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7 Attorneys for Plaintiffs
 8 FRANK L. DILEONARDO, JR. as trustee of the Frank
 9 L. DiLeonardo, Jr. Trust, and TIMOTHY TATUM, an
 10 individual

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 FRANK L. DILEONARDO, JR. as trustee
 14 of the Frank L. DiLeonardo, Jr. Trust, and
 15 TIMOTHY TATUM, an individual,

16 Plaintiff,

17 vs.

18 JOSEPH FLETCHER, an individual,

19 Defendant.

CASE No. 08 80144 MISC

**APPLICATION TO VACATE HEARING
 RE DEFENDANT JOSEPH FLETCHER'S
 APPEARANCE AND EXAMINATION
 WITHOUT PREJUDICE; [~~PROPOSED~~]
 ORDER**

20 Plaintiffs FRANK L. DILEONARDO, JR., trustee of the Frank L. DiLeonardo, Jr. Trust,
 21 and TIMOTHY TATUM (collectively "Plaintiffs"), hereby apply to the Court for an order
 22 vacating the hearing for the appearance and examination of Defendant JOSEPH FLETCHER
 23 ("Defendant"), currently scheduled for January 19, 2010 at 2:00 p.m., without prejudice.

24 Attached hereto as **Exhibit A** is a true and correct copy of the Court's December 9, 2009 *Order to*
 25 *Appear for Examination*, setting the hearing for Defendant's appearance and examination.

26 Good cause exists for vacating the hearing without prejudice. While Plaintiffs have
 27 diligently attempted to personally serve Defendant with the *Order to Appear for Examination*,
 28 they have not succeeded in doing so. Attached hereto as **Exhibit B** is a true and correct copy of
 the service status report from Plaintiffs' process server detailing their inability to personally serve
 Defendant.

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Long & Levit LLP, 465 California Street, 5th Floor, San Francisco, CA 94104.

On January 12, 2010, I served the documents named below on the following attorney(s) of record and/or interested parties in the case of **FRANK L. DILEONARDO, JR. V. JOSEPH FLETCHER** United States District Court Northern District of California, Case No. 08 80144 MISC.

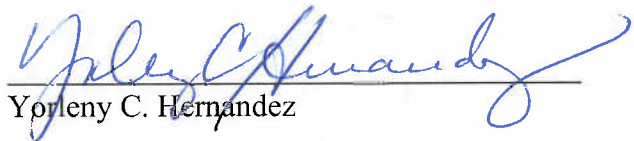
APPLICATION TO VACATE HEARING RE DEFENDANT JOSEPH FLETCHER'S APPEARANCE AND EXAMINATION WITHOUT PREJUDICE; [PROPOSED] ORDER

SERVED UPON:

Joseph E. Fletcher 12 White Oak Way Carmel Valley, CA 93924 "Last Known Address"	<i>Defendant</i>
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- (BY MAIL) I am readily familiar with Long & Levit LLP's practice for collection and processing of documents for mailing with the United States Postal Service. I caused such document(s) to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at San Francisco, California, that same day in the ordinary course of business.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 12, 2010, at San Francisco, California.


Yoriely C. Hernandez

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