

1 Lance C. Venable, Esq. (SBN #017074)
 Joseph R. Meaney, Esq. (SBN #017371)
 2 Venable, Campillo, Logan & Meaney P.C.
 1938 East Osborn Rd.
 3 Phoenix, Arizona 85016
 Tel: (602) 631-9100
 4 Fax: (602) 631-4529
 lancev@vclmlaw.com
 5 Attorney for Plaintiff and Third Party Defendant

6 SONNENSCHN NATH &
 ROSENTHAL LLP
 7 SCOTT STEIN (AZ Bar No. 022709)
 2398 East Camelback Road
 8 Suite 1060
 Phoenix, AZ 85016-9009
 9 Facsimile (602) 508-3914
 Telephone (602) 508-3900
 10

11 Christian S. Genetski (Pro Hac Vice Application Pending)
 1301 K Street, NW
 12 Suite 600-East Tower
 Washington, DC 20005
 13 Facsimile (202) 408-6399
 Telephone (202) 408-6400

14 Attorneys for Defendants and Cross-Claimants
 15 Vivendi Games, Inc.
 and Blizzard Entertainment, Inc.
 16

17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF ARIZONA**

19 **MDY INDUSTRIES, LLC,**
 20
 Plaintiff and Counterdefendant,
 21

22 vs.

23 **BLIZZARD ENTERTAINMENT, INC.,**
and VIVENDI GAMES, INC.,

24 Defendants and Counterclaim
 25 Plaintiffs.

Case No.: CV 06-2555 PHX DGC

**PROPOSED JOINT CASE
 MANAGEMENT PLAN (FRCP
 16(b),(c), 26(f))**

Date: April 4, 2007
Time: 4:30 P.M.

**Place: Courtroom of the Honorable
 David G. Campbell**

The Honorable David G. Campbell

1 **BLIZZARD ENTERTAINMENT, INC.,**
2 **and VIVENDI GAMES, INC.,**

3 Third-Party Plaintiffs,

4 vs.

5 **MICHAEL DONNELLY, an individual**

6 Third-Party Defendant
7

8 Pursuant to this Court's Order dated February 20, 2007 and pursuant to Federal
9 Rule of Civil Procedure 26(f), the parties herein, by and through their undersigned
10 counsel of record, hereby submit the following Joint Proposed Case Management Plan.
11

12 **I. LIST OF THE PARTIES IN THE CASE**

13 Plaintiff/Counter-Defendant - MDY Enterprises, LLC – an Arizona corporation
14 Third-Party Defendant – Michael M. Donnelly, an individual and Arizona
15 Resident.

16 Defendants/Counterclaimants and Third-Party Plaintiffs – Blizzard
17 Entertainment, Inc., a Delaware corporation, and Vivendi Games, Inc., a
18 Delaware Corporation, both having their principle places of business in
19 Los Angeles, California.
20

21 **II. NATURE OF THE CASE**

22 **A. Plaintiff / Third-Party Defendant's Statement**

23 The defendants Blizzard Entertainment and Vivendi Games, Inc. manufacture a
24 multiplayer online role-playing game under the name *World of Warcraft*. In *World of*
25 *Warcraft*, players control a character within a persistent game world, exploring the
26 landscape, fighting monsters, and performing quests on behalf of computer-controlled
27 characters. The game rewards success through money, items, and experience, which
28 in turn allow players to improve in skill and power. In addition, players may opt to

1 take part in battles against other players, including both duels and fights against player
2 characters allied with an enemy faction. When Blizzard's customers purchase the
3 *World of Warcraft* software, each customer must to assent to Blizzard's End User
4 License Agreement ("EULA") and Terms of Use ("TOU") in the form of a
5 "clickwrap" agreement. Both the EULA and the TOU contain language that restricts
6 customers from using third-party software that interacts with *World of Warcraft*.

