he formed in approximately 2001. McRoberts uses Eldorado
26 Capital to transact business.

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1 81. On August 21, 2003, McRoberts emailed Brovarone wire transfer
2 instructions for payment of his 10 point commission to Eldorado Capital LLC.
3 Exhibit 4

4 82. Mr. McRoberts was not involved in negotiating the transaction whereby
5 Mr. Firestone sold his shares. McRoberts Tr., pp. 44: 2-45: 8; 47: 9-15; 47: 17-21;
6 Bogani Tr., pp. 12: 21-13: 4; 15: 1-8.

7 83. Equity Speculation Group LLC is an entity used by Mark Bogani to make
8 investments in stocks and real estate. Bogani Tr., p. 8:1-7.

9 84. In 2003, the sole business of Equity Speculation Group was buying and
10 selling securities. Bogani Tr., p. 13:12-17.

11 85. Mr. Bogani had been a licensed securities broker and has owned a stock
12 transfer company since 2005. Bogani Tr., pp. 7: 3-14; 35:8-18.

13 86. Dennis Brovarone, a Denver lawyer, was appointed as the escrow agent to
14 handle the sales of Mr. Firestone's stock. Brovarone Tr., pp. 8: 12-9:2.

15 87. Mr. Brovarone had provided legal services for Equity Speculation Group.
16 Brovarone Tr., p. 13: 17-22.

17 88. Other than acting as an escrow agent in the transactions in which Mr.
18 Firestone sold stock, Mr. Brovarone had no business dealings with Mr. McRoberts.
19 Brovarone Tr., p. 12: 7-10

20 89. Mr. Brovarone believed that Mr. Enright may have asked him to act as
21 escrow agent in transactions where Mr. Firestone sold shares of iBiz Technology
22 stock. Brovarone Tr., p. 8: 16-20.

23 90. Mr. Brovarone believes he had telephone conversations with Mr. Firestone.
24 Brovarone Tr., pp. 15: 21-16: 2.

25 91. Mr. Firestone communicated directly with Mr. Brovarone to advise him of
26 the closing price of iBiz Technology's stock in order to complete the sale of stock
27 from Mr. Firestone to Equity Speculation Group. Brovarone Tr., pp. 38: 14-39:9.

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1 92. Mr. Bogani was informed by Mr. Enright that shares of iBiz Technology
2 were available. Bogani Tr., p. 9: 9-21.

3 93. Mr. Enright understood that Mr. Bogani was interested in transactions
4 involving a large amount of shares where the transaction was done outside the
5 market at a negotiated price constituting a discount to the market price. Enright
6 Tr., pp. 88: 22-89:3.

7 94. Mr. Bogani had dealt with Mr. Brovarone prior to the purchase of iBiz
8 Technology shares from Mr. Firestone. Bogani Tr., p. 10:15-23.

9 95. Mr. Bogani negotiated the terms of the stock purchase agreement with
10 Mr. Enright. Bogani Tr., pp. 12:21-13:4.

11 96. Mr. Bogani heard of Mr. McRoberts through Mr. Enright, who described
12 him as being a finder of an investment opportunity, but Mr. Enright never met Mr.
13 McRoberts nor had any discussions with him regarding the iBiz Technology
14 transaction. Bogani Tr., p. 15:1-18.

15 97. Mr. Brovarone has no specific recollection of any conversation with
16 Mr. McRoberts. Brovarone Tr., p. 104: 12-17.

17 98. Mr. Brovarone does not recall any telephone conversations with Mr.
18 McRoberts when he received the copy of the stock purchase agreement signed by
19 Mr. Firestone. Brovarone Tr., p. 18, lines 3-10.

20 99. Mr. Brovarone does not have any recollection of speaking with Mr.
21 McRoberts about the securities purchase agreement. Brovarone Tr., p. 65: 1-4.

22 100. Mr. Brovarone made the arrangements with the transfer agent of iBiz
23 Technology to have the sale of shares from Mr. Firestone to Equity Speculation
24 Group reflected on the books of iBiz Technology, and new share certificates issued
25 reflecting the transaction. Brovarone Tr., pp. 25:3-26:3.

26 101. The proceeds of Mr. Firestone's sale of stock to Equity Speculation Group
27 were received by Mr. Brovarone and went directly to Mr. Firestone. Brovarone
28 Tr., pp. 45: 12-46:8.

1 102. Mr. Brovarone was the primary draftsman of the stock purchase agreement.
2 Brovarone Tr., pp. 62: 9-23; 94: 11-95:3; SEC Exhibit 24.

3 103. Mr. Brovarone made arrangements for the delivery and transfer of
4 certificates relating to Mr. Firestone's sale of securities to Sprout Investments.
5 Brovarone Tr., pp. 65: 6-15; 71: 20-72:11; SEC Exhibits 42, 48, and 49.

6 104. Mr. Enright has spoken with Mr. Firestone by telephone. Enright Tr., pp.
7 17: 13-18: 3.

8 105. Mr. Enright believes that Mr. Bogani chose Mr. Brovarone as the escrow
9 agent for the purchase of stock from Mr. Firestone. Enright Tr., p. 90: 12-21.

10 106. Mr. Brovarone and Mr. Enright had done business prior to the sale of stock
11 by Mr. Firestone. Brovarone Tr., p. 53: 21-25.

12 107. Equity Speculation Group LLC sent a wire transfer of \$37,000 to
13 Brovarone, as the escrow agent, as payment for the iBiz stock purchase on August
14 21, 2003 and later sent a check for the additional \$1,500 to complete the purchase
15 the iBiz shares. Exhibits 28 and 36.

16 108. Brovarone sent Firestone's share certificate by Federal Express courier to
17 the transfer agent in Utah with instructions to transfer 20,000,000 of the shares into
18 the name of Equity Speculation Group, and then return the new certificates to him.
19 Exhibit 29.

20 109. On August 25, 2003, Brovarone sent by wire transfer \$30,480 to
21 Firestone's bank account for the money from the first sale. Exhibit 34. On August
22 26, 2003, Firestone sent a wire transfer of \$30,000 to Prolink Microsystems, one of
23 iBiz Technology's suppliers in Taiwan. Exhibit 135.

24 110. On August 25, 2003, Brovarone paid \$1,750 by check to Enright's wife,
25 and sent a wire transfer of \$1,730, which was \$1,750 less the \$20 wire fee, to
26 McRoberts as his half of the \$3,500 difference between the price paid by the buyer
27 of \$38,500 and the price received by the seller of \$35,000. On September 2, 2003,
28 Brovarone sent another wire transfer for an additional \$1,730, which was \$1,750

1 less the \$20 wire fee, to McRoberts as his half of ten percent commission granted
2 by Firestone from the \$35,000 he received from the sale of iBiz shares. Exhibits 39
3 and 79.

4 *111.* Enright located another buyer, Sprout Investments LLC, to whom he
5 offered the remaining 16 million of Firestone's iBiz shares. Exhibit 40.

6 *112.* McRoberts faxed a copy of the Stock Purchase Agreement to Sprout
7 Investments. Exh 41.

8 *113.* In the Stock Purchase Agreement, Sprout Investments LLC agreed to
9 purchase 5,000,000 of Firestone's shares for \$7,975, which was a 50% discount
10 from the closing bid price, and to pay a 5% fee to Primera Capital, a company
11 owned by Mr. Enright. Exhibit 41 and 44.

12 *114.* On September 4, 2003, Brovarone sent a wire transfer for \$5,505 to
13 Firestone's bank account for the money from the second sale. Exhibit 47. On
14 September 5, 2003, Firestone sent a wire transfer of \$5,000 to Catronics, another
15 one of iBiz Technology's suppliers. Exhibit 135.

16 *115.* On September 4, 2003, McRoberts received a commission of \$705 on the
17 Sprout transaction (\$725 less the \$20 wire fee). Exhibits 45, 46 and 79.

18 **h. Voykin' Sale of 50,000,000 Unregistered Shares**

19 *116.* In October 2003, iBiz prepared a consulting agreement for McRoberts to
20 advise the company in exchange for 50,000,000 shares. McRoberts did not sign the
21 agreement. Instead, McRoberts had another contract prepared in the name of his
22 assistant, Daniel Voykin, who signed it on McRoberts behalf. Exhibit 120,
23 McRoberts Tr. 25:10-16,89:6-90:23; Exhibit 82.

24 *117.* Dan Voykin was working for Mr. McRoberts at the time of the consulting
25 agreement with iBiz Technology. He had Mr. Voykin enter into a consulting
26 contract with iBiz Technology because he understood that a contract to be used in
27 connection with the stock to be issued under SEC Form S-8 had to be with an
28 individual. McRoberts Tr., pp. 25:10-26:9.

1 118. The consulting agreement between iBiz Technology and Mr. Voykin
2 included services related to mergers and acquisitions. However, compensation for
3 such services was not in the form of stock, but in cash, contingent on the
4 completion of a transaction. SEC Exhibit 60, Doc. # 73-7, page 2.

5 119. On October 3, 2003, McRoberts sent Schilling a subscription agreement for
6 the company to raise \$1,000,000 through the sale of convertible debentures. See
7 Exhibit 81.

