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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
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BY _____

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8 and VENKATESH SRINIVASAN

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 WARNER BROS. ENTERTAINMENT
INC., COLUMBIA PICTURES
14 INDUSTRIES, INC., DISNEY
ENTERPRISES, INC., PARAMOUNT
15 PICTURES CORPORATION,
TWENTIETH CENTURY FOX FILM
16 CORPORATION, and UNIVERSAL
CITY STUDIOS PRODUCTIONS LLLP,

17 Plaintiff,

18 v.

19 WTV SYSTEMS, INC. and WTV
20 SYSTEMS, LLC d/b/a ZEDIVA, and
21 VENKATESH SRINIVASAN,

22 Defendants.

Case No. CV 11-02817-JFW-E

**DEFENDANTS' ANSWER AND
COUNTERCLAIM**

DEMAND FOR JURY TRIAL

Ctrm: 16
Judge: John F. Walter

1 WTV SYSTEMS, INC. and WTV
2 SYSTEMS, LLC d/b/a ZEDIVA, and
3 VENKATESH SRINIVASAN,

4 Counterclaimants,

5 v.

6 WARNER BROS. ENTERTAINMENT
7 INC., COLUMBIA PICTURES
8 INDUSTRIES, INC., DISNEY
9 ENTERPRISES, INC., PARAMOUNT
10 PICTURES CORPORATION,
11 TWENTIETH CENTURY FOX FILM
12 CORPORATION, and UNIVERSAL
13 CITY STUDIOS PRODUCTIONS LLLP,

14 Counterdefendants.

1 Defendants WTV Systems, Inc. f/k/a WTV Systems, LLC ("Zediva"), and
2 Venkatesh Srinivasan (collectively, "Defendants") respond as follows to the
3 Complaint for Copyright Infringement ("Complaint") filed by plaintiffs Warner
4 Bros. Entertainment Inc., Columbia Pictures Industries, Inc., Disney Enterprises,
5 Inc., Paramount Pictures Corporation, Twentieth Century Fox Film Corporation,
6 and Universal City Studios Productions LLLP ("Plaintiffs").

7 **NATURE OF THE ACTION**

8 1. Defendants admit that WTV Systems, Inc. operates a DVD rental
9 service using the trademark "Zediva." Defendants admit that the web page
10 <http://www.zediva.com/about> contains the sentence, "We're a small team of people
11 working hard to bring new release and popular movies to the Internet; at possibly
12 the lowest prices around." Defendants admit that the web page
13 <http://www.zediva.com/faq> contains the sentence, "Using Zediva you can rent and
14 instantly watch new movies much earlier (often several weeks or months) than
15 either Netflix or Redbox." Defendants deny the remaining allegations of this
16 paragraph.

17 2. The allegations of the first, second, third, and fifth sentences of this
18 paragraph constitute legal conclusions to which no response is required; to the
19 extent a response is deemed necessary, those allegations are denied. Defendants
20 are without knowledge or information sufficient to admit or deny the allegations of
21 the fourth sentence of this paragraph, and on that basis deny them.

22 3. Defendants admit that the web page <http://www.zediva.com/faq> states,
23 "When you rent a movie on Zediva, you are renting both a DVD and DVD Player
24 in our data center. During the period of the rental, the DVD and the DVD Player
25 can only be used by you." Defendants admit that the document located at
26 <http://www.zediva.com/ZedivaFCCLetter-12102010.pdf> contains the following
27 text:
28

1 Zediva enables its users to rent DVDs, and watch their
2 rentals instantly on their computer, without needing to
3 pick up a physical copy of the DVD. Just like with
4 Sony's LocationFree[®], or Sling Media's Slingbox[®]
5 devices, our technology allows a user to remotely
6 "PlaceShift" their media to their viewing location over
7 the Internet using streaming technologies.

8 Defendants admit that plaintiffs have received full value for the genuine, lawfully-
9 made DVDs that Zediva has purchased, and that no further compensation is
10 necessary for the uses Zediva makes of those DVDs. Defendants deny any
11 remaining allegations of this paragraph.