7 In December 2004, third-party defendant Michael Donnelly ("Donnelly")
8 formed MDY Enterprises LLC ("MDY"). MDY's primary business is the
9 development of computer software. Donnelly is MDY's sole and managing member.

10 In early 2005, MDY developed a software program under the name
11 *WoWGlider*. *WoWGlider* is a software program designed to interact with the *World of*
12 *Warcraft*. *WoWGlider* assists a player with in-game tasks in *World of Warcraft* such
13 as advancing levels or completing repetitive events. But, the program does not give a
14 player any advantage over any other player in *World of Warcraft*. *WowGlider* simply
15 allows the computer to play the game while the user is away from the computer. Only
16 individuals who are licensed to play *World of Warcraft* purchase *WoWGlider*. MDY
17 began marketing and distributing *WoWGlider* in May, 2005 through its Internet
18 website.

19 On the morning of October 25, 2006, representatives from the defendants and
20 their counsel appeared uninvited at third-party defendant Michael Donnelly's home.
21 They presented Donnelly a copy of a complaint against him and MDY and threatened
22 to file it in U.S. District Court later that day in California if: (1) Donnelly or MDY did
23 not immediately cease and desist selling the *WoWGlider* software, and (2) agree to pay
24 back all of the profits earned from sales of the *WoWGlider* software. Based upon these
25 threats, MDY filed the complaint in this case later that day.

26 MDY seeks a declaratory judgment from this Court that the creation and sale of
27 the *WoWGlider* software, neither violates any provision of the U.S. Copyright laws
28 under 17 U.S.C. § 106 et seq or § 1202 et seq, nor has MDY or Donnelly tortiously

1 interfered with any contractual agreements that the defendants may have with third
2 parties.

3 **Claims against Donnelly:** MDY and Donnelly have several defenses to the
4 defendants' counterclaims and third-party claims. First, MDY and Donnelly are not
5 alter-egos. Donnelly is merely a member of MDY. The two entities maintain separate
6 identities under the law and MDY complies with all corporate formalities. MDY is the
7 sole entity responsible for making and selling *WoWGlider*. Therefore, the defendants'
8 fail to state claims against Donnelly upon which relief can be granted. As to the merits
9 of the defendants' claims against MDY, they are as follows:

10 **Contributory and Vicarious Copyright Infringement:** Proof of copyright
11 infringement requires that MDY contributed to making, or vicariously made
12 unauthorized copies of *World of Warcraft*.¹ Under no circumstances during the
13 development of the *WoWGlider* software has MDY made or distributed any copies of,
14 nor has it made any derivative works of the *World of Warcraft* software. Although
15 MDY's *WoWGlider* software interacts with *World of Warcraft*, *WoWGlider* makes no
16 unauthorized copies of *World of Warcraft*. In fact, because MDY contends certain
17 terms in the defendants' EULA and TOS are unenforceable, MDY contests the very
18 notion that a copy of *World of Warcraft* becomes unauthorized simply by installing
19 *WoWGlider* on a person's computer. Thus, MDY is not liable for copyright
20 infringement.

21 **Digital Millennium Copyright Act:** Violation of the DMCA, occurs when
22 there is a causal connection between the circumvention of a security measure and an
23 infringement of the defendants' copyright. 17 U.S.C. § 1201; *Storage Tech. v. Cus.*
24 *Hardwr Engin.*, 421 F.3d 1307, 1319 (Fed. Cir. 2005). Although MDY's *WoWGlider*

25
26
27
28 ¹ Metro-Goldwyn-Mayer v. Grokster Ltd., 380 F.3d 1154, 1160; 1164 (9th Cir. 2004).

1 is designed to avoid detection of the defendants' *Warden* program in *World of*
2 *Warcraft*, it does so solely for the purpose of interacting with *World of Warcraft* and
3 not for making unauthorized copies of the defendants' software. Furthermore, only
4 someone who has purchased a legitimate license of *World of Warcraft* purchases
5 MDY's *WoWGlider*.