8 120. At the request of Schilling, McRoberts had several telephone conversations
9 with Bryan Scott at Synosphere LLC.

10 121. On November 20, 2003, McRoberts sent an email to Scott with corporate
11 resolutions related to iBiz's possible acquisition of that company. McRoberts also
12 introduced Schilling to a securities attorney, Jehu Hand. Exhibit 61.

13 122. McRoberts was in Phoenix, Arizona on November 4, 2003.

14 123. In November 2003, McRoberts emailed Voykin a copy of the iBiz
15 consulting agreement and advised him "Just a straight consulting contract between
16 you & the company & FOR THOSE SERVICES (that we are performing),
17 REMUNERATION is paid in the form of S-8 shares (instead of cash)." Voykin
18 signed the agreement on November 12, 2003. Exhibits 57 and 60.

19 124. On November 12, 2003, Voykin sent McRoberts an email containing an
20 article on the appropriate uses for S-8 shares. McRoberts responded "We are in
21 compliance on the S-8 Article." Exhibit 58 and 59.

22 125. In early December 2003, McRoberts telephoned Schilling and asked him to
23 deliver the iBiz shares under the consulting agreement to Voykin, who worked with
24 McRoberts as a team. Exhibit 112.

25 126. In December 2003, Schilling and Perkins directed iBiz to deliver
26 50,000,000 shares to Voykin. McRoberts Answer ¶ 67.

27 127. On December 10, 2003, iBiz, Schilling and Perkin sold 50,000,000 shares
28 to Voykin as compensation under the consulting agreement. Exhibit 63.

1 128. McRoberts gave Voykin instructions on how to sell the shares. McRoberts
2 Answer ¶ 70; Exhibit 67.

3 129. Over the next week, Voykin sold the 50 million iBiz shares in 148
4 transactions for a total of \$404,077. McRoberts Answer ¶ 70; Exhibit 69.

5 130. McRoberts instructed Voykin to send him the money from the sales of iBiz
6 stock. Once the last sale had cleared, Voykin wired the money to his personal bank
7 account, from which he wrote a check to McRoberts for \$298,889 and a second
8 check to McRoberts' company, Eldorado Capital, LLC for \$105,154. Exhibit 68.

9 131. On January 6 and 7, 2004, McRoberts deposited the checks into the Eldorado Capital
10 bank account. McRoberts Answer ¶ 70; Exhibits 69, 70, 71, 83, 85.

11 132. On January 9, 2004, McRoberts transferred \$320,043 of the money to
12 Elephant Capital, LLC, an entity owned by Enright, to pay for publicity on behalf
13 of iBiz. McRoberts Answer ¶ 70; Exhibits 1, 85; Exhibit 120,

14 133. There was no registration statement in effect for McRoberts and his
15 assistant's offers and sales of the 50,000,000 shares. McRoberts Answer ¶ 71.

16 134. Mr. McRoberts believed he could provide consulting services to iBiz
17 Technology to assist it in product sales. McRoberts Tr., pp. 28:12 - 29:12.

18 135. Under the consulting agreement with iBiz Technology, Mr. McRoberts
19 evaluated iBiz Technology's managerial marketing and sales requirements.
20 McRoberts Tr., p. 96:9-17.

21 136. The consulting agreement with iBiz Technology was the first agreement
22 that Mr. McRoberts worked with where compensation was to be in the form of
23 shares registered under SEC Form S-8. McRoberts Tr., pp. 94:14 – 95:1.

24 137. Mr. McRoberts asked Mr. Enright to create a mailer for iBiz Technology
25 for the purpose of advertising a keyboard. McRoberts Tr., p. 32: 2-21.

26 138. Mr. McRoberts was not involved in the preparation of the iBiz Technology
27 product mailer. Enright Tr., p. 96:23-25.

28

1 139. Mr. McRoberts sent Mr. Enright \$320,040 to capitalize a product
2 advertising campaign for iBiz Technology. Enright Tr., p. 62: 10-20.

3 140. iBiz Technology never received any payment from Mr. Voykin, Mr.
4 McRoberts, or any of their affiliates. Schilling Tr., 2/9/05, p. 45: 13-16.

5 141. Neither Mr. Schilling nor any of his children received any payments from
6 Mr. McRoberts or Mr. Voykin. Schilling Tr., 2/9/05, p. 48: 8-14.

7
8 **i. Shares issued to Schilling and Perkins**

9 142. On February 3, 2003, iBiz Technology issued 41,208,447 shares to Kenneth
10 Schilling and 40,729,626 shares to Mark Perkins. Exhibits 157 and 158.

11 143. On or about June 12, 2003, iBiz Technology issued 58,461,383 shares to Kenneth
12 Schilling and 58,246,872 shares to Mark Perkins. Exhibits 160, 161, 162, 164, 165.

13 **j. Schilling Certifications of Annual and Quarterly Reports.**

14 144. Schilling signed a certification for iBiz Technology's 2003 annual report on
15 Form 10-KSB which was filed on February 13, 2004 and for each of the six
16 subsequent amendments. Exhibits 142, 143, 144, 145, 146, 147 and 148
17 Schilling signed a certification for iBiz Technology's January 2004 quarterly report
18 on Form 10-Q which was filed on March 15, 2004 and for each of the two
19 subsequent amendments. Exhibits 149, 150, 151.

20 Mr. McRoberts believes that the following facts have been admitted and
21 should be included in this section. The Plaintiff Securities and Exchange
22 Commission objects to such inclusion:

23 160. Based upon his relationship with Mr. Brovarone, if Mr. Brovarone
24 perceived a possible legal problem with the purchase of iBiz Technology shares,
25 Mr. Bogani would have expected Mr. Brovarone to bring that problem to his
26 attention. Bogani Tr., p. 41:7-17.

27 161. Mr. Brovarone never brought to Mr. Bogani's attention a possible
28 problem with the purchase of iBiz shares. Bogani Tr., p. 41: 7-17.

1 164. Mr. Bogani checked directly with the transfer agent and determined
2 that the shares which Equity Speculation Group contemplated purchasing from Mr.
3 Firestone had no stops or holds and were able to be resold. Bogani Tr., p. 19:9-18.

4 171. In drafting the stock purchase agreement, Mr. Brovarone included
5 representations and warranties designed to provide comfort that the transaction was
6 not an improper sale of unregistered securities. Brovarone Tr., pp. 100: 16-101: 3.

7 176. Mr. Enright expected that Mr. Brovarone, as an attorney specializing
8 in securities matters, would have raised any regulatory issue relating to the sale of
9 Mr. Firestone's stock to Equity Speculation Group. Enright Tr., p. 91:2-17.

10 181. On approximately November 11, 2003, Mr. McRoberts received an
11 email from Mr. Voykin sending information prepared by an attorney that indicated
12 that shares registered under SEC Form S-8 were freely tradable. SEC Exhibit 58.

13
14 **2. The following facts, although not admitted, will not be contested at trial by**
15 **evidence to the contrary:**

16
17 **3. The following issues of law are uncontested and stipulated to by the parties:**

18 1. A public company may use a Form S-8 registration statement to register its
19 offer and sale of shares to its consultant or advisor only if the consultant or advisor
20 is a natural person, provides bona fide services, and the services are not in
21 connection with the offer or sale of securities to raise money for the company, and
22 the consultants do not directly or indirectly promote or maintain a market for the
23 company's securities. Exhibit 117, Form S-8 General Instruction A.1 (a) (1).

24 2. Resales of shares by shareholders may be registered using a Form S-8
25 registration statement if it includes a reoffer prospectus. Exhibit 117, Form S-8
26 Instruction C.1.

27 3. Under the instructions for use of Form S-8, restricted shares acquired
28 directly or indirectly from an issuer in a transaction not involving a public offering

1 may be included in a Form S-8 registration for reoffer and resale only if the
2 restricted shares have been acquired by the selling shareholder prior to the filing of
3 the registration statement. Exhibit 117, General Instructions to Form S-8, C.1 (b).

4 4. Restricted shares are defined as securities that are acquired either directly or
5 indirectly from the issuer in a transaction or chain of transactions not involving any
6 public offering. Restricted securities registered on a Form S-8 must be issued under
7 an employee benefit plan. Restricted shares may be included in a reoffer prospectus
8 only if they have been acquired by the selling security holder prior to the filing of
9 the registration statement. Exhibit 117, Form S-8 Instruction C.1 and 17 C.F.R. §
10 230.144(a) (3) (i).

11 5. All persons holding restricted shares registered for reoffer or resale pursuant
12 to a reoffer prospectus must be named as selling shareholders in the reoffer
13 prospectus along with the amount of shares available to be resold. Exhibit 117,
14 Form S-8 Instruction C.3.

15 6. The shares iBiz issued to Elliott, Voykin and Firestone were issued under an
16 employee benefit plan.

17 7. Elliott and Firestone acquired their shares directly from the company in a
18 non-public offering of securities.