12 4. Defendants deny the allegations of the first three sentences of this
13 paragraph. Defendants admit that the document located at
14 <http://www.zediva.com/ZedivaFCCLetter-12102010.pdf> contains the following
15 text:

16 Zediva enables its users to rent DVDs, and watch their
17 rentals instantly on their computer, without needing to
18 pick up a physical copy of the DVD. Just like with
19 Sony's LocationFree[®], or Sling Media's Slingbox[®]
20 devices, our technology allows a user to remotely
21 "PlaceShift" their media to their viewing location over
22 the Internet using streaming technologies.

23 The remaining allegations of this paragraph constitute legal conclusions to which
24 no response is required; to the extent a response is deemed necessary, those
25 allegations are denied.

26 5. The allegations of this paragraph constitute legal conclusions to which
27 no response is required; to the extent a response is deemed necessary, those
28 allegations are denied.

6. The allegations of this paragraph constitute legal conclusions to which
no response is required; to the extent a response is deemed necessary, those
allegations are denied.

1 **THE PARTIES**

2 7. Defendants are without knowledge or information sufficient to admit
3 or deny the allegations of this paragraph, and on that basis deny them.

4 8. Defendants are without knowledge or information sufficient to admit
5 or deny the allegations of this paragraph, and on that basis deny them.

6 9. Defendants are without knowledge or information sufficient to admit
7 or deny the allegations of this paragraph, and on that basis deny them.

8 10. Defendants are without knowledge or information sufficient to admit
9 or deny the allegations of this paragraph, and on that basis deny them.

10 11. Defendants are without knowledge or information sufficient to admit
11 or deny the allegations of this paragraph, and on that basis deny them.

12 12. Defendants are without knowledge or information sufficient to admit
13 or deny the allegations of this paragraph, and on that basis deny them.

14 13. Defendants are without knowledge or information sufficient to admit
15 or deny the allegations of this paragraph, and on that basis deny them.

16 14. Defendants admit that Defendant WTV Systems, Inc., formerly
17 known as WTV Systems, LLC, is incorporated under the laws of the State of
18 Delaware with its principal place of business at 1549 Bedford Avenue, Sunnyvale,
19 California 94807. Defendants deny any remaining allegations of this paragraph.

20 15. Defendants admit that Defendant WTV Systems, Inc., formerly
21 known as WTV Systems, LLC, is incorporated under the laws of the State of
22 Delaware with its principal place of business at 1549 Bedford Avenue, Sunnyvale,
23 California 94807. Defendants deny any remaining allegations of this paragraph.

24 16. Defendants admit that Defendant Venkatesh Srinivasan resides at
25 1549 Bedford Avenue, Sunnyvale, California 94807.

1 24. Defendants admit that the web page cited in footnote 7 of the
2 Complaint includes the text, "Zediva lets you watch new movies online. Just pick
3 the movie you want to watch and enjoy." Defendants admit that the web page
4 [http://alltopstartups.com/2011/03/23/zediva-is-the-new-netflix-with-a-](http://alltopstartups.com/2011/03/23/zediva-is-the-new-netflix-with-a-controversial-twist/)
5 [controversial-twist/](http://alltopstartups.com/2011/03/23/zediva-is-the-new-netflix-with-a-controversial-twist/) contains the text, "'Our goal is to have the top 100 movies of
6 the last 12 months at any time,' said Venky Srinivasan, co-founder and CEO."
7 Defendants admit that the web page [http://www.xconomy.com/san-](http://www.xconomy.com/san-francisco/2011/03/16/zediva-launches-online-dvd-viewing/)
8 [francisco/2011/03/16/zediva-launches-online-dvd-viewing/](http://www.xconomy.com/san-francisco/2011/03/16/zediva-launches-online-dvd-viewing/) contains the text,
9 "'Zediva is designed to allow anyone to enjoy new releases at an affordable price
10 point.' Zediva founder and CEO Venky Srinivasan said in a statement."
11 Defendants deny the remaining allegations of this paragraph.

12 25. Defendants admit that the screenshots reproduced in this paragraph of
13 the Complaint depict the cited Zediva web pages as of some date in the past, but
14 Defendants deny that they depict the cited Zediva web pages as of April 1, 2011.
15 Defendants deny the remaining allegations of this paragraph.