6 Although defendants' EULA and TOU prohibit circumvention of the *Warden*
7 software for interoperability purposes, such restrictions in the defendants' agreements
8 constitute copyright misuse. And such restrictions are preempted by the
9 interoperability exception in the DMCA. 17 U.S.C. § 1201(f). Thus, because the
10 defendants' *Warden* software attempts to preclude third-parties from independently
11 writing software that lawfully interacts with *World of Warcraft*, the defendants have
12 misused their copyright.

13 Additionally, the *Warden* software is not a security measure that protects
14 against unauthorized copying of *World of Warcraft*. It is a program that detects third-
15 party software interacts with *World of Warcraft*. In fact, the defendants state as much
16 in their TOS:

17 "E. In order to assist Blizzard Entertainment to police users who may
18 use "hacks," or "cheats" to gain an advantage over other players, you
19 acknowledge that Blizzard Entertainment shall have the right to obtain
20 certain information from your computer and its component parts,
21 including your computer's random access memory, video card, central
22 processing unit, and storage devices. This information will only be used
23 for the purpose of identifying "cheaters," and for no other reason."

24 Thus, the defendants' misapply the DMCA by alleging MDY avoids detection
25 of *Warden*.

26 Therefore, the defendants' various misuses of their copyright is a defense to the
27 defendants' claims against MDY and Donnelly for violating the DMCA (17 U.S.C. §
28 1201 et seq.) and infringing the defendants' copyright either contributorily or
vicariously through third-parties.

1 **Tortious Interference With Contract:** The defendants' claims for tortious
2 interference with third-party contracts requires that MDY acted with improper means
3 and motive, without economic justification, and that MDY damaged the defendants.
4 *Wagenseller v. Scottsdale Memorial Hosp.*, 147 Ariz. 370, 386 (1985).

5 MDY did not act with improper motive to cause any breach of the defendants'
6 EULA or TOU agreements. MDY's only motive was to earn a profit by selling
7 *WoWGliders*. Although MDY was aware of the terms in the defendants' agreements
8 prohibiting interaction between *World of Warcraft* and third-party software, MDY
9 alleges that these terms were overreaching and unenforceable due to copyright misuse.
10 The unenforceability of the EULA and TOU in addition to MDY's desire to earn
11 profits without motive to interfere with the defendants' contracts justifies MDY's
12 actions.

13 Even more basic is the defense that the defendants must have been damaged.
14 MDY's software has not damaged the defendants monetarily, nor has it damaged the
15 reputation or game play of *World of Warcraft*. In fact, any monetary damages suffered
16 by the defendants were due to their own acts of banning customers when they learned
17 a customer was using *WoWGliders* software. MDY will demonstrate that not only have
18 the defendants seen rapid growth in the number of *World of Warcraft* purchases
19 despite *WoWGliders* sales, but it will prove that *World of Warcraft* customers do not
20 stop playing the game due to any use of *WoWGliders*. This is true because
21 *WoWGliders* does not affect the *World of Warcraft* game play environment.
22 *WoWGliders* give no tactical advantage to players of *World of Warcraft*. Thus, MDY
23 has not tortiously interfered with any third-party contracts.

24 **Unfair Competition and Unjust Enrichment:** As to the defendants' claims for
25 unfair competition and unjust enrichment, the defendants again refer the Court to the
26 above-stated defenses. Specifically as to the unjust enrichment claim, MDY has
27 earned its profits through lawful development and sales of its *WoWGliders* software.
28

1 As to MDY and Donnelly's remaining affirmative defenses, in particular
2 affirmative defenses 1-6 that include waiver, acquiescence, laches, estoppel, unclean
3 hands, and the defendants filing its claims outside of the pertinent statutes of
4 limitations, MDY and Donnelly will require confirmation of facts to support such
5 defenses through the discovery process.