19
20 **D. CONTESTED ISSUES OF FACT AND LAW**

21 **1. The following are the issues of fact to be tried and decided**

22 1. The SEC contends that iBiz Technology, Schillings and Perkins offered and sold
23 securities to Firestone, Voykin, and Elliott when no registration statement was in effect for each
24 of those transactions and no exemption from registration was available. iBiz, Schilling and
25 Perkins contend the shares were issued pursuant to an effective registration statement.
26 McRoberts contends that the shares issued to Mr. Firestone and Mr. Voykin were issued
27 pursuant to an effective registration statement. Elliott contends that the shares issued to him
28 were issued pursuant to an effective registration statement.

1 2. The SEC contends that the July 25, 2003 Form S-8 registration statement did not
2 effectively register the company's offer and sale of 36,691,177 shares to Firestone, where he
3 engaged in capital raising for the company by paying at least \$35,000 to the company's
4 suppliers and additional funds directly to the company. Exhibit 119. iBiz, Schilling and
5 Perkins contend that the shares were properly registered at the time they were issued.
6 McRoberts contends that the Firestone shares were properly registered at the time they were
7 issued.

8 3. The SEC contends that the July 25, 2003 Form S-8 registration statement also did not
9 effectively register Firestone's or McRoberts' direct or indirect offer or sale of Firestone's
10 36,691,177 shares because it does not contain a reoffer prospectus and neither Firestone nor
11 McRoberts are named as selling shareholders. iBiz, Schilling and Perkins contend that the
12 shares were properly registered at the time they were issued.

13 4. The SEC contends that the December 8, 2003 Form S-8 registration statement did not
14 effectively register the company's offer and sale of 50,000,000 shares to Voykin, where Voykin
15 or McRoberts engaged in capital raising for the company by paying Enright \$320,040 to create
16 an advertising mailer for iBiz Technology. iBiz, Schilling and Perkins contend that the shares
17 were properly registered. McRoberts contends that the shares were properly registered at the
18 time they were issued, and that payment for an advertising mailer, which was related to the
19 consulting services, does not make the use of Form S-8 improper.

20 5. The SEC contends that the December 8, 2003 Form S-8 registration statement did not
21 effectively register the company's offer and sale of 50,000,000 shares to Voykin, where Voykin
22 or McRoberts did not provide bona fide services to iBiz Technology in exchange for the
23 50,000,000 shares issued to Voykin. iBiz, Schilling and Perkins contend that bona fide services
24 were performed in exchange for the shares issued. McRoberts contends that bona fide services
25 were performed in exchange for the shares issued to Mr. Voykin.

26 6. The SEC contends that the December 8, 2003 Form S-8 registration statement did not
27 effectively register either Voykin's or McRoberts' direct or indirect offer and sale of the
28 50,000,000 shares, because the Form S-8 does not contain a reoffer prospectus and does not list

1 either Voykin or McRoberts as selling shareholders. Exhibit 98. Mr. McRoberts does not
2 dispute this.

3 7. The SEC contends that McRoberts directly or indirectly offered or sold Firestone's
4 shares of iBiz Technology by his participation in, and receipt of a commission for, the sales of
5 Firestone's 25,000,000 shares. McRoberts contends that he did not directly or indirectly offer
6 or sell the shares issued to Mr. Firestone because Mr. McRoberts neither sold nor solicited the
7 sale of those securities and was not a substantial participant in the offer or sale of those
8 securities.

9 8. The SEC contends that McRoberts directly or indirectly offered or sold shares of iBiz
10 Technology as a result of his participation in, and receipt of the money from, the Voykin's sales
11 of 50,000,000 shares. McRoberts contends that he was an indirect seller of Mr. Voykin's
12 shares.

13 9. The SEC contends that McRoberts acted as an underwriter in an unregistered distribution
14 of iBiz Technology shares. McRoberts contends that he was not an underwriter with respect to
15 any sales in which he was a seller of shares because he did not acquire such shares with a view
16 to distribution for the issuer, nor did he participate in such a distribution.

17 10. The SEC contends that the December 8, 2003 Form S-8 registration statement did not
18 effectively register the company's offer and sale of 117,352,941 shares to Elliot, where he
19 engaged in capital raising activities for the company by paying the company at least \$593,600
20 or did not provide bona fide services. Elliott contends that he did not engage in capital raising
21 transactions.

22 11. The SEC contends that the December 8, 2003 Form S-8 registration statement did not
23 effectively register either Elliott's offer and sale of the 117,352,941 shares, because the Form
24 S-8 does not contain a reoffer prospectus and does not list Elliott as a selling shareholder.
25 Exhibit 98.

26 12. The SEC contends that the April 19, 2004 Form S-8 registration statement did not
27 effectively register the company's offer and sale of 65,000,000 shares to Elliott, where he
28

1 engaged in capital raising for the company or did not provide bona fide services. Elliott
2 contends that he did not engage in capital raising transactions

3 13. The SEC contends that the April 19, 2004 Form S-8 registration statement did not
4 effectively register the Elliott's offer and sale of 65,000,000 shares, because the Form S-8 does
5 not contain a reoffer prospectus and does not list Elliott as a selling shareholder.

6 14. The SEC contends that Elliott acted as an underwriter in an unregistered distribution of
7 iBiz Technology shares. Elliott contends that he did not act as an underwriter, issuer or dealer.

8 15. The SEC contends that iBiz Technology and Schilling made false and misleading
9 statements in the July 23, 2003 press release which stated that the company has "entered into a
10 definitive agreement to acquire the assets of [Endeavor]."

11 16. The SEC contends that iBiz Technology and Schilling made false and misleading
12 statements in the July 23, 2003 press release which stated that Endeavour had begun mass
13 production of the Virtual Keyboard.

14 17. The SEC contends that iBiz Technology failed to disclose in its preliminary and
15 definitive proxy statements filed on August 22, and September 12, 2003, and its preliminary
16 and definitive proxy information sheets filed on September 3, and 22, 2003, that the company
17 had no definitive agreement with Endeavour Capital AG to acquire the rights to the Virtual
18 Keyboard and that iBiz Technology did not have a distribution agreement for the Virtual
19 Keyboard.

20 18. The SEC contends that Schilling knowingly aided and abetted iBiz Technology by
21 causing it to fail to disclose in the preliminary and definitive proxy statements and proxy
22 information statements filed in August and September 2003, that iBiz Technology had no
23 definitive agreement with Endeavour Capital AG to acquire the rights to the Virtual Keyboard
24 and that iBiz Technology did not have a distribution agreement for the Virtual Keyboard.

25 19. The SEC contends that iBiz Technology fail to disclose in its preliminary and definitive
26 proxy statements filed on August 22, and September 12, 2003, and its preliminary and
27 definitive proxy information sheets filed on September 3, and 22, 2003, that a change in
28 control of the company had occurred since the end of its last fiscal year on October 31, 2002,

1 by failing to disclose that Schilling and Perkins had acquired control of the company by issuing
2 over 116 million shares to themselves for past and future salaries.

3 20. The SEC contends that Schilling aided and abetted iBiz Technology by causing it to fail
4 to disclose in the preliminary and definitive proxy statements and proxy information statements
5 filed in August and September 2003, that a change in control of the company had occurred
6 since the end of its last fiscal year on October 31, 2002, by failing to disclose that Schilling and
7 Perkins had acquired control of the company by issuing over 116 million shares to themselves
8 for past and future salaries.

9 21. The SEC contends that between December 30, 2003 and February 2004, iBiz
10 Technology, Schilling and Perkins made false and misleading statements in press releases by
11 referring to the Virtual Keyboard as the "iBIZ Technology Virtual Keyboard" or as iBIZ
12 Technology's "latest creation" when they knew that the company did not have a definitive
13 agreement to acquire the rights to the Virtual Keyboard.

14 22. The SEC contends that during January 2004, iBiz Technology and Schilling made false
15 and misleading statements in two online interviews by failing to disclose that iBiz Technology
16 did not have a definitive agreement to acquire the rights to the Virtual Keyboard.

17 23. The SEC contends that during January and February 2004, iBiz Technology, Schilling,
18 and Perkins made false and misleading statements that iBiz Technology had an exclusive
19 licensing agreement to market the Virtual Keyboard Technology.

20 24. The SEC contends that during January 2004, iBiz Technology, Schilling and Perkins
21 made false and misleading statements in a press release that the Virtual Keyboard was now
22 shipping.

23 25. The SEC contends that on May 3, 2004, iBiz Technology, Schilling and Perkins made
24 false and misleading statements that "The much anticipated Virtual Laser Keyboard [is] now in
25 stock" and "ready for shipping."

26 26. The SEC contends that on May 3, 2004, iBiz Technology, Schilling and Perkins fail to
27 disclose that the 102 Virtual Keyboards that the company had received were defective.