16 26. Defendants admit that the web page <http://www.zediva.com/faq>
17 contains the text, "Using Zediva you can rent and instantly watch new movies
18 much earlier (often several weeks or months) than either Netflix or Redbox."
19 Defendants admit that Zediva currently charges rental fees of as little as \$1 per
20 rental. Defendants are without knowledge or information sufficient to admit or
21 deny the remaining allegations of this paragraph, and on that basis deny them.

22 27. Defendants admit that the web page
23 [http://techland.time.com/2011/03/16/zedivas-movie-rentals-are-50-cheaper-than-](http://techland.time.com/2011/03/16/zedivas-movie-rentals-are-50-cheaper-than-itunes/)
24 [itunes/](http://techland.time.com/2011/03/16/zedivas-movie-rentals-are-50-cheaper-than-itunes/) contains the text, "Zediva shaves down its pricing by cutting movie studios
25 out of the equation. Instead of negotiating streaming rights, the company buys up
26 DVDs at retail and uses place-shifting technology to stream the video out of a
27 Silicon Valley data center. Think Slingbox on a massive scale, but with DVD
28

1 players instead of cable boxes.” Defendants deny any remaining allegations of this
2 paragraph.

3 28. Denied.

4 29. Denied.

5 30. Defendants admit that the web page <http://www.zediva.com/faq>
6 contains the following text:

7
8 When you rent a movie from Zediva, you have up to 14
9 days to complete watching the movie. Each time you rent
10 the movie, you receive control of that DVD for 4 hours.

11
12 If you get interrupted while watching a movie or don't
13 want to watch it all at once, you can return to Zediva and
14 rent the movie again without additional charge for up to
15 14 days. Just return to the movie page and click on
16 "Rent". No movie credits will be deducted from your
17 account after the first rental -- during the free re-rental
18 period.

19
20 A special note on long pauses: Your DVD will be
21 automatically returned if you leave it on pause for an
22 hour or more. This is out of consideration to other users
23 who may be waiting to rent the DVD. If your rental is
24 auto-returned, you can re-rent the disc anytime within the
25 free re-rental period (subject to availability).

26 Defendants deny any remaining allegations of this paragraph.

27 31. Defendants admit that, like any business, Zediva hopes to expand.

28 Defendants admit that the web page <http://www.zediva.com/faq> contains the text,

“We currently support PC, MAC, Google TV and Android devices with Android

2.1 or later. We are working hard to add support for iPhone/iPad and game

consoles like Xbox, PS3.” Defendants admit that the web page

<http://www.zediva.com/about> contains the text, “We hope to quickly expand the

number of platforms and devices we can serve in 2011.” Defendants deny the

remaining allegations of this paragraph.

32. Defendants admit that Venkatesh Srinivasan is Founder and CEO of
Zediva. Defendants deny the remaining allegations of this paragraph.

1 33. Denied.

2 34. Defendants admit that the web page

3 <http://zedivamovies.blogspot.com/2011/03/genesis-of-zediva.html> is a blog post
4 which lists Srinivasan as its author and contains the following text:

5 While working on a project with Michel Billard (co-
6 founder of Zediva), I wondered aloud: "How neat it
7 would be if there were an escrow service I could send my
8 rented DVDs to and watch them remotely over the
9 internet". (Yes, I think I actually used the word "neat").
The rest as they say is history. We set out to build that
service - and with a few tweaks here, and a modification
there, Zediva was born.

10 The escrow service itself turned out not to be such a great
11 idea. The handling costs, it seemed, would be unwieldy --
12 and the customer proposition seemed too complicated.
Instead we found the economics of renting a DVD
directly were far more compelling.

13 Defendants admit that Srinivasan is one of four named inventors on a patent
14 application titled, "Remote Rental of Digital Content Peripheral Storage Entities,"
15 United States Patent Application No. US2010/0125529 A1, filed November 18,
16 2009 and published May 20, 2010. Defendants admit that WTV Systems, Inc.,
17 formerly known as WTV Systems, LLC, like many early-stage startups, currently
18 receives mail at the home of one of its founders. Defendants deny the remaining
19 assertions of this paragraph.