6
7 **B. Defendants' Statement**

8 Defendants and Counter-claimants Blizzard Entertainment and Vivendi Games,
9 Inc. (collectively "Blizzard") seek injunctive relief, money damages, and related relief
10 against counter-claim and third-party defendants MDY Industries LLC ("MDY") and
11 Michael Donnelly (collectively, "MDY Parties") based on the MDY Parties'
12 development, promotion and distribution of a software program known as
13 "WoWGlider." Blizzard is the publisher and copyright owner of World of Warcraft®
14 ("WoW"), the world's most popular Massively Multiplayer Online Roleplaying Game
15 ("MMORPG"), a genre of computer game in which large numbers of players from
16 around the globe interact with each other as they assume the roles of different
17 characters within the game to explore, adventure and quest across WoW's vast online
18 world. Like other MMORPG games, WoW derives revenue based on a subscription
19 fee model. In order to experience the WoW gaming environment, consumers must
20 obtain a legitimate version of the WoW game client, and then make periodic payments
21 for a subscription permitting them to continue accessing the authorized WoW servers
22 and playing in the authorized WoW gaming environment.

23 A central objective for WoW players is to advance their characters through the
24 various levels recognized in the game, often working in groups with other players, and
25 thereby access new content as levels increase. As players advance through the game,
26 they earn in-game currency and assets (e.g., armor, weapons, jewels, etc.) and develop
27 the abilities of their characters. Leveling characters in WoW requires an investment of
28 time and effort playing the game.

1 The richness of the WoW gaming experience depends on Blizzard’s ability to
2 ensure that all players are provided a level playing field and that the balance of the in-
3 game economy is preserved. When a player’s investment of personal time and effort
4 building a character can be replicated by others in a fraction of the time through
5 automated software, the incentives to continue playing the game are severely
6 diminished. Consequently, it is crucial that Blizzard be able to block the use of
7 automated software programs that destroys the integrity of the WoW gaming
8 experience. For that reason, Blizzard has instituted a combination of contractual and
9 technical measures designed to protect the integrity of the WoW gaming experience
10 by, among other things, preventing the use of such automated software. WoW
11 players’ use of the software is subject to both the WoW End User License Agreement
12 (“EULA”) and Terms of Use (“TOU”). The EULA and TOU are legally binding
13 contracts that govern the authorized use of the software. Those contracts forbid the
14 “use [of] cheats, bots, ‘mods’, and/or hacks, or any other third-party software designed
15 to modify the World of Warcraft® experience...” and specifically the “use [of] any
16 third-party software that intercepts, ‘mines’, or otherwise collects information from or
17 through the Program or the Service.” TOU 4(B)(ii) and (iii). Additionally, Blizzard
18 employs technical security measures designed to prevent users from making
19 unauthorized copies of WoW in conjunction with such a prohibited third-party
20 program.

21
22 WoWGlider is a software program designed specifically to exploit the WoW
23 code and automate gameplay so that a user can artificially increase their standing and
24 level in the WoW game without actual human participation. WoWGlider users are
25 able to advance their characters through the WoW universe, and acquire valuable in-
26 game currency and assets, at a significantly faster rate than legitimate users.
27 WoWGlider thus gives its users an unfair advantage over legitimate players and
28 thereby alters the balance of play and undermines the in-game economy. Moreover,

1 despite Blizzard's determined efforts to block WoWGlider users' access to WoW, the
2 MDY Parties have designed and frequently updated WoWGlider to ensure that it has
3 the ability to circumvent detection by Blizzard's security measures and enable users to
4 launch unauthorized copies of WoW running in conjunction with WoWGlider.

