EXHIBIT 107

Nelson, et al. v. Cuban, et al.
United States District Court, Northern District of California
Case No. 3:09-CV-682 PJH

*Exhibit **107** to Supplemental Declaration of John D. O'Connor in Opposition to Defendant's Special Motion to Strike*

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COPY

Re: Don Nelson Employment Agreement

Dear John:

I have your letter of October 12. Terdema's first letter could not have been more plain about Don's breaches and about affording him an opportunity to cure. But in any case, your latest correspondence makes it clear that Don has completely repudiated his obligations to the Club.

I reject your transparently opportunistic assertion, not for the first time (I'm referring to your letter of August 4, 2006), that Don's material breaches are somehow excused by earlier breaches on the part of the Club or by conduct of Mark or others. The agreement did not require the Club actually to use Don's services in any capacity except coach, and all changes in his actual responsibilities, including coaching, were by mutual decision. The Club paid (or tried to pay) Don every dollar required by the agreement, provided every benefit called for by the agreement, and continued in every way, consistent with Don's own wishes and the best interests' of the team, to treat him as an employee of the Club.

It is preposterous to think that the Club would provide luxury cars for Don and his wife, exclusive country-club memberships, cell-phone reimbursement, expense account, secretarial support, and other benefits of employment if it did not consider him still an employee. Moreover, the first the Club heard from Don about any possible breaches of the agreement or a desire to terminate it was shortly after Don cashed the last of his coach/GM paychecks and shortly before the official announcement that Don had agreed to coach the Warriors. It does not take a lawyer to see what was going on. Don's and your actions leading up to the announcement of his deal with the Warriors – the discussions had over several weeks in July and August about a possible one-time present-value payment to settle contractual obligations – were obviously designed to do one of two things: Either get Don as much money as possible through an agreed termination of his employment agreement or modification that would have required payment of the deferred compensation even if he were terminated for cause, all before his breaches of the agreement became apparent, or maneuver the Club into however technical a breach so that Don could do exactly what he has done – take another job, insist that the Club still owes him millions, and threaten the Club with adverse publicity.

As for the consultant pay, Don and Mark simply had differing understandings of their agreement at the time Don stepped down as coach; once those differences were aired, the Club agreed to accept Don's understanding and offered to tender payment, which was declined by Don's financial representative, again not coincidentally immediately before Don's deal with Golden State became public.

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It is exceptionally difficult for me to believe that Don, you, or anybody else can seriously believe or contend that the Club agreed to pay Don very substantial sums of money without regard to whether Don complied with his own contractual obligations. The reality, as I hope Don will readily confirm, is that Don's entire arrangement with the Club after Mark became owner was induced by Don's representations that the Mavericks would be his last basketball employer. The Club agreed to provide generous compensation and benefits on that understanding but also required contractual language that protected the Club against Don acting contrary to his representation. That Don "earned" the deferred compensation called for by the agreement did not make the compensation indefeasible. "Earned" means only that Don did not have to provide additional services in order to be eligible for payment. But executive-compensation agreements quite commonly have so-called "claw-back" or "bad-boy" provisions that result in loss of agreed compensation based on events occurring after the compensation is earned. Many of the provisions of the Club's agreement with Don that he has breached have the same effect. It now appears that the Club was wise to have them.

Although the Club did not choose to terminate the agreement with Don because of his breaches, had it done so (as it had the right to do), neither the deferred compensation nor of course any consulting payments would have been owing, which confirms the Club's understanding of "earned" compensation. The most straightforward proof of that construction is the Fourth Amendment. If, as you now contend, the contract gave Don an "irrevocable" (indefeasible) right to the deferred compensation, the Fourth Amendment – providing for payment of the deferred compensation upon Don's death and made at Don's request – would have been totally unnecessary. The Fourth Amendment confirms that Don's understanding of the agreement was the same as the Club's: A termination of the agreement by the Club for "cause," which as defined included Don's death, extinguished the Club's obligation to pay any deferred compensation.

The real question in fact is not whether the Club owes Don anything; it does not. The question you should focus on is the Club's claim against Don. All of the information available to us now suggests that Don was talking to other basketball organizations about employment long before August of this year, in violation not just of his representations to the Club and the agreement but also of his common-law duties of loyalty and possibly League rules as well. Further investigation, and formal discovery if needed, will no doubt flesh out those activities, and in a way not to Don's benefit or credit. Texas law makes any party who "knowingly participates" in breaches of an employee's duties of loyalty jointly and severally liable with the breaching employee and permits even exemplary damages. I do not agree that there is any requirement that the Club "exhaust" any remedies before it initiates legal action, arbitral or otherwise, for Don's violations of his legal duties. The Club is likewise not concerned by the possibility of publicity. On the other hand, a full airing of the parties' conduct is the last thing I should think Don would want. Finally, I am quite aware of the agreement's attorney's fee provision, which entitles the prevailing party to fees; outside counsel likely to be engaged by the Club informs me that his billing rate is $580/hr.

As mentioned in my last letter, the Club's claim is that the value to it of Don's last basketball employment being with the Mavericks equals $7 million, the amount of the deferred compensation plus the consulting compensation. Don's breaches deprived the Club of at least that value. Golden State reportedly valued Don's services at approximately $18 million. The difference -- $11 million – is the benefit Don stands to receive as a result of his breaches. That is accordingly the minimum claim – plus costs, interest, and attorney's fees – that the Club asserts against Don.

We are still interested in an agreed resolution, but circumstances are forcing the Club to make a decision about the situation quite soon. So the time to find a resolution is sooner rather than later.

Sincerely,

Robert Hart
General Counsel