28

- 1 27. The SEC contends that Schilling and Perkins made the false and misleading statements
2 or omissions of material facts knowingly or recklessly.
- 3 28. The SEC contends that iBiz Technology, through the knowledge of its officers and
4 directors who were Schilling and Perkins, made the false and misleading statements or
5 omissions of material fact knowingly or recklessly.
- 6 29. The SEC contends that iBiz Technology made false and misleading statements in its
7 2003 Form 10-K annual report filed on February 13, 2004 with subsequent amendments, and its
8 January 31, 2004 Form 10-Q quarterly report filed on March 15, 2004 with subsequent
9 amendment, when the company failed to disclose that that there was no definitive agreement
10 with Endeavour to acquire the license to market the Virtual Keyboard.
- 11 30. The SEC contends that Schilling and Perkins knowingly aided and abetted iBiz
12 Technology by causing it to make false and misleading statements in its 2003 annual report and
13 January 2004 quarterly report and subsequent amendments when they knowingly caused the
14 company to fail to disclose that that there was no definitive agreement with Endeavour to
15 acquire the license to market the Virtual Keyboard.
- 16 31. Schilling falsely certified that the 2003 annual report and the January quarterly report
17 and the subsequent amendments contained no untrue statements of fact or omissions of material
18 facts.
- 19 32. The SEC contends that in November 2003, iBiz Technology, Schilling and Perkins failed
20 to disclose at the time they were stating the company had cash and conventional credit facilities
21 in place to handle voluminous orders that they were anticipating, that in fact the company's
22 continued operations as well as the implementation of its business plan depended upon its
23 ability to raise approximately \$1,000,000 in additional funds over the next 12 months.
- 24 33. The SEC contends that iBiz Technology, Schilling and Perkins failed to disclose in April
25 2004 that the company was close to losing a Circuit City order because they had not delivered
26 any Virtual Keyboards.

27
28

1 34. The SEC contends that iBiz Technology, Schilling and Perkins failed to disclose in April
2 2004 that VKB would not cooperate with iBiz and allow the company to build drivers for the
3 Virtual Keyboard, which were a critical piece for the success of the device.

4 35. The SEC contends that iBiz Technology, Schilling and Perkins failed to disclose in April
5 2004 that the Virtual Keyboards cost \$100 to manufacture.

6 **2. The following are the issues of law to be tried and determined.**

7 1. The SEC contends that iBiz Technology, Schilling, Perkins, McRoberts and Elliott each
8 violated the securities registration provisions of Section 5(a) and(c) of the Securities
9 Act, 15 U.S.C. § 77e (a) and (c). Mr. McRoberts contends that he did not. He was not
10 a "seller" of Mr. Firestone's shares. The sales of shares issued to Mr. Voykin were
11 exempt pursuant to Section 4(1) of the Securities Act of 1933 [15 U.S.C. § 77d(1)]
12 because he was neither an issuer, underwriter, nor dealer. Elliott contends that his
13 transactions were exempt under Section 4(1) of the Securities Act.

14 2. The SEC contends that iBiz Technology, Schilling, and Perkins each violated the anti-
15 fraud provisions of Section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j (b),
16 and Rule 10b-5, 17 C.F.R. § 240.10b-5.

17 3. The SEC contends that iBiz Technology violated the annual and quarterly reporting
18 provisions of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m (a), and Rules 12b-
19 20, 13a-1, and 13a-13, 17 C.F.R. § 240.12b-20, 13a-1 and 13a-13.

20 4. The SEC contends that Schilling and Perkins aided and abetted iBiz Technology's
21 violations of the annual and quarterly reporting provisions of Section 13(a) of the
22 Securities Exchange Act, 15 U.S.C. § 78m (a), and Rules 12b-20 13a-1, and 13a-13, 17
23 C.F.R. §§ 240.12b-20, 13a-1 and 13a-13.

24 5. The SEC contends that iBiz Technology violated the proxy information provisions of
25 Section 14(a) and (c) of the Exchange Act, 15 U.S.C. § 78n (a) and (c), and Rules 14a-
26 3, 14a-9 and 14c-2 and 14c-6, 17 C.F.R. §§ 240.14a-3, 14a-9 and 14c-2 and 14c-6.

27
28

- 1 6. The SEC contends that Schilling aided and abetted iBiz Technology's violations the
2 proxy information provisions of Section 14(a) and (c) of the Exchange Act, 15 U.S.C. §
3 78n (a) and (c), and Rules 14a-9 and 14c-6, 17 C.F.R. §§ 240.14a-9 and 14c-6.
- 4 7. The SEC contends that Schilling falsely certify the annual and quarterly reports in
5 violation of Rule 13a-4, 17 C.F.R. § 240.13a-4.
- 6 8. The SEC contends that the Court should enter a permanent injunction against each of
7 the defendants from future violations of the federal securities laws alleged in this case
8 because there is a likelihood that the defendants will violate these securities provisions
9 again and should order the defendants to disgorge the ill-gotten gains from their
10 violations of the federal securities laws. Mr. McRoberts' position is that neither an
11 injunction nor disgorgement should be entered. He is neither in the process of, or about
12 to, violate any provisions of the federal securities laws in the future. No payments or
13 proceeds of sales are the result of any illegal conduct by Mr. McRoberts. It is the
14 position of iBiz, Schilling and Perkins that neither an injunction nor disgorgement
15 should be entered. They are not in the process of, or about to, violate any provisions of
16 the federal securities laws in the future. No payments or proceeds of issuance of stock
17 are the result of any illegal conduct by either iBiz, Schilling or Perkins. Elliott contends
18 that an injunction is not warranted because there is no evidence that he will violate the
19 federal securities laws in the future. Disgorgement is not warranted because the
20 proceeds received by Elliott were not ill gotten gains and did not result from any illegal
21 contact by Elliott.
- 22 9. The SEC contends that the Court should order the defendants to pay prejudgment
23 interest upon the ill-gotten gains received from their violations of the federal securities
24 laws. Mr. McRoberts' position is that no interest on ill-gotten gains should be ordered,
25 since there were no ill-gotten gains. In the event that the jury determines that Mr.
26 McRoberts engaged in any illegal conduct, his good faith belief in the legality of his
27 conduct warrants that no interest be required if disgorgement is ordered at all. It is the
28 position of iBiz, Schilling and Perkins that no interest on ill-gotten gains should be

1 ordered, since there were no ill-gotten gains. In the event that the jury determines that
2 iBiz, Schilling or Perkins engaged in any improper conduct, their good faith belief in
3 the legality of their conduct warrants that no interest be required if disgorgement is
4 ordered at all. Elliott contends that he acted in good faith and that the award of interest
5 would be punitive and unjustified.

6 10. The SEC contends that the Court should impose a civil penalty against each of the
7 defendants pursuant to Section 20(d) of the Securities Act for each of the defendant's
8 violations of the securities registration provisions of Section 5(a) and (c) of the
9 Securities Act. Mr. McRoberts' position is that no civil penalty is warranted since there
10 were no violations of the law. If it is found that Mr. McRoberts engaged in violations
11 of the law, they were not egregious, were made in the good faith belief of the legality of
12 his actions, were isolated, and, therefore, do not warrant the imposition of a civil
13 penalty. It is the position of iBiz, Schilling and Perkins that no civil penalty is
14 warranted since there were no violations of the law. If it is found that iBiz, Schilling or
15 Perkins engaged in violations of the law, they were not egregious, were made in the
16 good faith belief of the legality of their actions, were isolated, and, therefore, do not
17 warrant the imposition of a civil penalty. Elliott's alleged violations were not egregious
18 and he acted in good faith and therefore a penalty is not warranted.

19 11. The SEC contends that the Court impose a civil penalty against iBiz Technology,
20 Schilling, and Perkins pursuant to Section 21(d)(3) of the Exchange Act for the
21 defendant's violations or aiding and abetting of violations of Sections 10(b), 13(a) and
22 14(a), except Perkins as to the Section 14(a). It is the position of iBiz, Schilling and
23 Perkins that no civil penalty is warranted since there were no violations of the law. If it
24 is found that iBiz, Schilling or Perkins engaged in violations of the law, they were not
25 egregious, were made in the good faith belief of the legality of their actions, were
26 isolated, and, therefore, do not warrant the imposition of a civil penalty.

27 12. The SEC contends that the Court should order that Schilling and Perkins are barred
28 from serving as officers or directors of public companies pursuant to Section 20(e) of

1 the Securities Act and Section 21(d)(2) of the Exchange Act. It is the position of
2 Schilling and Perkins that neither of them should be barred from serving as officers or
3 directors of public companies. They are not in the process of, or about to, violate any
4 provisions of the federal securities laws in the future

5 13. The SEC contends that the Court should order that Schilling, Perkins, Elliott and
6 McRoberts are barred from participating in the offering of penny stocks pursuant to
7 Section 20(g) of the Securities Act, and additionally as to Schilling and Perkins
8 pursuant to Section 21(d)(6) of the Exchange Act. Mr. McRoberts position is that no
9 penny stock bar is warranted because he did not violate the law. If he did engage in
10 conduct found to violate the law, he did so in the good faith belief that his conduct was
11 lawful, such that a penny stock bar is not warranted. It is the position of Schilling and
12 Perkins that neither of them should be barred from participating in the offering of penny
13 stocks. They are not in the process of, or about to, violate any provisions of the federal
14 securities laws in the future. It is Elliott's position that he should not be subject to a
15 penny stock bar because he acted in good faith.

16 E. LIST OF WITNESSES:

17 **Plaintiff's Witnesses:**

18 (1) WITNESSES WHO SHALL BE CALLED AT TRIAL.