20 35. Defendants admit that, like the Founder and CEO of any early-stage
21 startup, Srinivasan is involved in the operations of the company he founded.
22 Defendants admit that, as befits the Founder and CEO of the company, Srinivasan
23 is the first of five members of the "Core Team" listed on Zediva's website at
24 <http://www.zediva.com/about>. Defendants admit that Srinivasan is listed as the
25 author of a post on the Zediva blog at
26 <http://zedivamovies.blogspot.com/2011/03/launch-day-recap.html> which contains
27 the following text:
28

1
2 When we spoke to the press, we sensed that they were
3 excited by the story. Though we could hardly imagine
4 what was to follow. Just about everyone we spoke to,
5 immediately published a story. Within a day, we were
6 covered in The New York Times, Wall Street Journal,
7 just about every major news outlet -- and dozens of
8 others. Getting featured on the Yahoo! homepage drove
9 huge volumes of traffic our way, and our servers got
10 overwhelmed.

11 We were disappointed that we couldn't handle the traffic.
12 It meant that we weren't available for our new or
13 returning customers -- this was upsetting; we aim to be a
14 very customer focused company, and here we were on
15 day one, disappointing you. We had a long night, but
16 were back in business just after midnight.

17 Defendants deny the remaining allegations of this paragraph.

18 36. Defendants admit that many journalists have interviewed Srinivasan
19 about the company he founded. Defendants admit that Srinivasan has likened
20 Zediva to "a really really long video cable and really long remote control cable
21 connected to the DVD player" in the cited letter to the FCC. Defendants admit that
22 the cited Washington Post article contains the text, "It's like watching with a long
23 cable and a long remote control," said Venky Srinivasan, Zediva's CEO and co-
24 founder in an interview," and that the article's author, Hayley Tsukayama,
25 confirmed that "In fact, it's just like renting a DVD for two weeks." Defendants
26 admit that a March 16, 2011 Zediva press release, which has been quoted by the
27 press, quotes Srinivasan as follows: "Until now, users had to pay premium prices
28 or drive down to the store to rent new release movies; Zediva is designed to allow
anyone to enjoy new releases at an affordable price point." Defendants admit that
the web page <http://business.financialpost.com/2011/03/16/zediva-launches-netflix-rival/> contains the following text:

It is unclear whether Zediva will face legal challenges from Hollywood studios by not adhering to the same 28-day delay as other companies in the sector. However, the

1 company is confident that its actions are in line with
2 relevant laws.

3 “The 28 day delay is really a contractual agreement and
4 we are not party to that contract,” explained Mr.
5 Srinivasan.

6 “Companies like Redbox, Netflix, Blockbuster, all of
7 them, they all rent DVDs to some extent or another from
8 DVDs they’ve purchased on the open market. So we’re
9 doing exactly the same thing; we’re purchasing market
10 price DVDs, we pay market price for them and we rent
11 them to our customers.”

12 Defendants deny the remaining allegations of this paragraph.

13 37. Denied.

14 38. Defendants admit that the cited letter to the FCC contains the text,
15 “By enabling users to watch new DVDs online, our service may be perceived to
16 directly compete with the Video-on-Demand service, PayPerView or other PayTV
17 services offered by cable providers and, in some cases, the providers of fiber
18 networks and wireless networks. At the same time, we depend on the broadband
19 Internet access service offered by these providers to reach our users.” Defendants
20 deny the remaining allegations of this paragraph.

21 39. Defendants admit that the Zediva service is fully compliant with the
22 law, and that Zediva co-founder Vivek Gupta was quoted in the San Francisco
23 Chronicle article cited in this paragraph of the Complaint as saying, “We believe
24 there is precedent for what we are doing and that we are fully compliant with the
25 law.” Defendants deny the remaining allegations of this paragraph.

26 **FIRST CAUSE OF ACTION**

27 **(Copyright Infringement, 17 U.S.C. §§ 106(4) and 501)**

28 40. Defendants incorporate herein by reference each and every averment
contained in the foregoing paragraphs.

41. Denied.

42. Denied.

1 43. Denied.

2 44. Denied.

3 45. Denied.

4 46. Denied.

5 47. Denied.

