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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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8 FCC, Inc., an Arizona foreign corporation,) No. CV-07-2111-PHX-LOA
9 of Franchise Capital Corporation, a))
10 Barbados corporation,)

No. CV-07-2111-PHX-LOA

**NOTICE OF ASSIGNMENT
AND ORDER**

11 Plaintiff,

12 vs.

13 Andrew P. Palmer an individual, Andrew))
14 P. Palmer and his spouse, Franchise))
15 Institute, Inc., a Delaware corporation,))
16 TES Franchising L.L.C., a Connecticut))
17 limited liability company , and Terry O.))
18 Powell, an individual, and Terry O. Powell))
19 and Karen Powell, his spouse.)

20 Defendants.)

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22 Pursuant to Local Rule ("LRCiv") 3.8(a), Rules of Practice, effective
23 December 1, 2006, all civil cases are, and will be, randomly assigned to a U.S. district
24 judge or to a U.S. magistrate judge. This matter has been assigned to the undersigned U.S.
25 Magistrate Judge.

26 As a result of the aforesaid Local Rule and assignment, if all parties consent
27 in writing, the case will remain with the assigned Magistrate Judge pursuant to 28 U.S.C.
28 636(c)(1) for all purposes, including trial and final entry of judgment. If any party
chooses the district judge option, the case will be randomly reassigned to a U.S. district
judge. To either consent to the assigned magistrate judge or to elect to have the case
heard before a district judge, the appropriate section of the form, entitled Consent To

1 Exercise Of Jurisdiction By United States Magistrate Judge¹, must be completed, signed
2 and filed. The party filing the case or removing it to this Court is responsible for serving
3 all parties with the consent forms. Each party must file a completed consent form and
4 certificate of service with the Clerk of the Court not later than 20 days after entry of
5 appearance, and must serve a copy by mail or hand delivery upon all parties of record in
6 the case.

7 Any party is free to withhold consent to magistrate judge jurisdiction
8 without adverse consequences. 28 U.S.C. 636(c)(2); Rule 73(b), Fed.R.Civ.P.; *Anderson*
9 *v. Woodcreek Venture Ltd.*, 351 F.3d 911, 913-14 (9th Cir. 2003) (pointing out that
10 consent is the "touchstone of magistrate judge jurisdiction" under 28 U.S.C. §636(c). "A
11 party to a federal civil case has, subject to some exceptions, a constitutional right to
12 proceed before an Article III judge." *Dixon v. Ylst*, 990 F.2d 478, 479 (9th Cir. 1993)
13 (citing *Pacemaker Diagnostic Clinic of Am. Inc. v. Instromedix, Inc.*, 725 F.2d 537, 541
14 (9th Cir. 1984) (*en banc*)).

15 A review of the Court's file indicates that Plaintiff's Complaint was filed
16 on October 30, 2007. Plaintiff shall have until November 21, 2007 within which to make
17 its selection to either consent to magistrate judge jurisdiction or elect to proceed before a
18 United States district judge. It is unknown if a copy of the appropriate consent form
19 electronically transmitted to Plaintiff's counsel on October 31, 2007 by the Clerk's office
20 was served with the Complaint per the written instructions from the Clerk.

21 Accordingly,
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25 ¹The consent/election form may be obtained directly from the Clerk of the Court or
26 by accessing the District of Arizona's web site at www.azd.uscourts.gov. To find the
27 consent/election form on the District's web site, click on "Local Rules" at the top of the page,
28 then click on "Forms" on the left side of the page and then click on and print the appropriate
form.

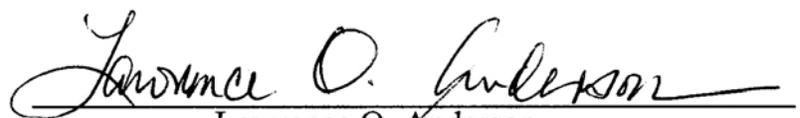
1 **IT IS ORDERED** that Plaintiff shall file on or before **November 21,**
2 **2007** its written election to either consent to magistrate judge jurisdiction or elect to
3 proceed before a United States district judge.

4 **IT IS FURTHER ORDERED** that Plaintiff shall serve upon the
5 Defendants the appropriate consent form provided at the time of the filing of its
6 Complaint at the time of service of its Complaint upon the Defendants.

7 **IT IS FURTHER ORDERED** that Defendants shall either consent to
8 magistrate judge jurisdiction or elect to proceed before a district judge within twenty (20)
9 days of each Defendant's formal appearance herein.

10 **IT IS FURTHER ORDERED** that counsel and any party, if
11 unrepresented, shall hereinafter comply with the Rules of Practice for the United States
12 District Court for the District of Arizona, as amended on December 1, 2006. The
13 District's Rules of Practice may be found on the District Court's internet web page at
14 www.azd.uscourts.gov/. All other rules may be found as www.uscourts.gov/rules/. The
15 fact that a party is acting pro se does not discharge this party's duties to "abide by the
16 rules of the court in which he litigates." *Carter v. Commissioner of Internal Revenue*, 784
17 F.2d 1006, 1008 (9th Cir. 1986).

18 DATED this 1st day of November, 2007.

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21 Lawrence O. Anderson
22 United States Magistrate Judge
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