19 1. Kenneth Schilling, 8512 W. Via Montoya Drive, Peoria, AZ 85383, a fact
20 witness and defendant, will testify about negotiations to obtain the virtual keyboard,
21 preparation of press releases, annual and quarterly reports, and interviews about the company's
22 acquisition, production, shipping and revenues to be earned from sales of the virtual keyboard.
23 Additionally, he will testify about his knowledge of the company's issuance of shares to
24 Firestone, Elliott and Voykin, any services provided by them, the receipt of any funds from
25 them or paid for the benefit of the company, and the company's registration statements on
26 Form S-8, his own sales of iBiz securities, conversion of debentures by the company's
27 creditors, and his preparation of proxy statements.

28 2. H. Mark Perkins, 25213 N. 47 Drive, Glendale, AZ 85310, a fact witness and

1 defendant, will testify about negotiations to obtain the virtual keyboard, preparation of press
2 releases, annual and quarterly reports about the company's acquisition, production, quality,
3 shipping and revenues to be earned from sales of the virtual keyboard. Additionally, he will
4 testify about his knowledge of the company's issuance of shares to Firestone, Elliott and
5 Voykin, any services provided by them, the receipt of any funds from them or paid for the
6 benefit of the company, and, the company's registration statements on Form S-8, his own sales
7 of iBiz securities, and conversion of debentures by the company's creditors.

8 3. D. Scott Elliott, 608 Fern Street, Anna Maria, FL 34216, a fact witness and
9 defendant, will testify about his consulting agreement with iBiz Technology Corporation, his
10 receipt of shares as compensation, his purchase of shares from the company and resales, and
11 funds paid to the company.

12 4. Jerrold B. Mc Roberts, 93 Camino Cabo, Santa Fe, NM 87508, a fact witness
13 and defendant, will testify about his arrangement to find a purchaser of iBiz Technology shares
14 owned by Firestone in exchange for a commission, the consulting agreement he negotiated with
15 the company, the issuance of shares to his assistant, Dan Voykin, and the subsequent sale of
16 those shares and use of the proceeds to provide promotional services to the company.

17 5. Geoff Clein, 2 Giladi, Entrance C, Jerusalem, Israel 93385, a fact witness and
18 partner in Enterprise Capital AG, will testify about the negotiations between iBiz Technology
19 and Endeavour Capital for the purchase of a license to produce and sell the Virtual Keyboard,
20 problems related finalizing the transaction, problems with production and shipping and the end
21 of the agreement between the parties.

22 6. Dan Voykin, 5309 E. Juniper, Scottsdale, AZ 85254, a fact witness, will testify
23 about his business arrangement with McRoberts, the consulting agreement with iBiz
24 Technology, his receipt and sale of shares from the company and transfer of the proceeds from
25 the sale to McRoberts.

26 7. Paul Enright, 8598 S. Miller Ct, Littleton, CO 80127, a fact witness, will testify
27 (via admission of his video deposition) about his partnership with McRoberts, the offer for sale
28 of Firestone shares, receipt of funds from McRoberts to pay for promotional services provided

1 to iBiz Technology.

2 8. Mark Bogani, 10484 E. Berry Drive, Greenwood Village, CO 80111, a fact
3 witness will testify (via admission of his video deposition), about Equity Speculation Group
4 LLC purchasing 20 million shares of IBIZ stock from Firestone.

5 9. Dennis Brovarone, 18 Mountain Laurel, Littleton, Colorado 80127-2228, a fact
6 witness, will testify (via admission of his video deposition) about his activities as an escrow
7 agent for the sale of Firestone's shares to Equity Speculation Group LLC and Sprout
8 Investments.

9 10. Kerry Matticks, Securities and Exchange Commission, 1801 California Street
10 Suite 1500, Denver, CO 80202, a summary witness, will testify about sales of shares by the
11 defendants, changes in number of shares held by the defendants, changes in price of iBiz
12 Technology shares, telephone calls between the defendants, shares issued to debenture or note
13 holders.

14 11. Hugh Beck, Securities and Exchange Commission, 1801 California Street Suite
15 1500, Denver, CO 80202, a summary witness, will testify about changes in number of shares
16 held by the defendants. He may also testify as a fact witness about statements made by the
17 defendants during the investigation and the source of various documents obtained by the SEC
18 during its investigation in this matter.

19 12. Marion Jenkins, 19055 North 13th St., Phoenix, AZ 85024-2381; Ph. (602)228-
20 8037, a fact witness, will testify about his purchase of shares of iBiz Technology Corporation,
21 and his reliance on iBIZ's website and other information about iBiz provided to the public.

22 13. Bryan Wallace, 400 Glyn Tawel Dr., Granville, OH 43023-1528, a fact witness,
23 will testify about his purchase of shares of iBiz Technology Corporation, and his reliance on
24 iBIZ's website and other information about iBiz provided to the public.

25 14. David Savage, 72 Ferry St., South Grafton, MA 01560-1345, a fact witness, will
26 testify about his purchase of shares of iBiz Technology Corporation, and his reliance on iBIZ's
27 website and other information about iBiz provided to the public.

28 15. Chris DiRado, 126 Mount Pleasant St., Marlboro, MA 01752, a fact witness,

1 will testify about his purchase of shares of iBiz Technology Corporation and his reliance on
2 iBIZ's website and other information about iBiz provided to the public.

3 (2) WITNESSES WHO MAY BE CALLED AT TRIAL

4 16. Mike Mathews, 15847 N. 63rd Drive, Glendale, AZ 85306, a fact witness, may
5 testify about production and quality problems related to the Virtual Keyboard, and his receipt
6 of shares of iBiz Technology during 2003.

7 17. Stanley Moffitt, 11811 N. Tatum Blvd. Suite 2600, Phoenix, AZ 85028, a fact
8 witness, may testify about statements made by Schilling and Perkins on the purpose for issuing
9 shares to themselves, Firestone, Elliott, and Voykin, workpapers used in accounting for the
10 issuance of shares, and the accounting treatment for any sales of the Virtual Keyboard.

11 18. Janine Notti, 11811 N. Tatum Blvd. Suite 2600, Phoenix, AZ 8502, a fact
12 witness, may testify about statements made by Schilling and Perkins on the purpose for issuing
13 shares to themselves, Firestone, Elliott, and Voykin, workpapers used in accounting for the
14 issuance of shares, and the accounting treatment for any sales of the Virtual Keyboard.

15 19. Marc Thomas or Barbara Jacobs, Securities and Exchange Commission, 100 F
16 Street NE, Washington DC 20549, a fact witness, may testify about the issuance of the Division
17 of Corporation Finance's comment letter on the iBiz Inc.'s registration statement.

18 20. Jessie Schilling, c/o John Karow, 11350 North 104th Place, Scottsdale, AZ
19 85359, a fact witness, may testify about her employment with iBiz Technology Corporation,
20 problems with the production of the Virtual Keyboard, and her receipt of over \$84,000 from
21 Firestone.

22 (3) WITNESSES WHO ARE UNLIKELY TO BE CALLED AT TRIAL

23 21. Kurt Hughes or Katherine Leaututu, of Interwest Transfer Company, Inc. fact
24 witnesses may testify about instructions received from Schilling and Perkins to issue iBiz
25 Technology shares to themselves, Firestone, Elliott, and Voykin.

26 22. Jonathan Curtiss, c/o Lumio Ltd., 5 Nahum Hefzadi, Beit Ofer, Jerusalem,
27 95484, Israel, the former president of VKB Inc., a fact witness, may testify about the licensing
28 contract for the Virtual Keyboard issued to Pangea Investments GmbH

1 23. Frank Ligammari, 3625 E. Garden Dr., Phoenix, AZ 85051, a fact witness, may
2 testify about production and quality problems related to the Virtual Keyboard, and his receipt
3 of shares of iBiz Technology during 2003.

4 24. Paul Russo, 5443 W Eugie Avenue, Glendale, AZ 85304, a fact witness, may
5 testify about production and quality problems related to the Virtual Keyboard, and his receipt
6 of shares of iBiz Technology during 2003.

7 25. Brian Allan Scott, 6217 York Bridge Circle, Austin, TX 78749, a fact witness,
8 may testify about his negotiations with iBiz Technology to merge the company, the need for
9 capital raising activities by the company, and his knowledge of problems with the production of
10 the Virtual Keyboard.

11 **Defendants' Witnesses:**

12 **Witnesses for iBiz, Schilling and Perkins:**

13 1. Kenneth Schilling, 8512 W. Via Montoya Drive, Peoria, AZ 85383, a fact
14 witness will testify about his knowledge of the facts involving the negotiation of the virtual
15 keyboard licensing and manufacturing agreements, the payments by iBiz for the manufacturing
16 of the virtual keyboard, the receipt of product, the preparation of press releases, annual and
17 quarterly reports, and interviews about the company's acquisition, production, shipping and
18 revenues to be earned from sales of the virtual keyboard, the advice received and the
19 company's registration statements on Form S-8, his own sales of iBiz securities, conversion of
20 debentures by the company's creditors, and his preparation of proxy statements.