5 The MDY Parties designed and market WoWGlider with the knowledge that its
6 use is prohibited by the Blizzard EULA and TOU, and that Blizzard's technical
7 measures are designed to preclude it. The MDY parties are also fully aware that
8 WoWGlider users rely on the program to acquire large quantities of WoW virtual
9 property with little effort, and then sell that virtual property for real money in
10 unauthorized third-party exchanges. These sales have a ruinous effect on WoW's in-
11 game economy. The MDY Parties' sale of WoWGlider has caused a loss of goodwill
12 among WoW players by devaluing the game experience, forced Blizzard to divert
13 resources to preventing access to WoWGlider users, and decreased Blizzard's
14 revenues from WoW players who stop playing out of frustration with the devalued
15 game and from WoWGlider users that Blizzard is forced to terminate to protect the
16 overall integrity of the game. Blizzard will seek to demonstrate that MDY is a limited
17 liability company formed by Donnelly to serve as his alter ego and insulate Donnelly
18 from the liability Donnelly understood he risked from the distribution of WoWGlider,
19 and therefore that Donnelly is personally liable for his development and distribution of
20 WoWGlider.

21 The MDY Parties' distribution of WoWGlider forms the basis for several
22 claims by Blizzard.

23 Contributory and Vicarious Copyright Infringement. Blizzard owns valid
24 copyrights in the World of Warcraft® software, and thus owns the exclusive right to
25 authorize who may make copies of that work. Users of WoW are licensees who are
26 permitted to make copies of WoW so long as they comply with the EULA and TOU.
27 The EULA and TOU prohibit users from running WoW in conjunction with
28 unauthorized third-party software such as WoWGlider, and thus when users launch

1 copies of WoW in their computer's random access memory in connection with
2 WoWGlider, those unauthorized copies infringe Blizzard's copyrights. 17 U.S.C. §
3 501. The MDY parties have knowledge of the infringements committed by
4 WoWGlider users, and their promotion of WoWGlider materially contributes to those
5 infringements. The MDY parties also have the right and ability to control whether
6 WoWGlider users may continue to infringe by deactivating the unique product key
7 associated with each WoWGlider user's account, and the MDY Parties derive a direct
8 financial benefit from their sale of WoWGlider. *A&M Records, Inc. v. Napster, Inc.*,
9 239 F.3d 1004, 1019 (9th Cir. 2001). Blizzard is entitled to statutory damages for each
10 of the underlying infringements that the MDY parties induced.

11 Digital Millennium Copyright Act. Blizzard's WoW software incorporates a
12 component known as "Warden" that serves as a technological measure that effectively
13 protects Blizzard's rights as a copyright owner by restricting users' ability to make
14 unauthorized copies of WoW. WoWGlider is specifically designed to avoid or bypass
15 Warden without Blizzard's authorization. The WoWGlider FAQ on MDY's website
16 explicitly recognizes this function. The MDY Parties created, promote and sell
17 WoWGlider knowing that the program is primarily produced for the purpose of, has
18 only limited commercially significant use other than, and is marketed by the MDY
19 Parties with their knowledge for use in, circumventing Blizzard's technical restrictions
20 on the making of unauthorized copies of WoW, all in violation of 17 U.S.C. § 1201, et
21 seq.

22 Tortious Interference with Contracts. The EULA and TOU are valid,
23 enforceable contracts between Blizzard and its WoW users. The MDY parties have
24 acknowledged their awareness of these contracts, and their knowledge that use of
25 WoWGlider constitutes a breach of them. The MDY Parties have nonetheless
26 willfully promoted and encouraged the use of WoWGlider in breach of the EULA and
27 TOU. The MDY parties sole motive in knowingly inducing these breaches was its
28 own profit at Blizzard's expense. As a result of MDY's actions, Blizzard has suffered

1 damage in an amount to be proven at trial, including but not limited to loss of goodwill
2 among WoW users, diversion of Blizzard resources to prevent access by WoWGliders
3 users, loss of revenue from users leaving the WoW game as a result of the diminished
4 game experience, loss of revenue from terminated WoWGliders users, and decreased
5 subscription revenue from undetected WoWGliders users. *Wallace v. Casa Grande*
6 *Union High Sch. Dist. No. 82 Bd. of Governors*, 184 Ariz. 419, 427, 909 P.2d 486, 494
7 (App. 1995).