6 **PRAYER FOR RELIEF**

7 Defendants deny that Plaintiffs are entitled to the relief requested in its
8 Prayer for Relief, or to any relief whatsoever.

9 **JURY DEMAND**

10 Defendants hereby request a trial by jury on all issues so triable.

11 **AFFIRMATIVE DEFENSES**

12 **First Affirmative Defense**

13 48. Plaintiffs' claim is barred by the limitations on copyright liability set
14 forth in 17 U.S.C. § 512.

15 **Second Affirmative Defense**

16 49. Plaintiffs' claim is barred by the defense of fair use.

17 **Third Affirmative Defense**

18 50. Plaintiffs' claim is barred because Plaintiffs have granted an express
19 or implied license to some or all of the works at issue.

20 **Fourth Affirmative Defense**

21 51. Plaintiffs' claim is barred because Plaintiffs engage in copyright
22 misuse.

23 **Fifth Affirmative Defense**

24 52. Plaintiffs' claims are barred by the equitable doctrine of waiver.

25 **Sixth Affirmative Defense**

26 53. Plaintiffs' claim is barred due to Plaintiffs' unclean hands.

27 **Seventh Affirmative Defense**

1 54. Plaintiffs' claim is barred by the equitable doctrine of laches.

2 **Eighth Affirmative Defense**

3 55. Plaintiffs' claim is barred by the equitable doctrine of estoppel.

4 **Ninth Affirmative Defense**

5 56. Plaintiffs' claim is barred in whole or in part by collateral estoppel.

6 **Tenth Affirmative Defense**

7 57. Plaintiffs' claim is barred by Plaintiffs' knowledge, consent and
8 acquiescence.

9 **COUNTERCLAIM**

10 Defendant and Counterclaimant WTV Systems, Inc., f/k/a WTV Systems,
11 LLC ("Zediva") hereby asserts the following counterclaim against plaintiffs and
12 counterdefendants Warner Bros. Entertainment Inc., Columbia Pictures Industries,
13 Inc., Disney Enterprises, Inc., Paramount Pictures Corporation, Twentieth Century
14 Fox Film Corporation, and Universal City Studios Productions LLLP ("the
15 Studios"), on personal knowledge as to itself and on information and belief as to
16 others, as follows:

17 **JURISDICTION AND VENUE**

18 58. Zediva's counterclaim for declaratory relief is brought pursuant to the
19 Declaratory Judgment Act, 28 U.S.C. § 2201(a), and the Copyright Act, 17 U.S.C.
20 §§ 106(4) and 501.

21 59. This Court has subject matter jurisdiction over Zediva's counterclaim
22 pursuant to 28 U.S.C. §§ 1331 and 1338.

23 60. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
24 because the Studios are subject to personal jurisdiction within it.

1 **THE PARTIES**

2 61. Counterclaimant WTV Systems, Inc. is a corporation organized and
3 existing under the laws of the state of Delaware with its principal place of business
4 located in Sunnyvale, California.

5 62. On information and belief, counterdefendant Warner Bros.
6 Entertainment Inc. is a corporation incorporated under the laws of the State of
7 Delaware with its principal place of business located in Burbank, California.

8 63. On information and belief, counterdefendant Columbia Pictures
9 Industries, Inc. is a corporation incorporated under the laws of the State of
10 Delaware with its principal place of business located in Culver City, California.

11 64. On information and belief, counterdefendant Disney Enterprises, Inc.
12 is a corporation incorporated under the laws of the State of Delaware with its
13 principal place of business located in Burbank, California.

14 65. On information and belief, counterdefendant Paramount Pictures
15 Corporation is a corporation incorporated under the laws of the State of Delaware
16 with its principal place of business located in Los Angeles, California.

17 66. On information and belief, counterdefendant Twentieth Century Fox
18 Film Corporation is a corporation incorporated under the laws of the State of
19 Delaware with its principal place of business located in Los Angeles, California.

20 67. On information and belief, counterdefendant Universal City Studios
21 Productions LLLP is a limited liability limited partnership duly organized under
22 the laws of the State of Delaware with its principal place of business located in
23 Universal City, California.