21 2. H. Mark Perkins, 25213 N. 47 Drive, Glendale, AZ 85310, a fact witness will
22 testify about his knowledge of the facts involving the negotiation of the virtual keyboard
23 licensing and manufacturing agreements, the payments by iBiz for the manufacturing of the
24 virtual keyboard, the receipt of product, the preparation of press releases, annual and quarterly
25 reports, and interviews about the company's acquisition, production, shipping and revenues to
26 be earned from sales of the virtual keyboard, the advice received and the company's
27 registration statements on Form S-8, his own sales of iBiz securities, conversion of debentures
28 by the company's creditors, and his preparation of proxy statements.

1 **Elliott's witnesses:**

2 **Witnesses who shall be called to testify:**

3 1. D. Scott Elliott, Mr. Elliott will testify on the services that he provided to iBiz,
4 consulting agreements, the options issued to him by the company, the exercise of his options,
5 the payment for the exercise of his options and the sale of stock by him. Mr. Elliott will testify
6 as to his relationship with the company and its officers, his discussions with the officers of iBiz
7 and his belief that his sales of stock complied with the law.

8
9 **Witnesses who may be called to testify:**

10 2. Mark Perkins, Mr. Perkins will testify on the subjects mentioned by Plaintiff and
11 Defendant Perkins if called to testify.

12 3. Kenneth Schilling, Mr. Schilling will testify on the subjects mentioned by
13 Plaintiff and Defendant Schilling if called to testify.

14 **McRoberts' Witnesses:**

15 The following witnesses will be called at trial:

16 1. Jerrold B. Mc Roberts, 93 Camino Cabo, Santa Fe, NM 87508, a fact witness
17 will testify about his arrangement to find a purchaser of iBiz Technology shares owned by
18 Firestone in exchange for a commission, the consulting agreement he negotiated with the
19 company, the issuance of shares to his assistant, Dan Voykin, and the subsequent sale of those
20 shares and use of the proceeds to provide promotional services to the company.

21 2. Dan Voykin, 5309 E. Juniper, Scottsdale, AZ 85254, a fact witness will testify
22 about his business arrangement with McRoberts, the consulting agreement with iBiz
23 Technology, his receipt and sale of shares from the company and transfer of the proceeds from
24 the sale to McRoberts. (by deposition)

25 3. Paul Enright, 8598 S. Miller Ct, Littleton, CO 80127, a fact witness may testify
26 or his testimony will be presented through entry of his deposition, about his partnership with
27 McRoberts, offer for sale of Firestone shares, receipt of funds from McRoberts to pay for
28 promotional services provided to iBiz Technology. (by deposition)

1 4. Mark Bogani, 10484 E. Berry Drive, Greenwood Village, CO 80111, a fact
2 witness may testify or his testimony will be presented through entry of his deposition, about
3 Equity Speculation Group LLC purchasing 20 million shares of IBIZ stock from Firestone.(by
4 deposition)

5 5. Dennis Brovarone, 18 Mountain Laurel, Littleton, Colorado 80127-2228, a fact
6 witness may testify or his testimony will be presented through entry of his deposition, about his
7 activities as an escrow agent for the sale of Firestone’s shares to Equity Speculation Group
8 LLC and Sprout Investments.(by deposition)

9 Each party understands that it is responsible for ensuring that the witnesses it wishes to
10 call to testify are subpoenaed. Each party further understands that any witness a party wishes
11 to call shall be listed on that party’s list of witnesses above and that party cannot rely on that
12 witness having been listed or subpoenaed by another party.

13 F. LIST OF EXHIBITS

14 1. The following exhibits are admissible in evidence and may be marked in
15 evidence by the Clerk:

16 a. Plaintiff’s Exhibits: McRoberts stipulates to 1 through 60; 63; 69-74;
17 77; 79; 82-85; 133; 230-233, 289.

18 Elliott stipulates to 63, 86-102, 105-108, 110, 116, 118-121, 128-129,
19 132-133, 137, 139-152a, 154, 156, 293-294.

20 iBiz, Schilling, and Perkins stipulate to Exhibits 1-166, 169-287, 300-
21 305.

22 b. Defendant Elliott’s Exhibits: 330 and 331.

23 c. Defendants iBiz, Schilling and Perkins: A Virtual Keyboard unit.; all
24 exhibits presented by Plaintiff.

25 2. As to the following exhibits, the parties have reached the following stipulations:
26 The following Exhibits are not being offered against Mr. McRoberts, and he takes no
27 position to their admissibility: 80; 86 -116; 118-130; 134-233; 236-288, 290-297; 299-
28 303.

- 1 3. As to the following exhibits, the party against whom the exhibit is to be offered
2 objects to the admission of the exhibit and offers the objection stated below:
- 3 a. McRoberts objects to Exhibits 61 - 62; 81. FRE 402. These Exhibits
4 relate to potential merger and acquisition activity, which is contemplated
5 under the consulting agreement signed by Mr. Voykin, but which is not
6 to be compensated by stock but by cash.
- 7 b. McRoberts objects to Exhibits 64-68; 75, 76, 304. FRE 403 (waste of
8 time). These exhibits demonstrate Mr. McRoberts' participation in the
9 sales made by Mr. Voykin. However, Mr. McRoberts does not dispute
10 he was a substantial participant in those sales.
- 11 c. McRoberts objects to Exhibits 117 and 131. FRE 402 and 403. These
12 exhibits are, respectively, instructions for the completion of SEC Form
13 S-8, and SEC Rule 144. They are not probative of any factual issue. To
14 the extent these authorities relate to any legal issue, it is the Court's
15 function to provide appropriate instructions.
- 16 d. McRoberts objects to Exhibit 234. FRE 802 and 805. This exhibit
17 contains an email from Mr. Schilling attributing a statement to Mr.
18 McRoberts. However, Mr. Schilling has stated under oath that that he
19 did not personally hear Mr. McRoberts make the statement, but that he
20 was informed of it by Mr. Firestone. Schilling Transcript February 8,
21 2005, page 183, lines 12-18.
- 22 e. McRoberts objects to Exhibit 298. FRE 402, 403, 702, and 802. This
23 exhibit purports to be a flow chart, the preparer of which is not
24 identified, but is presumed to be someone at the SEC, which purports to
25 show that shares sold by Mr. Voykin were used to raise capital for iBiz
26 through a payment to an "iBiz vendor." The reference to "raising
27 capital" and to an "iBiz vendor" is hearsay and an opinion of the
28 evidence which is legally incorrect. Further, the evidence is not

1 probative of anything at issue and is likely to result in confusion to the
2 jury.

3 f. McRoberts objects to Exhibit 304 and 305, F.R.E. 402 and 403

4 g. Elliott objects to Exhibits 1-62, 64-85, 157-277, 281-289, 291-292, 296-
5 298, and 300-305 as not relevant to the claims against him.

6 h. Elliott objects to Exhibits 103, on relevance and foundation.

7 i. Elliott objects to Exhibits 109, 111-113, 114-115 on relevance and not
8 disclosed on time.

9 j. Elliott objects to Exhibits 109, 114-115 on relevance, foundation and not
10 disclosed on time.

11 k. Elliott objects to Exhibits 117 and 131 as inappropriate to introduce law
12 into evidence. Elliott contends that Rule 144 has no relevance to the
13 sales in this case.

14 l. Elliott objects to Exhibit 134 on hearsay and on relevance.

15 m. Elliott objects to Exhibits 135-136, 138 on relevance.

16 n. Elliott objects to 152b-153 on relevance.

17 o. Elliott objects to Exhibit 290 on foundation

18 p. Elliott objects to Exhibits 295 on relevance and foundation

19 q. Elliott objects to Exhibits 299 as cumulative and contends it is an
20 inaccurate summary of evidence

21 r. Elliott notes Exhibits 104, 278-280 – No documents are marked as
22 exhibits.

23 s. iBiz, Schilling and Perkins object to Exhibits 167, 168, 288 through 299
24 on the basis of lack of foundation and hearsay.

25 4. Each party hereby acknowledges by signing this **joint** Proposed Final Pretrial
26 Order that any objections not specifically raised herein are waived. Counsel for
27 defendants, iBiz Technology, Schilling and Perkins, objects to this statement.

28 G. DEPOSITIONS TO BE OFFERED:

1 Plaintiff intends to introduce the following video deposition testimony of **Dennis Brovarone**
2 dated August 21, 2007.