8 Unfair Competition and Unjust Enrichment. Use of WoWGliders impoverishes
9 Blizzard by altering the game balance in WoW, damaging Blizzard's reputation with
10 players dissatisfied with the pervasiveness of cheaters and the effect of cheating on the
11 game, and depriving Blizzard of monthly membership revenue by enabling users to
12 progress in the game more quickly than legitimate players. The MDY Parties are
13 aware of the injurious effects their program has on Blizzard, and nonetheless have
14 sought to profit from the sale of the program. Blizzard is thus entitled to the equitable
15 disgorgement of MDY's unjustly received revenues from the sale of WoWGliders.

16 Finally, none of the defenses asserted in the MDY Parties' Answer bars
17 Blizzard's claims. Blizzard will demonstrate in discovery that it comes to this matter
18 with clean hands, and that it neither waived its claims nor acquiesced in the MDY
19 Parties' actions, but in fact expended considerable resources both attempting to
20 preclude the use of WoWGliders through technical means and attempting to identify
21 Donnelly as the source of WoWGliders prior to seeking legal redress.

22 23 **III. JURISDICTIONAL BASIS OF THE CASE**

24 The jurisdiction of the case is based upon federal question jurisdiction (28
25 U.S.C. §§ 1331 and 1338) for trademark claims pursuant to 15 U.S.C. §
26 1125(a), copyright infringement and alleged violation of the Digital Millennium
27 Copyright Act pursuant to 17 U.S.C. § 101 et seq.

28

1 **IV. PARTIES REMAINING TO BE SERVED**

2 All parties have been served in this case.
3

4 **V. ADDITIONAL PARTIES TO THE CASE**

5 The parties do not anticipate adding additional parties to the case.
6

7 **VI. A LISTING OF CONTEMPLATED MOTIONS AND ISSUES TO BE**
8 **DECIDED BY THESE MOTIONS.**

9 Other than dispositive motions, neither the plaintiff and third-party defendant
10 nor the defendants and counter-claimants contemplate filing any additional motions at
11 this time.
12

13 **VII. SUITABILITY FOR REFERENCE TO A MAGISTRATE JUDGE**

14 The parties do not believe this case is suitable for a magistrate judge. The case
15 has already been removed from the magistrate judge originally assigned to the case.
16

17 **VIII. STATUS OF RELATED CASES PENDING BEFORE OTHER COURTS**
18 **OR OTHER JUDGES IN THIS COURT**

19 There are no other related cases pending before other courts or other judges in
20 this court.
21

22 **IX. INITIAL DISCLOSURES**

23 The parties exchanged initial disclosures on April 2, 2007.
24
25
26
27
28

1 **X. ANY ISSUES RELATING TO DISCLOSURE OF DISCOVERY OF**
2 **ELECTRONICALLY STORED INFORMATION, INCLUDING THE**
3 **FORM OR FORMS IN WHICH IT SHOULD BE PRODUCED**

4 At this time, there are no issues relating to the disclosure of electronic
5 discovery. The parties have agreed to exchange discovery, including electronic
6 discovery either via electronic mail, compact disc, or DVD.

7 **XI. ISSUES PERTAINING TO PRIVILEGE OR WORK PRODUCT**

8 At this time, there are no issues pertaining to privilege or work product.
9

10 **XII. DISCOVERY ISSUES**

11 **A. The Extent, Nature, and Location of Discovery Anticipated by the**
12 **Parties;**

13
14 The plaintiff and third-party defendant anticipate that discovery will be
15 conducted in phases. Initially, the plaintiff and third party defendant will serve written
16 discovery upon the defendants in the form of requests for interrogatories, document
17 production requests and admissions. Upon receipt of the responses to the written
18 discovery requests, depositions of the defendants' fact witnesses will take place.
19 Depending upon what is disclosed, the plaintiff and third-party defendant may issue
20 subpoenas of other non-party fact witnesses. It is understood that most of the
21 discovery from the defendants is located at the defendants' facility in Southern
22 California.