24 **GENERAL ALLEGATIONS**

25 68. Zediva is a DVD rental service. Zediva buys genuine, lawfully made
26 DVDs by the hundreds, and rents them out to its customers. Its customers are then
27 able to watch the DVDs they have rented. The only difference between watching a
28

1 rented DVD on the DVD player in one's living room and watching a rented DVD
2 using Zediva is that rather than connecting to the DVD player with a short cable,
3 Zediva lets users connect to the DVD player over the Internet. In this way, Zediva
4 simply functions as a very long cable between the user and the DVD player she has
5 rented.

6 69. Stores or services that rent out DVDs do not need to obtain a license
7 from copyright holders. This is because once a video rental store buys a DVD, the
8 copyright laws permit it to rent out that copy. The copyright laws do not, of
9 course, permit the video store to make additional DVD copies; that would require a
10 license.

11 70. Zediva maintains stacks and stacks of real DVD players containing
12 real DVDs, purchased at retail, in its Silicon Valley data center.

13 71. The user can do no more using Zediva than he can using any other
14 rented DVD and DVD player: he can fast forward, pause, go back, and so on.
15 Users cannot download or copy movies using Zediva. And, like any DVD rental
16 service, a user who wants to watch a DVD which has been rented by another user
17 must wait for it to be returned before he can rent it.

18 72. This is no trick or gimmick: it is the result of an inherent limitation in
19 the DVD rental business. When a user rents a DVD and DVD player through
20 Zediva, he gains full and exclusive control of that DVD and DVD player during
21 the rental period. He is the only user who can press "Play" or "Pause," and so on,
22 and he is the only user who can see what the DVD player outputs.

23 73. This is no more a public performance than playing a DVD in one's
24 own living room. It defies common sense to say, as the Studios do, that putting a
25 longer cable between a DVD player and its single viewer transforms a private
26 performance into a public performance.

27
28

1 **FIRST CAUSE OF ACTION**
2 **(Declaratory Judgment of Copyright Non-Infringement)**

3 74. Zediva incorporates herein by reference each and every averment
4 contained in the foregoing paragraphs.

5 75. In their complaint, the Studios have alleged that the Zediva has
6 infringed the Studios' copyrights in their works by publicly performing the
7 Studios' copyrighted works, allegedly in violation of 17 U.S.C. §§ 106(4) and 501.

8 76. Based on the foregoing allegations, there exists between the parties a
9 substantial controversy of sufficient immediacy and reality to warrant declaratory
10 relief.

11 77. Plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. § 2201
12 and Federal Rule of Civil Procedure 57 that Zediva has not infringed the exclusive
13 right set forth in 17 U.S.C. § 106(4), because Zediva has not performed the
14 Studios' copyrighted works publicly.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Zediva accordingly prays for judgment as follows:

17 a. For a declaration that that Zediva has not infringed the
18 exclusive right set forth in 17 U.S.C. § 106(4), because Zediva has not performed
19 the Studios' copyrighted works publicly;

20 b. For Zediva's attorneys' fees;

21 c. For Zediva's costs and disbursements in this action; and

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 d. For such other and further equitable and legal relief as the Court
2 shall find just and proper.

3
4 Dated: May 16, 2011

DURIE TANGRI LLP

5
6 Bv: _____

Michael H. Page

7
8 Attorneys for Defendants
9 WTV SYSTEMS, INC. f/k/a WTV
10 SYSTEMS, LLC and VENKATESH
11 SRINIVASAN
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

3 I am employed in the aforesaid County, State of California; I am over the
4 age of eighteen years and not a party to the within entitled action; my business
5 address is: 217 Leidesdorff Street, San Francisco, CA 94111.

6 On May 16, 2011, I served the foregoing:

7 **DEFENDANTS' ANSWER AND COUNTERCLAIM**

8 on the interested parties in this action:

9 Glenn D. Pomerantz

10 Glenn.Pomerantz@mto.com

11 Kelly M. Klaus

12 Kelly.Klaus@mto.com

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24 [X] VIA ELECTRONIC MAIL: I transmitted a PDF version of this document
25 by electronic mail to the party(s) identified above using the email address(es)
26 indicated.

27 I declare that I am employed within the office of a member of the bar of this
28 Court at whose direction the service was made.

Executed on May 16, 2011, at San Francisco, California.