3	<u>Page/Line</u>	
4	[8:5] - [8:8]	[46:12] - [47:8]
5	[8:10] - [9:7]	[47:10] - [47:21]
6	[9:10] - [10:7]	[48:1] - [49:5]
7	[10:8] - [10:11]	[49:6] - [50:9]
8	[10:22] - [11:19]	[50:10] - [51:16]
9	[12:13] - [13:6]	[51:18] - [53:8]
10	[13:7] - [13:10]	[53:11] - [53:25]
11	[13:22] - [14:10]	[58:15] - [60:6]
12	[15:3] - [15:23]	[60:25] - [63:23]
13	[15:24] - [16:12]	[63:24] - [65:25]
14	[16:21] - [17:13]	[66:1] - [66:4]
15	[17:14] - [18:3]	[66:6] - [67:1]
16	[18:4] - [18:6]	[67:11] - [68:19]
17	[18:7] - [19:16]	[68:25] - [70:14]
18	[19:17] - [20:12]	[70:18] - [71:15]
19	[20:13] - [20:16]	[72:4] - [73:11]
20	[20:22] - [21:4]	[73:17] - [74:3]
21	[21:5] - [21:20]	[74:4] - [77:3]
22	[21:21] - [23:4]	[79:12] - [80:22]
23	[23:12] - [24:2]	[81:3] - [81:23]
24	[24:3] - [25:2]	[82:1] - [83:5]
25	[25:3] - [25:23]	[83:6] - [83:10]
26	[26:3] - [28:5]	[83:12] - [83:19]
27	[28:6] - [30:17]	[83:22] - [85:19]
28	[31:8] - [33:22]	[85:20] - [86:10]
29	[33:23] - [34:9]	[95:11] - [95:22]
30	[34:10] - [36:18]	[96:4] - [96:11]
31	[37:17] - [38:12]	[96:24] - [97:6]
32	[38:13] - [40:4]	[97:7] - [97:20]
33	[40:17] - [41:24]	[98:7] - [98:18]
34	[42:3] - [43:3]	[107:19] - [108:18]
35	[43:18] - [44:8]	[108:19] - [109:13]
36	[44:9] - [45:12]	[109:14] - [110:4]
37	[45:13] - [46:8]	[110:9] - [111:1]

25 Plaintiff intends to introduce the following video deposition testimony of **Paul Enright** dated
26 August 21, 2007.

28	<u>Page/Line</u>	
	[7:9] - [7:19]	[7:22] - [8:1]

1	[8:19] - [9:12]	[44:16] - [45:21]
	[10:1] - [10:15]	[46:5] - [47:20]
2	[10:20] - [10:22]	[47:21] - [49:6]
	[11:7] - [11:10]	[49:7] - [50:4]
3	[11:19] - [12:10]	[50:5] - [51:3]
	[13:6] - [13:9]	[51:4] - [52:3]
4	[13:11] - [14:3]	[52:4] - [52:11]
	[14:23] - [15:14]	[52:12] - [53:4]
5	[15:15] - [16:7]	[53:5] - [53:9]
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6	[18:13] - [18:15]	[54:15] - [55:11]
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7	[19:10] - [19:14]	[57:10] - [59:5]
	[19:16] - [19:25]	[59:20] - [61:7]
8	[20:1] - [20:15]	[61:11] - [62:2]
	[20:20] - [21:4]	[62:3] - [63:13]
9	[21:5] - [21:12]	[63:14] - [64:14]
	[21:13] - [21:20]	[64:15] - [65:11]
10	[23:17] - [24:3]	[65:12] - [67:3]
	[24:14] - [24:23]	[67:4] - [67:14]
11	[25:8] - [25:21]	[67:15] - [68:3]
	[25:22] - [26:22]	[69:3] - [69:11]
12	[27:21] - [28:13]	[69:12] - [70:12]
	[29:7] - [29:12]	[70:13] - [71:7]
13	[29:16] - [30:4]	[71:13] - [73:4]
	[30:5] - [30:11]	[77:23] - [78:16]
14	[30:20] - [31:6]	[79:1] - [79:5]
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15	[34:18] - [35:10]	[87:18] - [88:8]
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16	[36:5] - [36:20]	[94:24] - [95:10]
	[36:24] - [37:1]	[95:24] - [96:10]
17	[37:2] - [37:6]	[97:23] - [98:14]
	[37:14] - [38:14]	[101:4] - [101:17]
18	[38:24] - [39:9]	[101:22] - [102:6]
	[40:2] - [40:19]	[103:12] - [103:15]
19	[40:20] - [41:4]	[103:16] - [104:19]
	[41:5] - [42:6]	[104:20] - [106:5]
20	[42:7] - [42:20]	[106:20] - [107:24]
	[42:21] - [43:14]	[111:13] - [112:24]
21	[43:15] - [44:15]	[113:6] - [113:17]

26
27 Plaintiff intends to introduce the following video deposition testimony of **Mark Bogani** dated
28 September 5, 2007.

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[13:24] - [15:15]
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[18:11] - [21:19]
[21:20] - [22:12]
[22:18] - [24:9]
[24:17] - [28:23]
[29:7] - [31:17]
[32:2] - [34:4]
[34:15] - [34:17]
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[46:21] - [46:23]

Plaintiff intends to introduce the following video deposition testimony of **Jerrold McRoberts** dated September 24, 2007, if he does not appear at trial or for impeachment

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[8:4] - [8:13]
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[11:18] - [12:24]
[12:25] - [13:1]
[13:10] - [14:10]
[14:14] - [14:16]
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[26:21] - [27:7]
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[30:10] - [31:6]
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[34:17] - [35:11]
[35:12] - [35:17]
[35:18] - [35:24]
[36:5] - [37:1]
[37:2] - [37:25]
[38:1] - [38:24]
[38:25] - [39:5]
[39:6] - [40:4]
[40:5] - [41:8]
[41:9] - [42:22]
[42:23] - [43:18]
[44:20] - [45:8]
[45:9] - [45:10]
[45:22] - [46:20]
[46:21] - [46:25]
[47:1] - [48:14]
[48:22] - [49:7]
[49:20] - [49:25]
[50:5] - [50:7]

1	[50:14] - [51:15]	[104:12] - [106:9]
	[51:18] - [51:23]	[106:10] - [107:9]
2	[51:24] - [53:19]	[107:10] - [108:3]
	[53:20] - [54:17]	[108:4] - [108:8]
3	[54:25] - [55:8]	[108:9] - [109:9]
	[55:9] - [56:1]	[109:10] - [109:18]
4	[56:7] - [57:7]	[109:19] - [110:22]
	[57:21] - [58:14]	[110:23] - [111:16]
5	[58:15] - [59:18]	[111:23] - [112:23]
	[60:24] - [61:12]	[112:24] - [113:5]
6	[61:13] - [62:2]	[113:6]
	[62:19] - [62:25]	[113:7]
8	[64:16] - [65:8]	[113:14] - [113:17]
	[65:14] - [65:24]	[113:18] - [113:23]
9	[66:3] - [67:3]	[113:24] - [114:19]
	[67:6] - [67:21]	[114:20] - [114:23]
10	[68:4] - [69:4]	[114:24] - [115:15]
	[69:5] - [69:21]	[115:16] - [115:24]
11	[70:3] - [70:5]	[115:25] - [117:13]
	[70:15] - [71:2]	[117:14] - [118:18]
12	[71:9] - [71:11]	[118:19] - [121:5]
	[71:15] - [73:4]	[121:25] - [122:12]
14	[73:9] - [75:9]	[122:13] - [123:16]
	[75:13] - [76:4]	[123:21] - [125:4]
15	[76:5] - [76:9]	[125:9] - [127:3]
	[76:10] - [78:10]	[127:4] - [127:10]
16	[78:11] - [79:9]	[127:11] - [128:2]
	[79:16] - [80:20]	[128:7] - [128:13]
18	[81:8] - [82:10]	[128:14] - [129:16]
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19	[83:11] - [83:24]	[130:21] - [131:14]
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27	[101:20] - [103:17]	[149:16] - [150:15]
28	[103:18] - [104:11]	[150:16] - [151:19]

[151:20] - [152:21]
[152:22] - [154:18]

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1
2 Plaintiff intends to introduce the following testimony of **Bryan Scott** dated February 23, 2005.
3 McRoberts objects to introduction of this evidence on the basis that the testimony of Mr. Scott
4 was not a deposition and is inadmissible hearsay.

5 Page/Line

6 [32:11] - [32:13]
7 [39:20] - [40:2]
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9 [42:10] - [43:1]
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11 [47:12] - [47:14]
12 [47:20] - [48:1]
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16 [51:12] - [52:10]
17 [56:18] - [57:13]
18 [63:4] - [65:11]
19 [74:13] - [75:8]
20 [75:11] - [75:25]

21
22 Plaintiff intends to introduce the following testimony of **H. Mark Perkins** dated October 28,
23 2004, October 29, 2004, February 9, 2005, and February 10, 2005. McRoberts objects to the
24 introduction of this evidence on the basis that this is improper since the testimony of Mr.
25 Perkins is not a deposition and is inadmissible hearsay Perkins objects to the introduction of
26 this testimony as improper because it was not a deposition and is therefore inadmissible as
27 hearsay, and since he will be appearing as a witness.
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10/28/2004

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[76:9] - [78:2]
[78:10] - [79:10]
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Plaintiff intends to introduce the following testimony of **D. Scott Elliott** dated May 11, 2005. McRoberts objects to the introduction of this evidence on the basis that this is improper since the testimony of Mr. Elliott is not a deposition and is inadmissible hearsay

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1	[16:2] - [16:3]	[77:17] - [78:1]
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8	[31:20] - [32:9]	[98:6]
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24	[75:11] - [75:16]	[153:12] - [153:16]
	[76:25] - [77:6]	[157:1] - [157:13]

[161:1] - [161:11]
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1 Defendant Mc Roberts intends to introduce the following deposition testimony:

2 1. Dennis Brovarone (August 21, 2007): pp. 13:1-14:2; pp. 15:21-16:2; pp. 17:20-
3 18:10; pp. 25:3-26:3; pp. 38:14-39:9; pp. 45:12-46:8; p. 53:21-25; p. 58:4-20; p. 62:9-23;
4 p. 65:1-4; p. 65:6-15; pp. 71:20-72:11; p. 75:12-25; p. 90:9-16; p. 91:17-92:1; p. 92:3-7;
5 p. 94:11-95:3; p. 95:24-96:6; p. 97:7-12; p. 97:19-98:7; p. 98:20-99:18; p. 100:3-12; p. 100:16-
6 101:3; p. 101:18-102:8; p. 104:8-11; p. 104:12-17; p. 106:25-108:2; p. 108:6-13; p. 109:9-19.