23 Defendants intend to issue interrogatories, requests for production of documents
24 and requests for admission, followed by the taking of depositions of fact witnesses of
25 Plaintiff, including Michael Donnelly. Blizzard anticipates serving third-party
26 subpoenas for documents and possibly depositions. Blizzard anticipates that most
27 discovery of the MDY Parties will take place in the District of Arizona.
28

1 **B. Suggested Changes, If Any, To the Discovery Limitations Imposed**
2 **By the Federal Rules of Civil Procedure and Local Rule of Civil**
3 **Procedure 16.2**

4 At this time, the parties do not anticipate the need to modify the discovery rules
5 pursuant to Rule 16.2 of the F.R.C.P.

6 **C. The Number of Hours Permitted For Each Deposition, Unless**
7 **Extended By Agreement of the Parties.**

8 The parties have agreed that each deposition shall last no longer than eight (8)
9 hours.

10 **XIII. PROPOSED SPECIFIC DATES FOR:**

11 **A. Fact Discovery**

12 The parties propose a fact-discovery cutoff date of **March 7, 2008**, by which all
13 fact-discovery is expected to be completed.

14 **B. Dates For Full and Complete Expert Disclosures under Federal Rule**
15 **of Civil Procedure 26(A)(2)(A)-(C)**

16 The parties propose that full and complete expert disclosures shall be served by
17 no later than **December 7, 2007**.

18 **C. Deadline for Completion of All Expert Depositions**

19 The parties propose that the deadline for a completion of all expert depositions
20 shall be **February 1, 2008**.

21 **D. Deadline for Filing Dispositive Motions**

22 The parties propose that the deadline for filing dispositive motions shall be
23 **April 18, 2008**.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E. A Date By Which The Parties Shall Have Engaged In Good Faith Settlement Talks

The parties propose that good faith settlement talks will occur by no later than **March 21, 2008.**

XIV. JURY TRIAL

The plaintiff and third-party defendant have requested a jury trial.

XV. ESTIMATED LENGTH OF TRIAL AND ANY SUGGESTIONS FOR SHORTENING THE TRIAL

The parties anticipate the trial to last five (5) days. As this is a relatively complex case, the parties have no suggestions for shortening the trial at this time.

XVI. THE PROSPECTS FOR SETTLEMENT INCLUDING ANY REQUEST OF THE COURT FOR ASSISTANCE IN SETTLEMENT EFFORTS

The parties do not believe the prospects for settling the case are good at this time. The parties engaged in good faith settlement discussions shortly before the complaint was filed and for several weeks thereafter. If the parties wish to address settlement in the future, the parties would welcome the assistance of the Court.

XVII. ANY OTHER MATTERS THAT WILL AID THE COURT

The parties are unaware of any other matters that will aid the Court at this time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated this 27th day of March, 2007.
Venable, Campillo, Logan & Meaney P.C.

Bv S/ Lance C. Venable

Lance C. Venable, Esq.
Joseph R. Meaney, Esq.
1938 East Osborn Rd.
Phoenix, Arizona 85016
Tel: 602-631-9100
Fax: 602-631-4529

Bv S/ Scott Stein

Sonnenschein, Nath & Rosenthal LLP
2398 East Camelback Road
Suite 1060
Phoenix, AZ 85016-9009
Facsimile (602) 508-3914
Telephone (602) 508-3900

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Name	Email Address

I hereby certify that on _____, I served the attached document by FIRST CLASS MAIL on the following, who are not registered participants of the CM/ECF System:

Name	Physical or Email Address

s/ Lance C. Venable