7 Plaintiff objects to McRoberts' designations for Brovarone at p. 58:4-20 as incomplete
8 by not including the question and answer that begins at p. 57:25-58:6 and including irrelevant
9 material on taking a break; p. 71:20-72:3 which includes the video technician comment about
10 the recess; p. 90:9-16 as incomplete and irrelevant; p. 91:17-92:1 and 92:3-7 objection
11 information on Mr. Bogani's businesses is irrelevant; p. 94:11-95:3, Brovarone's prior
12 provision of legal services to Bogani and playing poker is irrelevant; p. 97:19-98:7, 98:20-
13 99:18 Brovarone's concerns about whether sale was improper are irrelevant, he was not acting
14 as the attorney for McRoberts and did not advise him, nor has McRoberts asserted a reliance on
15 counsel defense or identified Mr. Brovarone as an expert; p. 100:3-12, p. 100:16-101:3, p.
16 101:18-102:8 Brovarone's knowledge of how long Firestone held the securities, his failure to
17 inquire, and reliance on representation about being non-affiliates is irrelevant to McRoberts
18 violation; p. 104:8-17 are the statements of McRoberts attorney and are not evidence; p
19 106:25-107:9, Brovarone's use of a similar from for Spencer Edwards is irrelevant.

20 2. Paul Enright (August 21, 2007): p. 7:19-8:2; p. 8:13-16; pp. 10:19-11:6;
21 p. 15:1-5; p. 15:14-22; pp. 17:13-18:3; pp. 22:22-23:6; pp. 24:15-25; p. 31:20-22; p. 33:13-24;
22 p. 34:11-14; pp. 37:24-38:9; p. 40:5-14; p. 42:15-18; pp. 44:9-45:1; pp. 45:9-46:7; pp. 55:18-
23 56:1; p. 60:2-12; p. 62:10-20; pp. 63:20-64:3; p. 84:13-24; p. 85:16-25; p. 87:9-17; pp. 87:18-
24 88:12; pp. 88:22-89:3; p. 90:19-21; p. 91:2-17; p. 93:5-13; pp. 94:24-95:10; p. 96:7-10;
25 p. 96:23-25; p. 97:1-14; p. 97:15-24; p. 98:2-8; p. 99:12-14; p. 100:4-17; p. 102:16-18;
26 p. 105:23-24.

1 Plaintiff objects to McRoberts' designations for Enright at p. 8:13-18 as irrelevant; p.
2 31:20-22 as incomplete, it should include p. 31:21-25; p. 33:13-24 as incomplete, it should
3 include p. 33:10-23; p. 34:11-14 as incomplete, it should include p. 34:10-12; p. 84:13-24
4 should include the answer at 84:25; p. 87:9-16 objection unanswered question; p. 88:22-89:3
5 testimony on block transactions lacks foundation; p. 90:19-21, 91:2-11 speculation, lack of
6 foundation ; p. 93:5-13, incomplete should include 93:3-13; p. 99:12-14, incomplete should
7 include 99:9-14; p. 100:4-17 incomplete should include p. 100:1-17; and p. 102:16-18
8 irrelevant.

9 3. Mark Bogani (September 5, 2007): p. 7:3-14; p. 8:1-7; p. 9:9-21; p. 11:6-13;
10 pp. 12:21-13:4; p. 13:12-17; p. 15:1-18; p. 18:18-22; p. 19:9-18; pp. 19:19-20:14; pp. 26:23-
11 27:6; pp. 36:9-37:2; p. 40:9-23; p. 41:7-17; p. 44:3-9; p. 44:14-22; pp. 44:23-45:5; p. 46:3-9;
12 pp. 46:24-47:12; p. 47:13-20.

13 Plaintiff objects to McRoberts' designations for Mr. Bogani at p. 36:9-37:2, objection
14 irrelevant, Bogani's knowledge of the registration requirements, work with a brokerage firm
15 and knowledge of Brovarone are irrelevant to whether McRoberts violated the registration
16 provisions; p. 40:9-23, 46:24-47:12 objection irrelevant, Mr. Bogani's status an accredited
17 investor is irrelevant; p. 41:7-17 irrelevant; and p. 44:3-9, 46:3-9, objection irrelevant Bogani's
18 form and reliance on Brovarone is irrelevant.

19 Each party herby acknowledges by signing this joint Proposed Final Pretrial Order that
20 any deposition not listed as provided herein will not be allowed absent good cause.”

21 H. MOTIONS IN LIMINE (JURY TRIAL)

22 Motions in limine shall be filed as separate pleadings and responded to in accordance
23 with the instructions contained in the Order Setting Final Pretrial Conference.

24 I. LIST OF PENDING MOTIONS

25 None. However, the SEC would like to present its exhibits and deposition video clips
26 by means of a computer that will televise the images onto computer screens for the jury,
27 witness, opposing counsel and the Court.

28 J. ESTIMATED LENGTH OF TRIAL

1 3 hours – Jury selection

2 5 hours – Opening Statements (plaintiff 2 hours)

3 80 hours – Plaintiff’s case (including rebuttal, if any)

4 Mr. McRoberts believes the estimate for Plaintiff’s case is unreasonably long,
5 and will not leave any time for Mr. McRoberts to present a case. Defendants,
6 iBiz, Schilling and Perkins object to this estimate, the August 29, 2006 Joint
7 Proposed Case Management Plan estimated the total length of the trial at 10
8 days. These Defendants ask that the Court place time limits on the presentations
9 of the parties at trial.

10 8 hours – Defendant McRoberts’ case.

11 8 hours – Defendants iBiz, Schilling and Perkins case

12 8 hours – Defendant Elliott’s case

13 8 hours – Closing arguments (SEC 2 hours, McRoberts 1 hour, Elliott 1 hour)

14 120 hours – Total.

15 K. PROPOSED TRIAL DATES

16 February 24, through March 20, 2009

17 L. JURY DEMAND

18 The defendants, iBiz Technology Corporation, Kenneth Schilling, Mark Perkins, jointly
19 and Scott Elliott and Jerrold McRoberts separately, demanded a jury trial in their answers filed
20 on June 12, 13 and November 20, 2006 respectively. The parties stipulate that the request was
21 timely and properly made.

22 M. JOINT PROPOSED JURY INSTRUCTIONS, JOINT PROPOSED VOIR DIRE
23 QUESTIONS, AND PROPOSED FORMS OF VERDICT

24 The separately filed joint Proposed Jury Instructions, joint Proposed Voir Dire Questions, and
25 Proposed Forms of Verdict are incorporated by reference into this joint Proposed Final Pretrial
26 Order.

27 N. CERTIFICATIONS

28

1 The undersigned counsels for each of the parties in this action do hereby certify and
2 acknowledge the following:

- 3 1. All discovery has been completed.
- 4 2. The identity of each witness has been disclosed to opposing counsel.
- 5 3. Each exhibit listed herein: (1) is in existence; (2) is numbered; and (3) has been
6 disclosed and shown to opposing counsel.
- 7 4. The parties have complied **in all respects** with the mandates of the Court's Rule
8 16 Scheduling Order and Order Setting Final Pretrial Conference.
- 9 5. The parties have made all of the disclosures required by the Federal Rules of
10 Civil Procedure.
- 11 6. The parties acknowledge that once this **joint** Proposed Final Pretrial Order has
12 been signed and lodged by the parties, no amendments to this Order can be
13 made without leave of Court.

14 APPROVED AS TO FORM AND CONTENT:

15
16 s/ Leslie J. Hughes
17 Leslie J. Hughes
18 Attorney for the Plaintiff

19 s/ David A. Zisser
20 David A. Zisser
21 Attorney for Defendant
22 Jerrold McRoberts

23 s/ Thomas D. Birge
24 Thomas D. Birge
25 Attorney for Defendant
26 Doyle Scott Elliott

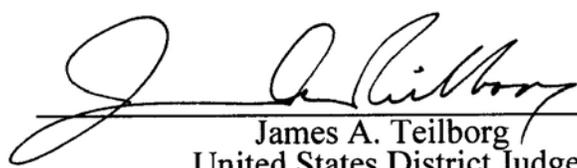
27 s/ John E. Karow
28 John E. Karow
Attorney for Defendants
iBiz Technology Corporation
Kenneth Schilling
S Mark Perkins

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Based on the foregoing,

IT IS ORDERED that this Proposed Final Pretrial Order jointly submitted by the parties is hereby APPROVED and ADOPTED as the official Pretrial Order of this Court.

Dated this 23rd day of February, 2009.



James A. Teilborg
United States District Judge